

**IN THE HIGH COURT OF JUSTICE**  
**OYO STATE OF NIGERIA**  
**IN THE IBADAN JUDICIAL DIVISION**  
**HOLDEN AT IBADAN**

**BEFORE THE HON. JUSTICE I. O. OLAKANMI - CHIEF JUDGE**  
**ON MONDAY THE 14<sup>TH</sup> DAY OF OCTOBER, 2002**

**BETWEEN:**

**CHARGE NO. I/40C/2000**

THE STATE  
AND

...

...

COMPLAINANT

WAHABI ADEJOBI )

STELLA OLUGBENJO )

SULAIMON ADEYEMI)

...

...

ACCUSED

**J U D G M E N T**

The three accused persons in this case have been charged as amended by the prosecution as follows:-

**STATEMENT OF OFFENCE**

Conspiracy to commit a felony to wit: stealing contrary to Section 516 of the Criminal Code Cap. 30 VOL.II Laws of Oyo State of Nigeria, 1978.

**PARTICULARS OF OFFENCE**

Wahabi Adejobi 'M' Stella Olugbenjo 'F' between the months of June and October, 1998 at Trans International Bank, Iwo Road Branch, Ibadan in the Ibadan Judicial Division, did steal the sum of N=7,000,000.00 (Seven Million Naira) the property of Trans International Bank, Iwo Road Branch, Ibadan.

**STATEMENT OF OFFENCE**

Stealing contrary to Section 390(6) of the Criminal Code Cap. 30 Vol.II Laws of Oyo State of Nigeria, 1978.

**PARTICULARS OF OFFENCE**

Wahab Adejobi 'M' Stella Adegbenjo 'F' between the months of June and October, 1998 at Trans International Bank, Iwo Road Branch, Ibadan in the Ibadan Judicial Division, did steal the sum of N=7,000,000.00 (Seven Million Naira) the property of Trans International Bank, Iwo Road Branch, Ibadan.

**STATEMENT OF OFFENCE**

Stealing contrary to Section 390(6) of the Criminal Code Cap. 30 Vol.II Laws of Oyo State of Nigeria, 1978.

**PARTICULARS OF OFFENCE**

Wahab Adejobi 'M' Stella Olugbenjo 'F' between the months of June and October, 1998 at Trans International Bank, Iwo Road Branch, Ibadan in the Ibadan Judicial Division, did steal the sum of N=7,00,000.00 (Seven Million Naira) the property of Trans International Bank, Iwo Road, Branch, Ibadan.

### STATEMENT OF OFFENCE

Stealing contrary to and punishable under Section 390(9) of the Criminal Code Cap 30 Vol II Laws of Oyo State of Nigeria, 1978.

### PARTICULARS OF OFFENCE

Sulaimon Adeyemi 'M' between the months of June and October, 1978 in Ibadan in the Ibadan Judicial Division did steal the sum of N=7,000,000 00 (Seven Million Naira) of Trans International Bank, Iwo Road Branch, Ibadan.

### STATEMENT OF OFFENCE

Fraudulent false Accounting contrary to and punishable under Section 438 of the Criminal Code Laws of Oyo State 1978.

### PARTICULARS OF OFFENCE

Wahabi Adejobi 'M' Stella Olugbenjo 'F' between the months of June and October, 1998 at Trans International Bank, Iwo Road Branch, Ibadan in the Ibadan Judicial Division being employees of the said Bank did fraudulently destroy I.C.A. form and I.C.J. forms among others which is in your possession on account of Trans International Bank, PLC.

All the Counts of the charge were duly read to the three accused in English Language while same were interpreted into Yoruba language for the third accused. They, each pleaded not guilty to the charge. The prosecution called three (3) witnesses while the 1<sup>st</sup> and 2<sup>nd</sup> accused only gave evidence each in his/her defence but called no witness. In the course of the trial, the 3<sup>rd</sup> accused person, Sulaimon Adeyemi was reported dead with an affidavit of his death filed in court.

First prosecution witness who in this judgment shall be referred to as PW1, one Alhaji Kareem Oladele Oladokun, a Chief Inspector of Trans International Bank PLC, the complainant/Bank, said he knew the 1<sup>st</sup> and 2<sup>nd</sup> accused but not the third accused. He knew the 1<sup>st</sup> and 2<sup>nd</sup> accused to be former officers in the Iwo Road Branch of Trans International Bank. While 1<sup>st</sup> accused was a signatory of the bank, the 2<sup>nd</sup> accused he said was the branch accountant i.e. next in rank to the branch manager. His evidence also showed that the 1<sup>st</sup> accused was in charge of Transfers Department i.e. the department in charge of issuing of bank drafts to customers both local and up country. According to this witness, the 1<sup>st</sup> accused had served as computer operator and systems administrator of that branch and that he joined the bank in 1990 as a computer operator.

Continuing his evidence PW1 disclosed that 1<sup>st</sup> accused later obtained an HND in Banking and Finance while on the job which enabled him to change from a computer operator to that of an operational man. Before his transfer to Iwo Road branch he had served at Ogbomosho branch of the bank as a computer operator.

On the 2<sup>nd</sup> accused, PW1 described her as a chartered banker by profession and had worked in Canada before she returned to Nigeria to join T.I.B. as an officer and got promoted to the post of Senior Assistant Manager.



According to PW1, the duties of 1<sup>st</sup> accused as officer in charge of Transfer Department included:- attending to customers' requests in respect of issuing bank drafts both local and up country and keeping proper records of the sales thereof. He had a number of internal accounts that he was operating namely:-

- (a) Up country draft Account
- (b) Local draft account, etc.

Up country account meets a particular internal account that temporarily accommodates the proceeds of bank drafts that are issued on other branches of the bank. Whereas the local drafts account is the internal account that accommodates the proceeds of bank drafts that are issued and payable by the same branch. He went on to state that it was the responsibility of the 1<sup>st</sup> accused to ensure that these accounts were balanced regularly.

Second accused had the duty of overseeing various departmental heads of the branch. The procedure for bank drafts, he explained, is that the customer makes a request to purchase bank draft whether local or up country, he would either issue his cheque or he pays cash. On the basis of that, 1<sup>st</sup> accused had the responsibility of passing entries in the book of account of the branch clearly separating the principal amount from the commission paid.

It was discovered in June 1999 that the internal account earlier mentioned under 1<sup>st</sup> accused's schedule did not balance. It was impressed on the manager to see that the account balanced. As at that time the account reflected a balance of over seven million (7 million) Naira that could not be accounted for. The bank's investigation team from the Inspection Department set out to work on the account in the branch with a view to ascertaining the cause of the imbalance. Before the team got to the branch, it was learnt from the branch manager that the 1<sup>st</sup> accused had owned up for the difference claiming it was devil's wish.

On the basis of that the branch manager had reported to the Iwo Road Police Station for fear that the accused might run away. The Investigating Team went through the book of the branch account to ascertain how much was involved. Investigation revealed that sometimes between June and October 1998, 1<sup>st</sup> accused used his position to manipulate entries and figures in the internal accounts that were kept by him. It was discovered, too, a number of spurious and unauthorised entries in the records made up largely of fictitious debit entries into up country accounts and corresponding credit entries to some unknown customer's accounts.

Continuing, PW1 disclosed that part of 1<sup>st</sup> accused's duties included opening new accounts for a customer and to coordinate for the purpose of computing postings, all the transactions vouchers generated by all departments of the branch. It was their finding, witness continued, that 1<sup>st</sup> accused had his opportunity as system administrator to create customers accounts which were made use of in the manipulation. There was a total of eleven (11) of such accounts through which fraudulent operations were carried out. One

of such person is one Femi Olaoye for whom 1<sup>st</sup> accused opened both current and savings accounts.

At the end of the investigation they wrote a report to the management of the Bank at which juncture they requested that State C.I.D. should come in. He identified a copy

of the report dated 2/7/99 claiming that the original was with the management. Same copy was admitted through him as Id.1.

He testified further by saying that they have a lot of control points put in place at Iwo Road branch which included - Dual Signatory Control whereby a single officer is not allowed to carry out any accounting transaction. It is a control system whereby the job of one person is supposed to be checked by or made to compliment the job of another such that barring collusion among officers, it is not possible to defraud the bank. All the vouchers they were able to lay their hands on were co-signed by the 1<sup>st</sup> and 2<sup>nd</sup> accused satisfying the control measure for there to be at least two officers one of whom must be an 'A' signatory which the 2<sup>nd</sup> accused was. They debited the internal account. A lot of the documents involved were in various postings and were nowhere to be found in the bank's premises. They were able to get some of the documents. Exhibits 'A', 'B', 'C', 'D - D22' were all admitted through this witness.

The first hint, according to this witness, about the imbalance was from the branch inspector. Before their investigation the branch manager had queried the 1<sup>st</sup> and 2<sup>nd</sup> accused and by the time they came into it both accused were in Iwo Road Police Station. He concluded his evidence in chief by stating that he was aware the 1<sup>st</sup> and 2<sup>nd</sup> accused made statements to the police.

Under cross-examination by Mr. Sobanjo for the 1<sup>st</sup> accused PW1 said he was not in a position to state the exact date 1<sup>st</sup> accused became an officer unless he went into his file. He confirmed the offence was committed between June and October 1998. He was appointed by T.I. B. as a Senior Manager. In answer to another question, PW1 stated that the cheque is issued by a customer drawn on the bank issued to him by the Bank. A supervisor, he said, depending on the circumstances, has authority to pay up to N=10,000.00 (ten thousand Naira) when there is no other superior officer around. Also an officer can authorise payment up to N=50,000.00 (fifty thousand Naira) when his superior officer is not around. He confirmed his knowing proof Journal in banking. Its purpose, he said, is to list out the details of all transactions and particularly it highlights debit entries against corresponding credit entries as are passed through the computer. PW2 Cpl 163835 - Fatai Tijani of Dc Anti Fraud Section State C.I.D. took part in the investigation. He knew all the accused. On 29/6/99 he received a petition written by PW1 against the accused which was referred to him for investigation. It was a case transferred from Agodi Police Station to Iyaganku State C.I.D. for further investigation with the accused persons. The three statements of the 1<sup>st</sup> accused 2/7/99, 16/7/99 and 16/8/99 were jointly admitted through him as Exhibit 'E'. So also Exhibit 'F', statement



of 2<sup>nd</sup> accused. As a result of a search he conducted at 1<sup>st</sup> accused's house he recovered three (3) cars. He recovered nothing in the house of the 2<sup>nd</sup> accused.

He visited the scene of the crime where he discovered that some account belonging to three customers were used by the 1<sup>st</sup> accused to withdraw money. He also discovered that some books of account had been removed. It was confirmed to him by the manager of the Bank that it was the 1<sup>st</sup> accused that removed the books.

Under cross-examination, PW2 said 1<sup>st</sup> accused made the statement to him by putting questions to him. That 2<sup>nd</sup> accused was not there when the 1<sup>st</sup> accused made his statement. He claimed to be the only one that investigated the case. That the petition earlier referred to by him alleged that seven million naira was stolen from T.I.B. Ibadan. That in the course of his investigation it was confirmed that the said amount was missing through 1<sup>st</sup> accused.

PW2 also confirmed through cross-examinations by Mr. Sadiq for the 2<sup>nd</sup> accused that he did not know the 3<sup>rd</sup> accused person before their case was transferred to him and that he had no cause to be hostile to them in the investigation. That 2<sup>nd</sup> accused volunteered her statement.

PW3, one Umar A. Bature DSP also gave evidence. On 17/6/99 he was the O/C Anti Fraud Investigation State C.I.D., Iyaganku, Ibadan. All the accused persons as well as the Chief Inspector of T.I.B. were known to him. He supervised the investigation of this case at the end of which at least one of the accused made a confessional statement i.e. the 1<sup>st</sup> accused. Witness identified Exh. 'E'. He confirmed endorsing this Exhibit. When they took over the case the 1<sup>st</sup> accused was deaf and dumb so they had to wait for him to recover. The accused with his confessional statement were brought to him on 2/7/99 at about 10.00 a.m. Same statement was read over to him after which he admitted it was made voluntarily. 1<sup>st</sup> accused signed and he counter-signed. He maintained he took part in all the actions as the supervising officer.

Under cross-examination by Mr. Sobanjo, witness said because of the amount involved, he was part of the investigation and was not just issuing directives. That he personally visited T.I.B. with his team. They visited the scene and collected the relevant documents needed for their investigation. That visit to T.I.B. was not just once and that Cpl Tijani could have been there alone on a different visit.

When cross-examined by Mr. Sadiq for the 2<sup>nd</sup> accused witness said that 1<sup>st</sup> accused feigned sickness when he was brought along with the others but started to talk as they were making arrangements to take him to the hospital.

1<sup>st</sup> accused gave evidence in his defence. He was employed by T.I.B. on 4<sup>th</sup> October, 1990 as a computer operator. He became an officer in May 1999. Stating how the bank functions, he said a customer draws his own cheque duly signed, submits to control cashier who will refer same to the Reference Clerk to verify the signature. If the signature is regular then the Reference Clerk passes the cheque either to the Manager or the Accountant, depending on the amount involved, who will authorise payment. Same

will be passed to the Cash Officer or the cashier depending on the amount. Before the money is paid, the paying cashier must ensure the correct identity of the drawee. The identity could be checked through any of the following ways:- (a) Identity Card, (b) passport photograph or (c) International Passport.

Continuing, he stressed that in the case of the owner of the account not coming personally there should be an authorisation letter which should be attached to the cheque. He was not in charge of opening a new account for customers in the bank then. The duty according to him is that of an officer not below the rank of executive officer. He was temporarily assigned the above duty sometimes in September 1996 not officially. He said he never opened accounts with fictitious names during the short period. One Ibrahim Akintunde Nurudeen he mentioned to be a customer of the bank as well as Felinco (Nig) Ltd, Kaaton (Nig.) Enterprises, Odediran K. O. and Akinrinoye F.A. By virtue of his job as Transfer Officer he said he issued drafts to customers some of whom preferred paying cash and they issued their cheques. He would collect the cash and issue the drafts. Such customers, he explained, did this to avoid paying heavier commissions and all other charges and to save time. He expressed surprise that Exhibit 'B' has no indemnity or authority letter from the customer attached to it. For without it the approving officer would not approve and if he mistakenly approves the cashier will not pay it. Because, according to him, on the second day the manager will check and make a comment if it is not properly done. That the procedure he explained about Exhibit 'B' was approved by the authority for it had never been queried either by Internal or External Auditors at the head office. He denied any conspiracy with the 2<sup>nd</sup> and 3<sup>rd</sup> accused to defraud T.I.B. of a sum of Seven Million Naira. He denied destroying I.C.A. or I.C.J. form of T.I.B. before his dismissal because he said he was never a stores officer in the bank. Also he explained that the key holding system did not allow such. He never signed any register requesting for vouchers. That the torture he received at Iwo Road and Iyaganku police stations led to his being taken to the hospital. He made his statement when he was sick in hospital and another after leaving hospital but he was still sick. He said that an armed policeman from S.A.R.S. threatened him with a pistol and the I.P.O. said he would like to assist him to get out of the cell that he should just cooperate. He also said he started posing questions to him which he answered.

Between the time of his appointment and dismissal, he had two promotions:- 1994 to a Supervisory post and in May 1999 to an officer. The promotion was based on his 1998 performance i.e. the period the bank alleged he stole its money. He concluded by stating that both the Internal and External auditors published a balanced account for T.I.B. against the year, 1998.

Under cross-examination by the prosecutor, Mr. Adeoye, 1<sup>st</sup> accused said he joined T.I.B. on 1<sup>st</sup> October, 1990. He reiterated he was employed as a computer operator. As at the time of the alleged offence he was a supervisor. Since his employment there was no delay in the payment of his salary. His salary per annum then



was forty-eight thousand Naira. He denied loaning the 2<sup>nd</sup> accused any money. He wrote Exhibits A1 – A4 personally. In them he said he described the mode adopted in the fraud. He had never met the I.P.O. Sgt. Fatai Tijani before this case. He agreed the I.P.O. could not have known the relationship between him and the dead 3<sup>rd</sup> accused (Sulaimon Adeyemi). And the I.P.O. could not have known his background before he wrote Exhibits A1-A4. That the dead 3<sup>rd</sup> accused was a customer of his bank. One Femi Olaoye was also a customer of the bank. 1<sup>st</sup> accused denied giving the deceased 3<sup>rd</sup> accused a sum of N=500,000.00 for the prayer he offered on his behalf.

2<sup>nd</sup> accused in her evidence testified that she was a former employee of Trans International Bank, Iwo Road, Ibadan. She joined the bank on October 28, 1991 and left in 1999. She was employed as a Pro-Manager I.C.A. sub-Manager. Before joining T.I.B. she was working with A.I.B. formerly known as the Bank of Commerce and Industry in Lagos. She also worked with Canadian Imperial Bank of Commerce, Toronto, Canada. She left T.I.B. as Senior Manager. She was promoted Assistant Manager in December 1994 and Senior Manager in December 1997. She worked last at the Iwo Road branch of T.I.B. She disclosed that as a Senior Manager, her duties included being in charge of the branch treasury and daily cash transactions. She was to distribute cash to the cashiers and they balanced to her at the end of each day. She was also in charge of payment of cheques. She was the custodian of the key to the branch treasury. According to her there were four different keys to the treasury. The Manager kept one of the keys and on resumption of duty everyday he had to surrender it to the cash officer.

She explained that I.C.A. means Inter branch credit Advice while I.C.J. means Inter branch credit Journal. The I.C.A. is operated to assist a customer of the bank in transferring any amount from his account in his branch to another branch which is known as the Respondent branch. The form for this, she stressed, must be in quadruplicate i.e. four copies of the I.C.A. form are involved. The four copies are distributed as follows:- (1) Two to the respondent bank; (2) one to the headquarters and the fourth is retained by originating bank. The I.C.J. is in five copies:- (1) The first 3 copies will go to the head office, (2) the fourth to the computer for posting and the last with the branch.

She disclosed also that the auditing of the branch account takes the following process:-

From the 1<sup>st</sup> 6 months of every year, the Internal auditor would come and check the books of the branch and report to the Chief Inspector. At the end of the year the Internal auditor would come again to check the books. Same December the External Auditors would check the books and make their report. She said the accounts of the branch were checked from 1994 to 1998 and the report was positive i.e. there was a balanced account for all the years.

She denied destroying some I.C.A. and I.C. J. forms nor did she conspire with the first accused to steal seven million naira (N=7,000,000.00) property of T.I.B. She denied stealing the money along with the 1st accused or stealing any money at all.. In the

stations. Exhibit I was admitted through her.

Under cross-examination by Mr. Adeoye, 2<sup>nd</sup> accused said that there was a branch manager for their Iwo Road branch as at the time of the incident. She was the accountant of the branch. Her annual salary then was one hundred and two thousand naira (N=102,000.00). While all huge payments must be endorsed by the branch manager, 2<sup>nd</sup> accused endorsed all payments in his absence. She denied collecting any money from the 1<sup>st</sup> accused. It was one Adenike Olaniyan who collected N=900,000.00 from Martins in her (2<sup>nd</sup> accused's) presence. She said the draft for N=200,000.00 was issued by her husband and not by her and did not know when he did so. She was not allowed to see her husband when she was detained by the police and when her husband saw the embarrassment given to her by the police he issued the draft.

Cross examined by Mr. Sobanjo, 2<sup>nd</sup> accused said 1<sup>st</sup> accused was not present when she was making her statement. Case for the 2<sup>nd</sup> accused.

Mr Sobanjo addressed the court by referring to the charge. He submitted on count 1 that the prosecution had failed to prove this count against the 1<sup>st</sup> accused. He referred to S.516 C.C. that the particulars of the offence are at variance with the provision of the above section which talked of conspiracy in any part of the world. That the prosecution had failed to prove that the offence alleged committed occurred at a place outside this country as required under S.516 C.C. under which the accused had been charged and that the court cannot convict on it and not under other section of the law. Learned counsel cited the case of (Okebi vs. The State) (1984) All N.L.R. (reprint version) p.356-371. He therefore urged the court to discharge and acquit the accused persons on count 1.

On counts 2 – 3 which are stealing counts, learned counsel submitted that the prosecution had failed to prove these counts as against the 1<sup>st</sup> accused person. He referred to PW1's evidence as well as Exhibits A, B, C, D-D22 and submitted that PW1 had failed to prove that both accused persons stole the money. On the exhibits, it was his submission that the prosecution failed to explain all the exhibits but merely dumped them on the court expecting the court to go on a voyage of discovery. He referred to the case of First Bank PLC v. Mamman (Nig) Ltd. (2001) FWLR (PT 31) p. 2890 at 2906 paras D – E.

He urged the court to hold that the 1<sup>st</sup> accused did not steal the sum alleged from T.I.B. for PW1 himself's evidence, he observed, showed that the 1998 report of the External Auditors of the bank showed a balanced account. On PW2 evidence i.e. I.P.O. the investigating police officer, learned counsel submitted that the witness did not give evidence as to how the money was stolen and that failure on prosecution's part to call as witnesses T.I.B. customers whose accounts PW1 alleged were used by the 1<sup>st</sup> accused to defraud the bank was fatal to the prosecution's case. So is their failure to call the branch manager of the Iwo Road branch of T.I.B. Counsel cited in aid – S. 148(d) E. Act and



State vs. Emine (1992) 7 N.W.L.R. (Pt. 256) p. 658 at pp. 670-671 paras H-A. He urged the court to treat as hearsay and so ignore whatever evidence PW2 might have offered concerning the part played by the Iwo Road branch manager of T.I.B. and the three customers whose accounts were said to have been used in stealing the money by 1<sup>st</sup> accused. On this he cited the case of Ekpo vs. The State (2001) F.W.L.R. (PT/55) 454 at 464-465 paras H-A.

Learned counsel conceded he did not object to the admission of 1<sup>st</sup> accused's statements i.e. Exhibits A1, A2, A3 and A4. He however urged the court not to use Exh. 'F' i.e. statement of 2<sup>nd</sup> accused as against the 1<sup>st</sup> accused since same was not adopted by the latter in his own statement. He referred to Waziri vs. The State (1997) 3 N.W.L.R. (PT.496) p. 689 at 724-725 paras H-A. That all the 1<sup>st</sup> accused admitted taking in Exhibit 'E' was a total of N=882,000.00 only. He submitted that the court cannot convict the 1<sup>st</sup> accused for stealing a lesser amount than the one charged which is seven million naira (N=7,000,000.00) specifically. He cited Dr. O. Onagoruwa vs. The State (1993) 7 N.W.L.R. (PT. 303) p.49 at 93 paras E-F. He urged the court to discharge and acquit the 1<sup>st</sup> accused on the stealing charge.

On count 5, he urged the court to hold that there was no evidence led by the prosecution on this and so he urged that the 1<sup>st</sup> accused be equally discharged and acquitted.

In his own submission Mr. Akinjide Sadiq observed that only counts 1, 2, 3 and 5 relate to the 2<sup>nd</sup> accused. On count 1 he adopted Mr. Sobanjo's submission. He however added that there was no shred of evidence to show that the two accused either planned or worked together to commit any offence.

On counts 2 and 3, he referred to the evidence of PW1, PW2 and PW3 as relate to the accused. He submitted that the prosecution had a duty to establish the ownership of the stolen money and that the owner cited in the two counts is a non-juristic person. He cited on this para. 178 in p. 27 of – 'Nigeria Criminal Code Companion' by Fakayode J. as well as Onagoruwa's case holden 21 and 22 at p. 86 paras D – E.

He called the court's attention to the difference in the amount charged i.e. seven million, three thousand, six hundred and two Naira mentioned by PW22 in his evidence. That the court is left to conjecture as to the real amount stolen. Learned counsel referred to Exhibits 'F' and 'I' wherein the 2<sup>nd</sup> accused was alleged to have confessed benefiting to the tune of N=900,000.00 only.

That while 2<sup>nd</sup> accused said in her evidence that she made three (3) statements only 2 were tendered by the prosecution. And that failure by the prosecution to produce her statement was prejudicial to her case. He urged the court to hold S.146(d) of the Evidence Act as amended should apply here. He also called in aid Emine's case (supra) p. 670-671 paras H – A.

He also submitted that failure of the prosecution to call the owners of the accounts in Exhibits D – D22 is fatal to their case and that the court is left to guess as to who

withdraw from which account. He urged the court to hold that the prosecution withheld material evidence when it refused to call as witness the branch manager of T.I.B. at the material time even though his name appeared in the proof. That the total amount in Exhibits D-D22 do not come close to N=900,000.00 which is still a far cry from seven million Naira charged. He also urged the court to discountenance Exhibits 'F' and 'I' for failure to produce of 2<sup>nd</sup> accused's third statement.

He urged the court to discharge and acquit the 2<sup>nd</sup> accused on counts 2 and 3. Learned counsel also urged the court to expunge the evidence of PW2 regarding what the customers of the bank and the branch manager told him being hearsay evidence. Regarding count 5 he urged the court to hold this as abandoned by the prosecution for its failure to lead any evidence on it. He finally urged the court to discharge and acquit the 2<sup>nd</sup> accused completely.

In his reply, the prosecutor, Mr. Adeoye (P.L.O.) referred to the amended charged ~~filed and applied orally to withdraw the 3<sup>rd</sup> count which was granted and so same was~~ struck out. He referred to the charge and pointed out that though there were three accused persons arraigned before the court, the death of the third accused, as announced by his counsel to the court brought the number to two. He therefore applied again to withdraw the 4<sup>th</sup> count which affected the deceased accused only and so same was struck out by the court.

Submitting on the remaining counts, learned prosecutor submitted that the prosecution had discharged the onus placed on it through its three witnesses called. On count 1, (the conspiracy count), he submitted that what was required to be proved is an agreement between the conspirators to do an unlawful act or a lawful act by unlawful means. That proof of the agreement can be direct or inferred from the surrounding circumstances of anything said, done or written by any of the conspirators in furtherance of or pursuant to the common intention or design. He referred to 'Criminal Code Companion' by Fakayode J. of late, pp. 17-19 and cited Waziri's case (supra) p. 689 at 698 Ratio 10, 11, 12, 13 & 14 and Dr. Segun Oduleye vs. The State (2001) 2 S.C. Monthly p. 81. He referred to that aspect of PW1's evidence to the effect that the 1<sup>st</sup> accused was using certain customers account to take money away from the bank. That 1<sup>st</sup> accused was only an overdraft officer with a limit of N=10,000.00. He referred to Exh. 'H' which contains the names of such customers and that Exhibits 'A', 'B', 'C', 'D - D22' corroborate the contents of Exh. 'H'. That Exh. 'E' (1<sup>st</sup> accused's statement) was tendered without objection from counsel to the 1<sup>st</sup> accused. He urged the court to treat the defence of involuntariness raised by 1<sup>st</sup> accused as an afterthought. That Exh. 'E' coming from 1<sup>st</sup> accused himself is much revealing. That 2<sup>nd</sup> accused admitted in Exh. 'E' liability to the tune of N=900,000.00 (Nine hundred thousand naira) That 2<sup>nd</sup> accused's husband even issued a cheque for that amount when he visited her at the police station. He submitted that the only inference deductible from the contents of



Exhibits 'E', 'A1', 'A2', 'A3', 'A4', 'F' and 'I' is that both accused persons agreed together to deprive their employer of the amount in issue.

On count 2 (stealing count) he submitted that the following must be proved:-

- (1) a taking by the two accused
- (2) the thing taken must belong to a person natural or juristic
- (3) such taking must be without the consent of the owner.

He referred to PW1's evidence as well as Exhibits 'E', 'A1-A4' in which 1<sup>st</sup> accused confessed to committing the offence which learned counsel urged is sufficient to convict the accused persons without any corroborative evidence so far as the court is satisfied with the truth of the confession. He cited on this Akpan vs. The State (1992) 6 N.W.L.R. (pt. 248) P. 439 AT 445. And that the confessional statements of the two accused satisfy the requirements in Akpan's case (supra). That the evidence of PW1 and Exh. 'H' corroborate the contents of Exh. 'E', 'A1-A4', 'F' and 'I'. He cited Waziiri's case (supra) too at p. 699. Ratio 17. He urged the court to hold the defence of 2<sup>nd</sup> accused that the sum of N=900,000.00 given to her by 1<sup>st</sup> accused was a loan as an afterthought. On this count, he finally urged the court to hold, going by both direct and circumstantial evidence in this case that the two accused stole the sum of seven million Naira (N=7,000,000.00).

As regards count 5, learned counsel submitted that the I.C.A. and I.C.J. forms being the property of T.I.B. were normally given to both accused in their normal daily transactions. This was PW1's evidence and that both accused even agreed. That all the I.C.A. and I.C. J. forms in connection with the stolen seven million Naira were said, in evidence by PW1 not found and that the only inference drawable from this is that the forms must have been destroyed by the two accused and the two of them could not account for the missing documents. He urged the court to invoke the provisions of S.438 C.C. against the accused.

Replying on his learned friend's submission on S.516 C.C., he urged the court to disregard same but referred to Ogunleye's case (supra).

On failure of the prosecution to call all listed witnesses, learned prosecutor submitted that the prosecution was not bound to call all witnesses listed in the proof and that the evidence of PW2 an I.P.O. in the case is not hearsay evidence. He finally urged the court to hold that the charge had been established against the two accused beyond reasonable doubt.

The original charge in this case was against three accused persons. It contained three counts. Same was consequently amended through an application on Notice by the prosecution which was granted by the court.

The new charge contains five counts. On the death of the 3<sup>rd</sup> accused person Sulaimon Adeyemi however, count 4 which is the only count affecting him singularly was withdrawn by the prosecution and same got struck out, leaving the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> counts to contend with.

First count is for conspiracy for which the accused persons have been jointly charged. But since the 3<sup>rd</sup> accused has died, I shall be considering this count with reference only to the 1<sup>st</sup> and 2<sup>nd</sup> accused alive to face same. They have been alleged to have conspired to steal a sum of N=7,000,000.00 (Seven Million Naira) property of Trans International Bank Iwo Road Branch, Ibadan. S. 516 C.C. Cap. 30 Vol. II Laws of Oyo State of Nigeria, 1978 provides as relating to conspiracy as follows:-

“516 – Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Nigeria would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for seven years or if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser imprisonment.”

The above is the punishment Section. The question is – How is an offence of conspiracy committed? Conspiracy is committed when two or more persons agree to do an unlawful act which in law amounts to a felony or to do a lawful act by unlawful means.

The case for the prosecution on this is predicated on:

- (1) the evidence of PW1, Alhaji Kareem Oladele Oladokun, a Chief Inspector of the complainant/Bank T.I.B.
- (2) Exhibits ‘E’ and ‘F’, Statements of both 1<sup>st</sup> and 2<sup>nd</sup> accused and
- (3) Exhibit ‘H’ which is the report of Irregularities discovered in the Up-Country Drafts Payable Account at Iwo Road branch of T.I.B. PLC. All combined point to no other conclusion but that the 1<sup>st</sup> and 2<sup>nd</sup> accused had an agreement to steal T.I.B. PLC money through their fraudulent means. There is the evidence through PW1 that while 1<sup>st</sup> accused was in charge of transfers department of the Iwo Road branch of T.I.B. and had the duty of attending to customer’s requests in respect of issuing bank drafts both local and up country and keeping proper records of the sales thereof. He also had a number of Internal accounts that he was operating e.g. (1) Up country draft account; (2) Local draft account, etc. The second accused had the duty of overseeing various departmental heads of the branch signing all vouchers raised from all the departments. The 2<sup>nd</sup> accused confessed in her statement, Exh. ‘F’ that whenever 1<sup>st</sup> accused brought his own voucher for her signature, she would sign them without cross-checking. It is clear from both the oral testimony and the Exhibits available in this case that both accused conspired together to defraud the T.I.B. PLC, Iwo Road branch, Ibadan.

I do find from the totality of evidence in this case and the circumstances arising in same that both accused persons i.e. the 1<sup>st</sup> and the 2<sup>nd</sup> accused are guilty of the count of conspiracy, this is inferable from the surrounding circumstances. Evidence of PW1 and the confessions of the two accused as earlier highlighted in this judgment.



In the case of *Dr. Segun Oduleye vs. The State* (2001) 2 S.C. Monthly p. 81 it has been held that proof of an agreement by criminal conspirators can be either direct or inferred from surrounding circumstances

Although counsel for the first accused made a heavy weather as to the section of the Code under which the count of conspiracy has been brought. My comment on his submission is that it was misconceived. Section 516 C.C. is a general section for the charge of conspiracy and like it was pointed out at page 2295 of Brett & Macleans 'The Criminal Law and Procedure of the Six Southern States of Nigeria Second Edition' by C.O. Madarikan & T. A. Aguda (both of blessed memory) this section is meant to cover cases where no provisions for special types of conspiracy or classes of conspiracy are made, and where such provision is made, the charge should be laid under the section making it. e.g. where statement of offence referred to S.516 and the particulars of offence alleged a conspiracy to commit what would have been an offence under S. 37(1) and punishable as a conspiracy under S. 37(2) the count was held to lack precision and the conviction was quashed. See the case of *Enahoro vs. The State* (1965) N.M.L.R. 265. But this is not the situation in the present case.

I therefore find the two accused persons guilty of conspiracy to commit a felony to wit – stealing.

Counts 2 and 3 of the Amended Charge are repetitious one of the other and so I shall regard both for the purpose of this judgment to be one and so I deal with only count 2 as framed. This is a count alleging the stealing of a sum of N=7,000,000.00 (Seven Million Naira) against the two accused. The particulars of the count read and I quote:-

“Wahabi Adejobi (M) Stella Olugbenjo ‘F’ between the months of June and October, 1998 at Trans International Bank, Iwo Road branch, Ibadan in the Ibadan Judicial Division, did steal the sum of N=7,000,000.00 (Seven Million Naira) the property of Trans International Bank, Iwo Road branch, Ibadan.”

From the available evidence in this case, one fact is not in doubt whatsoever, i.e. there was a fraud in the nature of stealing of money at the Iwo Road branch of Trans International Bank PLC between the months of June and October, 1998. The requirements from proving a charge of stealing, I consider too trite to necessitate stating same here in this case. It suffices to state that the charge of stealing is proved once evidence is available pointing to the existence of a stolen property belonging to any person be he natural or artificial and that another person stole same against the interest of the owner. The above and no more is what the prosecution has to prove beyond reasonable doubt in this case. Prosecution in doing this called three witnesses i.e. PW1, PW2 and PW3 – the Chief Inspector of the bank, the I.P.O. and a CSP who over saw the investigation of the case respectively.

The duty of the prosecution here is discharged here once it is able to establish that a sum of seven million naira was stolen from the Iwo Road branch of T.I.B. the complainant bank and that the two accused persons are the people that stole same. It is in

evidence before this Court through PW1 Alhaji K. O. Oladokun – the Chief Inspector of T.I.B. PLC that both the 1<sup>st</sup> and 2<sup>nd</sup> accused were officers of the Iwo Road branch of T.I.B. While 1<sup>st</sup> accused, a signatory of the bank was at all time material to this case in charge of transfer department i.e. issuing of bank drafts to customers both local and up country, his duty, PW1 said, included (a) attending to customers requests in respect of issuing bank drafts both local and up country and (b) keeping proper records of the sales. He had the following internal accounts he was operating i.e.

- (i) up country draft account
- (ii) local draft account, etc.

Accordingly, while up country draft account meets a particular internal account that temporarily accommodates the proceeds of bank drafts that are issued on other branches of the bank, local drafts account is the Internal account that accommodates the proceeds of bank drafts that are issued and payable by the same branch. It is in evidence too that the 1<sup>st</sup> accused's duty included ensuring that these accounts were balanced regularly. 2<sup>nd</sup> accused was an overseeing officer over the various departmental heads of the branch including the 1<sup>st</sup> accused.

It was discovered, said PW1, that in June 1999 the Internal Account under the 1<sup>st</sup> accused's schedule did not balance. There was a deficit of over seven million Naira that could not be accounted for. The Inspection team of the bank set out to investigate the cause of the imbalance, but before the team got to the branch, the branch manager informed the team that the 1<sup>st</sup> accused had owned up for the deference claiming it was devil's work and that a report of same had been lodged to the Iwo Road Police Station, for fear that the accused might run away. This part of the prosecution's evidence is fortified by the 1<sup>st</sup> accused himself in Exhibit 'E' one of his statements made to the police which makes for interesting reading:-

"As regards the fraud I took part at T.I.B. PLC Iwo Road, all started between June 1998 and October 1998."

In another part of the same Exhibit 'E' 1<sup>st</sup> accused wrote in his own handwriting:-

"I met Sheikh Sulaimon Adeyemi Raji through Khalifa Khalihu Rahman son to Sheikh Abubakar of Kajola Monatan Area.... As the time pass (sic) by Khalili Rahman also introduced me to Bai who latter (sic) took me to their father, Sheikh Slaimon Adeyemi Raji..... We both spoke on various issues..... I made him realise I was by then due for promotion which I have been denied. He promised assisting me out with some Islamic preparations which he gave me to drink. All along I did not realise was preparing me for criminal activities in the bank. He then came out and said why do you insist on promotion when there are ways to make money in the bank. I said yes there are ways like big customers who normally give small contracts like sale of telephone and computer equipments. Sheikh Sulaimon now said I can defraud the bank and no one can ever discover the fraud, not even a key officers (sic) who may disturb my activities. I took the concution for the night and used as instructed.



When I got to the office the second day, his son Bai Aliyu Adeyemi came and he said what about our discussion with Baba Sheikh. I told him no problem. It is that day I debited the up country draft account and gave the Sheikh the first instalment of N=500,000.00. We both agreed that whatever I am able to draw from the bank must be share (sic) equally and that I should not break our covenant..... I usually credit 302031895 which belongs to Femi Olawoye who is in no way aware of the fraudulent activities on his account since we do not send statement of account to customers...

The Up Country Draft that I used for the whole fraud has not been balanced since early 1997 and this allowed me to sail through when committing the criminal activities. In fact the concoction was pushing me and I became very bold to the extent that I always felt like going to the counter, pack money and give to the boys each time they appear in my office. ----- The total amount of N=2,993,186.68 has so far been dubiously withdrawn from the bank and spent between myself and Sheikh Sulaimon and his children"

The 1<sup>st</sup> accused also went on in the same Exhibit 'E' - "If the total fraud exceed N=2,993,186.68 which I mentioned please let the bank probe further into the up country Draft since 1999 January to 24<sup>th</sup> June, 1999. If any strange entries that are not supposed to be there are found there let the person that did it explain. I made a self confession and do not want to put my problem on others."

Let me stress that the Exhibit 'E' portions of the contents of which are quoted above was admitted without any objection from his counsel Mr. Sobanjo. Thus Exhibit 'E' was properly endorsed as a confessional statement by PW3 DSP Bature. Although 1<sup>st</sup> accused in his evidence on oath denied stealing the sum alleged or even using fictitious names to defraud the bank, this his evidence is far from the truth going by the very revealing contents of Exhibit 'E' which was written by him. Nor can the submission of his counsel Mr. Sobanjo improve 1<sup>st</sup> accused's case. It is trite that addresses by counsel are never substitutes for viva voce evidence before the court. Learned counsel also urged the court to hold Exhibits A, B, C, D-D22 as not proving the amount stolen beyond reasonable doubt and should hold that the 1<sup>st</sup> accused did not steal the sum alleged from T.I.B. This his submission is unfounded in law. I believe the evidence of PW1 that a total of over Seven Million Naira was stolen from T.I.B. Iwo Road Ibadan branch between June and October 1998. Exhibit 'H' the report of the Investigating team of T.I.B. supports this holding. Although 1<sup>st</sup> accused confessed in Exhibit 'E' to stealing only N=2,993,186.68 and that Exhibits A, B, C, D-D22 might not prove the total sum of seven million Naira as charged there is evidence which I do believe that some I.C.J. and I.C.A. documents were missing which the 1<sup>st</sup> accused himself could not account for.

As for the 2<sup>nd</sup> accused, apart from her own confession. Part of Exhibit 'H' read:-

"The team headed by the Chief Inspector himself worked throughout a week-end before finally establishing a figure of N=7,388,602.00. Appendix 1 to Exh. 'H' shows the details of the fraud and gave the total as N=7,388,602.00 even above the amount charged. I do find that the prosecution has proved the involvement of the 1<sup>st</sup> accused in the count of stealing beyond reasonable doubt. As for the 2<sup>nd</sup> accused the prosecution through PW1 and Exhibit 'H' proved joint fraudulent activities of both the 1<sup>st</sup> and the 2<sup>nd</sup> accused persons.

PW1 in his evidence disclosed and I quote:-

"All the vouchers that we were able to lay our hands upon were co-signed by the 1<sup>st</sup> and 2<sup>nd</sup> accused satisfying the control measure for there to be at least two officers one of whom must be an 'A' signatory which the 2<sup>nd</sup> accused was."

This is supported by Exhibits D-D22 on which 2<sup>nd</sup> accused's signature is prominent. With the above and the admission by 2<sup>nd</sup> accused herself in Exhibit 'I' that she was accountable for only N=900,000.00 of the fraud, could it be said that she knew nothing about the fraud? The evidence available goes to no conclusion but that 2<sup>nd</sup> accused participated and connived with the 1<sup>st</sup> accused in committing the alleged theft of N=7,000,000.00.

In Exhibit 'F' which is 2<sup>nd</sup> accused's statement she wrote inter alia:-

"When vouchers are raised from all the departments in the branch by individual departmental heads and sign the first leg I always cross check the vouchers being brought to me for signature, but whenever Adejobi brings his own I just sign them. I did not know why I did not cross-check his own vouchers before I signed them."

Exhibit 'F' was also admitted without objection from her counsel. I believe her statement. I wonder what further evidence is required for proof by the prosecution. Both the oral and documentary evidence in this case are quite overwhelming and compelling that this court has no alternative but to find both accused guilty of stealing as charged under count 2. After all court can convict on the voluntary confession of an accused. See *Akinmoju vs. The State* (2000) S.C.N.L.R. (PT. 1) 90 at 118 paras A – C per Iguh JSC where he held:-

"The law is firmly settled that a free voluntary confession, which is direct and positive and properly proved is sufficient to sustain a conviction without any corroborative evidence so long as the court is satisfied with its truth."

Next is count 5 which is for fraudulent false accounting. This count alleges that the two accused fraudulently destroyed I.C.A. and I.C.J. forms among others which are in their possession on account of Trans International Bank PLC.

The prosecution has not been able to offer any credible evidence directly linking the two accused with the destruction of the two types of forms. All I have before me on this is mere suspicion or assumption and suspicion however grave cannot ground a



conviction. The degree of proof required in criminal cases is proof beyond reasonable doubt.

The accused persons have also denied any such destruction. The evidence from the prosecution on this are (1) from PW1 –

“A lot of the documents involved were in various postings and were nowhere to be found in the bank’s premises.....”

(2) from PW2 –

“I personally checked the accounts. I discovered that some books of account had been removed.”

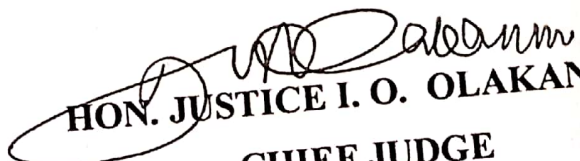
From Exhibit ‘H’ the Investigation report of the Investigating Team of T.I.B. at the page 2 states :-

“What was actually alarming was that majority of the relevant vouchers for the days involved and vital files were missing and are yet to be located.”

The above are all the available evidence regarding any lost document, in this case, all of them knit together, to my mind, cannot be fixed beyond reasonable doubt to the two accused, in that the possibility of any other person being responsible for their disappearance cannot be ruled out in the circumstance.

I therefore find them not guilty of this count.

In conclusion, the two accused are hereby found guilty of the counts of conspiracy and stealing as charged.

  
**HON. JUSTICE I. O. OLAKANMI**  
**CHIEF JUDGE**