IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY, THE 25TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP,
HON. JUSTICE O. E. ABANG
JUDGE

CHARGE NO. FHC/ABJ/CR/05/16

BETWEEN

FEDERAL REPUBLIC OF NIGERIA ... COMPLAINANT

AND

1. OLISA METUH
2. DESTRA INVESTMENT LIMITED ... DEFENDANTS

08039636736
FEDERAL HIGH COURT
03 MAR 2020
ABUJA

JUDGMENT

The 1st and 2nd Defendants were arraigned before this Court as presently constituted on 15/1/2016 on 7 counts charge dated 14/1/2016. The Prosecution later filed an amended 7 counts charge dated 16/2/2016 pursuant to sections 216, 217 and 218 of the Administration of Criminal Justice Act 2015.

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FEDERAL HIGH COURT
ABUJA

The amended 7 counts charge dated 16/2/2016 state as follows:

Count I

That you Olisa Metuh and Destra Investment Limited on at about the 24/11/2014 in Abuja within the jurisdiction of this Court directly took possession or control of the sum of N400,000,000.00 (Four Hundred Million Naira only) paid into the account of Destra Investments Limited with Diamond Bank Plc Account No. 0040437573 from the account of the office of the National Security Adviser with the Central Bank of Nigeria without contract award when you reasonably ought to have known that the said fund formed part of the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki Rtd the then National Security Adviser (to wit criminal breach of trust and corruption) and thereby committed an offence contrary to section 15(2)(d) of the Money Laundering (Prohibition) Act 2011 as amended in 2012 and punishable under section 15(3) of the same Act.

Count 2

That you Olisa Metuh and Destra Investment Limited on or about the 24th November 2014 in Abuja within the jurisdiction of this Honourable Court directly converted the sum of N400,000,000.00 (Four Hundred Million Naira only) which sum was transferred from the account of the office of the National Security Adviser with the Central Bank of Nigeria without contract award, which you claim to have received for political activities of the Peoples Democratic Party when you reasonably ought to have known that the said funds formed part of the proceeds of unlawful activity of Col. Mohammed Sambo Dasuki (Rtd) the then National Security Adviser (To wit: Criminal breach of trust and corruption) and you thereby committed an offence contrary to section 15(2)(b) of the Money Laundering (prohibition) Act 2011 as amended in 2012 and punishable under section 15(3) of the same Act.

Count 3

That you Olisa Metuh and Destra Investments Limited on or about the 24th November 2014 in Abuja within the jurisdiction of this court did retain the sum of N400,000,000.00 (Four Hundred Million Naira only) on behalf of the Peoples Democratic Party for its campaign activities by concealing the said sum in your account with Diamond Bank Plc when you reasonably ought to have known that such fund directly represented the proceeds of unlawful activity of Col. Mohammed Sambo Dasuki (Rtd) the then National Security Adviser (To wit: Criminal breach of trust and corruption) and you thereby committed an offence contrary to section 17(b) of the money laundering (prohibition) Act 2011 as amended in 2012 and punishable under section 17(b) of the same Act.

Count 4

That you Olisa Metuh and Destra Investments Limited between the 24th November 2014 and March 2015 in Abuja within the jurisdiction of this Honourable Court having reason to know that an aggregate sum of

N400,000,000. 00 (Four Hundred Million Naira only) directly represented the proceeds of unlawful activity of Col. Mohammed Sambo Dasuki (Rtd) the then National Security Adviser (To wit; criminal breach of trust and corruption in respect of the said amount used the said fund for campaign activities of the People's Democratic Party and other personal purposes and thereby committed an offence contrary to section 15(2)(d) of the Money Laundering (prohibition) Act 2011 as amended in 2012 and punishable under section 15(3) and (4) of the same Act.

Count 5

That you Olisa Metuh and Destra Investment Limited or about the 2nd December 2014 in Abuja within the jurisdiction of this Honourable Court did make a cash payment through your agent one Nneka Nicole Ararume to one Kabiru Ibrahim a non financial institution to the tune of $1,000,000.00 USD (One Million US Dollars) only and thereby committed an offence contrary to section 1 of the Money Laundering (Prohibition) Act 2011 as amended in

2012 and punishable under section 16(2)(d) of the same Act.

Count 6

That you Olisa Metuh and Destra Investments Limited on or about the 2nd December 2014 in Abuja within the jurisdiction of this Honourable Court did make a cash payment through your agent one Nneka Nicole Ararume to one Sie Iyenome of Capital Field Investment to the tune of $1,000,000.00 USD (One Million US dollars only) and thereby committed an offence contrary to section 1 of the Money Laundering (prohibition) Act 2011 as amended in 2012 and punishable under section 16(2)(d) of the same Act.

Count 7

That you Olisa Metuh and Destra Investment Limited on or about the 4th December 2014 in Abuja within the jurisdiction of this Honourable Court did directly transfer the sum of N21,776,000.00 (Twenty One Million Seven Hundred and Seventy Six Thousand naira only) to Chief

Anthony Anenih being part of the sum of N400,000,000.00 (Four Hundred Million Naira) which you reasonably ought to have known that the said fund represented the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (Rtd) the then National Security Adviser (to wit: Criminal breach of trust and corruption) and thereby committed an offence contrary to section 15(2)(d) of the Money Laundering (prohibition) Act 2011 as amended in 2012 and punishable under section 15(3) of the same Act.

The amended 7 counts charge was read and explained to the 1st Defendant in English Language by the Court's Registrar on 18/2/2016. The 1st Defendant pleaded not guilty. A plead of not guilty was equally recorded for the 2nd Defendant. Before 18/2/2016, the prosecution called eight witnesses that were examined in chief, cross examined and some of the witnesses re-examined.

Same day that is 18/2/2016, the Court granted parties leave to file and exchange written addresses for and in

opposition to the Defendants' no case application. The matter was then adjourned to 25/2/2016 for adoption of parties' written addresses for and in opposition to the Defendants' no case application.

On 25/2/2016 parties presented arguments for and in opposition to the Defendants' no case application. On 9/3/2016 the Court then delivered a Ruling dismissing the Defendants' no case application and directed them to enter their defence. The decision of this Court on the Defendants' no case application was affirmed by the Court of Appeal and the Supreme Court respectively.

The 1st Defendant opened his defence on 11/4/2016. The 1st Defendant called 14 witnesses and also testified in person as the 15th 1st Defendant's witness. The 1st Defendant closed his case on 2/10/2019. The 2nd Defendant called just one witness and closed its case on 8/10/2019.

Before then, on 20/4/2016, Learned Senior Counsel for the 2nd Defendant Tochukwu Onwugbufor (SAN) drew the

Court's attention to his notice of preliminary objection dated 13/2/2016 challenging the jurisdiction of this Court to entertain counts 1 and 2 of the amended charge dated 16/2/2016. That the two counts be struck out because they are allegations bordering on the existence or otherwise of the contract award to the 2nd Defendant by the office of the National Security Adviser ONSA which this Court according to the Learned Senior Counsel lacks jurisdiction to entertain and/or determine by the express provisions of section 251(1) and 3 of 1999 Constitution as amended. There is a written address in support dated 13/4/2016. The Prosecution also filed a written address in response to the 2nd Defendant's preliminary objection dated 19/4/2016.

The Court on 20/4/2016 in a brief pronouncement deferred findings on the 2nd Defendant's preliminary objection till the day Judgment would be delivered that is today. The Court relied on the provisions of section 396(2) of ACJA to this effect.

The Court stated that the operative words in section 396(2) are "any objection" whether or not it is an objection that challenges Court's jurisdiction, it shall be resolved at the end of proceedings in the matter at the time Judgment is to be delivered.

The 2nd Defendant was dissatisfied with the Court's decision deferring findings on the objection till the time Judgment would be delivered and appealed to the Court of Appeal. The 2nd Defendant's appeal was dismissed at the Court of Appeal. A further appeal to the Supreme Court was also dismissed. It is reported in the case of **DESTRA INVESTMENT LIMITED V. FEDERAL REPUBLIC OF NIGERIA (2018) 8 NWLR pt. 1621 SC 335 at 343.** Put differently, SC on 12/1/2018 affirmed the Court of Appeal's decision dated 10/5/2017 that affirmed the decision of this Corut dated 20/4/2016.

Supreme Court in its decision dated 12/1/2018 at page 343 of the Judgment, resolved the issue raised by the 2nd Defendant in its objection dated 13/4/2016 to the effect

that the submission made by the Learned Senior counsel for the 2nd Defendant Tochukwu Onwugbufor (SAN) that when the issue of jurisdiction is involved that it must be resolved first is not quite true. Supreme Court further stated the case before this court did not involve a dispute over a breach of contract so as to bring the matter under the purview of the provisions to section 251(1) of the 1999 constitution as amended which stipulates:-

> "**provided that nothing in the provision of paragraph p, q and r of this sub section shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages injunction or specific performance where the action is based on any enactment law and equity**".

Supreme Court having decided that the case before this court in particular counts 1 and 2 do not involve breach of contract, that this Court has jurisdiction to entertain counts 1 & 2 of instant amended charge dated 16/2/2016.

Supreme Court having arrived at the above decision, I do not think there is anything left for the Court to decide in the 2nd Defendant's objection dated 13/4/2006 except to dismiss the said objection.

However for the purpose of completeness, because Learned Senior Counsel for the 2nd Defendant in his written address in paragraph 9.04 stated that Supreme Court only dismissed the 2nd Defendant's appeal on the challenge to this Court's deferment of the Ruling till the final Judgment and it has nothing to do with whether or not this Court has jurisdiction to entertain the said two counts, in the light of this, I will still briefly make findings on the objection of the 2nd Defendant challenging Court's jurisdiction to entertain counts 1 and 2 of the prosecution amended 7 counts charge dated 16/2/2016, parties having already canvassed argument on the 2nd Defendant's objection.

The Court having considered the objection of the 2nd Defendant with its written address in support and the

complainant's written address in opposition, it is my humble but firm view that charges in counts 1 and 2 of the amended charge are not predicated on the existence or otherwise of contract award neither are the Defendants alleged to have been in breach of any contract. The contention of the Learned Senior Counsel that counts 1 and 2 of the amended charge should be struck out on the ground that the subject matter of the said counts are predicated on the existence or otherwise of a contract award by ONSA to the 2nd Defendant which according to Learned Counsel removes the charges contained in the said counts outside the jurisdiction of this Court is highly misconceived. Learned Senior Counsel for the 2nd Defendant relied on the case of **Onuorah V. Kaduna Refining & Petrochemical Company Limited (2005) 6 NWLR pt. 821 SC 393** out of context. The objection raised by the 2nd Defendant dated 13/4/2016 lacks merit and it is accordingly dismissed.

I have already stated in this Judgment that the matter proceeded to trial. The prosecution called 8 witnesses. The 1st Defendant called 15 witnesses himself testifying as the 15th 1st Defendant's witness. The 2nd Defendant called 1 witness.

Various documentary evidence were tendered by the prosecution and marked exhibits A, B, C, D1, D2, D3, E1, E2, E3, E4, E5, E6(1) - E6(4), E7, E8 and D28. ExhibitD28 is the Diamond Bank's letter dated 1/3/2019 addressed to the EFCC titled Re: Investigation activities - Account Name - Destra Investment Limited tendered through the 1st Defendant under cross examination by the prosecution. The defence tendered in evidence various documentary evidence that were admitted in evidence and marked exhibits D1, D2, D3, D4, D5, DW6, D7, D8, D9, D10, D11, D12, D13, D14, D15, D16, D17, D18, D19, D20, D21, D22, D23, D24, D25, D26, D27. The defence witnesses testified and were cross examined and in some cases re-examined.

At the end of trial, parties elected to file final written addresses. The 1st Defendant's final written address is dated 28/10/2019. His reply on points of law is dated 21/11/2019. The 2nd Defendant's final written address is dated 29/10/2019. Its reply on points of law is dated 21/11/2019. The Complainant's final written address is dated 15/11/2019. Parties adopted their final written addresses on 26/11/2019. The matter was then adjourned till today for Judgment.

The 1st Defendant at page 6 of his written address formulated a lone issue for determination. That is -

> **"whether considering the totality of evidence adduced in this case the prosecution could safely be said to have proved all ingredients of the offences charged beyond reasonable doubt to warrant a conviction of the Defendants."**

The 2nd Defendant formulated its lone issue for determination which is -

"whether the prosecution have discharged the evidential/burden of proof placed on it by law and established the offence of money laundering against the 1st and 2nd Defendants beyond reasonable doubt to warrant their conviction by this Honourable Court".

The complainant formulated their issue for determination as follows;

"whether the prosecution have proved the essential ingredients/elements of the offences alleged against the Defendants beyond reasonable doubt to warrant their being found guilty and consequently convicted."

My lords the three issues formulated by the parties in substance are the same though differently worded. The summary of this being that the burden is on the prosecution to prove the charges against the Defendants beyond reasonable doubt to secure conviction. Therefore I will consider the 3 issues together. However the brief

facts of this case as presented by the parties. First facts presented by the prosecution.

On 28/11/2015 the office of the National Security Adviser of this country petitioned EFCC over the transfer or payment from its account in CBN under the immediate past National Security Adviser Col. Mohammed Sambo Dasuki (Rtd) to some companies and individuals without any documents supporting such payments/contracts having been awarded to them. The letter is exhibit A in evidence. EFCC was directed to investigate the said payments/transfers.

That in the course of investigation activities, letters of investigation were written to Banks, organisations, companies. Individuals were also invited and interviewed in furtherance of the investigation. Upon the conclusion of investigation, a case of money laundering of the sum 400 million naira transferred into the account of the 2nd Defendant was established which led to the filing of the instant charges against the Defendants. It is also alleged

by EFCC that it discovered the issue of laundering of the sum of 2,000,000.00 dollars by the 1st Defendant. This led the instant amended charge being filed against the 1st and 2nd Defendants.

On his part, the 1st Defendant stated that it was the President that paid him 400 million naira through the 2nd Defendant to enable him coordinate media advocacy on a grave National issue of insecurity that be deviled the country at that time. Put differently, that the former President engaged him on special national assignment. Counts 1, 2, 3, 4 & 7 deal with the offences that the Defendants allegedly directly took possession or control of the sum of 400 million naira, converting the said sum of N400 million naira, retaining the said sum of 400 million naira being proceeds of an unlawful act and dealt with the said sum of 400 million naira for the campaign activities of PDP and other personal purposes. That Defendants directly transferred the sum of 21,776,000.00 to Chief Anthony Anenih from the said 400 million naira which the

Defendants reasonably ought to have known that the said funds represented the proceeds of an unlawful act of Col. Mohammed Sambo Dasuki (Rtd).

Counts 5 & 6 deal with the alleged making cash payments above the stipulated threshold through non-financial institution contrary to section 1 of the Money Laundering Prohibition Act 2011 as amended in 2012 and punishable under section 16(2)(d) of the same Act.

I have thoroughly, calmly and dispassionately perused the various written addresses of the parties that are so lengthy running into several pages inclusive of the 1st and 2nd Defendants' replies on points of law.

I intend in this Judgment to consider each of the 7 counts amended charge, the evidence adduced by the parties and ascertain whether or not the prosecution have proved beyond reasonable doubt the essential ingredients of the offence charged and ascertain whether or not the prosecution can secure conviction. The Court will consider

evidence adduced by parties in this regard and counsel written arguments where it is relevant.

On this, I agree with the Learned Counsel for the 1st Defendant that it is the duty or burden of the prosecution to prove the guilt of a Defendant and not for him to prove his innocence. See section 36(5) of 1999 constitution as amended, sections 131 and 132 of the Evidence Act. See also the case of **ADEKOYA V. STATE (2017) LPELR - 41564.**

That the prosecution must prove except in strict liability offences, the requisite intention i.e mens rea especially in a situation like the case at hand according to the defence counsel where knowledge of unlawful activity is alleged and has to be proved by the prosecution before there can be a conviction. Learned defence counsel referred the Court to the case of **BABALOLA V. STATE (1989) LPELR -695 SC p. 45** where it was held that no man can be convicted of a crime unless his physical conduct (that is the actus

reus) is accompanied with a guilty mental element - a mind at fault (mens rea).

That as regard counts 1, 2, 3, 4 & 7, the prosecution must prove the mens rea requirement and infact the ingredients of the offences charged before conviction. See the case of **OGUNRONBI V. STATE (2014) LPELR 243 CAP**. Learned Senior Counsel for the 2nd Defendant agreed with the 1st Defendant's counsel on this in paragraphs 6.02 to 6.03 of his written address.

I also agree with the Learned counsel for the prosecution that in criminal cases that the burden of proof is on the prosecution and the standard of proof is beyond reasonable doubt. Learned Counsel referred the Court to sections **135 and 138(1) of the Evidence Act 2011, IBEZIAKO V. COP (1963) 1 NWLR 61, BAKARE V. STATE (1987) 1 NWLR pt. 52 578 SC, AFOLALU V STATE (2010) 16 NWLR pt. 1220 SC 584**.

According to the Learned Counsel for the prosecution that the Prosecution can prove the guilt of the Defendant by

direct evidence, confessional statement of the Defendant or by circumstantial evidence. **ADEYEMO V. STATE (2015) 16 SC NWLR pt. 1485 p. 311 at 329.**

My lords I will now consider count 1 taking possession or control of the sum of 400 million naira.

My lords, Learned Counsel for the 1st Defendant submitted that the ingredients of the offence as contained in count 1 that the prosecution must prove are as the follows -

(i) That the Defendants took possession of the sum of 400 million naira from the office of the National Security Adviser,

(ii) That the Defendants reasonably ought to have known that the said fund formed part of the proceeds of criminal breach of trust and corruption by Col. Mohammed Sambo Dasuki the then National Security Adviser.

That the prosecution must prove the ingredients of the offence as created by statute and also as contained in the charge before conviction can be secured.

That the prosecution failed to prove that the 1st Defendant ought to have reasonably known that the 400 million naira paid into the account of the 2nd Defendant was part of the proceeds of criminal breach of trust and corruption by Sambo Dasuki. That the prosecution failed to prove mens rea. That mens rea and actus reus as provided in the said section 15(2)(d) of the Act must be conjunctively proved before it can safely be said that the ingredients of the offence have been proved. That the prosecution failed to prove before this Court in evidence this double barrelled ingredients of the offence in count 1. That for there to be a conviction, the prosecution must prove the guilty mind and guilty act.

That for there to be a crime, there must co-exist the guilty mind and the guilty act (mens rea and actus reus). As it is, Col. Sambo Dasuki Rtd has not been adjudged guilty of criminal breach of trust and corruption. That the 1st Defendant could not have laundered the said 400 million naira. That the charges pending at FCT HIGH

COURT exhibits E7 and E8 could not be evidence of criminal breach of trust and corruption of Col. Dasuki. Learned Counsel for the 1st Defendant further submitted that there is no evidence direct or circumstantial that can give credence to the prosecution allusion that the 1st Defendant ought to have known that the money paid into the 2nd Defendant's account was from Col. Mohammed Dasuki and that same was a proceed of crime. That mere crediting of the 2nd Defendant's bank account without more does not amount to an offence of money laundering against him. That the charges in exhibits E7 and 8 were not pending at the time of the transfer of the money to the 2nd Defendant's account. Therefore according to Learned Counsel for the 1st Defendant, that the 1st Defendant could not know or reasonably ought to have known that 400 million naira was the proceeds of corruption as alleged. Learned Counsel for the 1st Defendant made reference to the evidence of PW5 that stated that DW5 and the 1st Defendant made presentation

to the former President and on account of the presentation, he worked for the President which was to get Nigerians appreciate the role of the military in the fight against Boko Haram insurgency. That the 1st Defendant had to believe that it was the former President that credited the 2nd Defendant's account with said sum of N400 million naira. That with all these, that the prosecution failed to prove the requisite mens rea in this matter.

That exhibit B the E-payment mandate being a transaction between the presidency (because it was issued by DW8 Sambo Dasuki the President's aide i.e the office of the National Security Adviser) and CBN is an official act which according to Learned defence Counsel enjoys presumption of regularity under the law. That it was clearly stated that the payment was for security services with certification that all due processes were complied with. Learned Counsel relied on the case of **AKEEM V. STATE (2017) LPELR 42465 SC pp 36 - 37** to submit

that E-payment mandate from ONSA to CBN enjoys presumption of regularity. That the prosecution failed to rebut this presumption.

The Learned Counsel further submitted that under section 15 (2)(d) of the Act, a predicate offence must have to be established and this makes the establishment or proof of predicate offence a necessary ingredient of Money Laundering under the Act. That the prosecution must prove beyond reasonable doubt that the 1st Defendant committed the offence with the knowledge that 400 million naira was the proceeds of a criminal act.

Learned Counsel made reference to the evidence of PW3 Mr. Bali Ndam legal officer in the office of the National Security Adviser. Learned Counsel made reference to evidence of PW3 to the effect that his duty was to draft and vet contracts. That because the witness said that there was no contract of the 2nd Defendant that he vetted or that attached to the E-payment mandate, that suspicion was raised. That it is the suspicion that made the 1st

Defendant to be arraigned before this Court. Learned Counsel was quick to point out that suspicion no matter how grave cannot constitute a crime or a ground for conviction. He made reference to **OBIAKOR V. STATE (2002) LPELR - 2168 SC p. 18**.

That the e-payment mandate exhibit B proceeded from a proper and duly authorised source. Learned Counsel stated that it is not in evidence that CBN keeps or holds illicit money in its possession. That it is not in evidence that the money appropriated to the office of National Security Adviser in CBN was illicit or proceeds of crime or corruption. That it is also not in evidence that the mandate by NSA to pay the 2nd Defendant for security services in itself was a crime. That the PW3 merely said that he did not come across any contract or memorandum of understanding between ONSA and the 2nd Defendant. Learned counsel then submitted that the fact that e-payment was duly executed and certified "all due processes complied" raised a presumption of regularity or

compliance with whatever process or procedure involved in tendering of security services. Learned Counsel then submitted that the fact that PW3 stated that he did not vet any contract document between ONSA and the 2nd Defendant cannot be conclusive proof that there was no security services rendered for which ONSA paid out the sum of 400 million naira to the Defendants.

Learned Counsel further submitted that e-payment mandate exhibit B has not been faulted. That there is no evidence oral or documentary showing or proving that the execution or the giving of the mandate to CBN by NSA to effect payment as contained in exhibit B constituted corruption or criminal breach of trust of Col. Sambo Dasuki or that the 400 million naira paid to the 1st Defendant was a proceed of corruption or criminal breach of trust.

On the issue of possession, Learned Counsel for the 1st Defendant stated that they did not contend that they did not take possession of the said 400 million naira. But that

their contention is that it was the former President who paid the money for the National assignment that he detailed the 1st Defendant to do.

That receipt of money simpliciter cannot constitute the offence under Money Laundering Act. That the prosecution failed to prove that the 1st Defendant took possession of 400 million naira with the knowledge or supposed knowledge that the fund was proceeds of Col. Sambo Dasuki's criminal breach of trust and corruption. That the prosecution failed to prove that the funds itself was of illegal origin before knowledge of its illegal origin can be imputed to the person in possession of it.

Learned Counsel further submitted that there is no iota of evidence not even a remote one on this issue of knowledge or reasonably ought to know i.e the mental element or mens rea required to be conjunctively proved with actus reus before it can be said that any offence in particular as it relates to this charge has been committed.

On the issue of receiving deposit alerts, Learned counsel urged the Court to expunge exhibit D28 from the Court's record. According to Learned Counsel, the prosecution went out of their way to tender through the 1st Defendant in the course of cross examination the said exhibit D28. Learned Counsel claimed that the letter did not relate to the 1st Defendant or the 2nd Defendant's account with Diamond Bank. Learned Counsel urged the Court to expunge the document from evidence. He relied on the case of **BUHURI V. INEC (2008) 19 NWLR pt. 1120 p. 246**. Learned counsel in paragraphs 79 - 81 of his written address canvassed argument similar to argument he canvassed in this Court on 5/7/2019 when Learned Counsel objected to the admissibility of the document in evidence. Learned counsel submitted that the issue of trying to use receipt of alert to prove knowledge of receiving payment from ONSA or that the fund was of illicit origin does not hold water at all. Learned Counsel submitted that there is no evidence before the Court that the 1st Defendant

received an alert with the transaction code or details in respect of 400 million naira deposit into the 2nd Defendant's account. Learned Counsel further submitted that the 1st Defendant did not deny the fact that 400 million naira has been credited to his account in Diamond Bank. That the 1st Defendant testified that the President called him on phone and informed him that the sum of 400 million naira has been paid into his account and that he called his account officer who confirmed that fact. That the fact exhibit D28 was admitted to prove or seeking to establish is not in issue.

On the issue of transaction code "CBN/CIFTS/NAT Security Advis" generated by the Bank and placed on the transaction details of the inflow of 400 million naira into the 2nd Defendant's account on 24/11/2014, reference was made to the evidence of PW4 that testified that what the code or terms means is credit from National Security Adviser. The Learned Counsel submitted that the 1st Defendant was not furnished with his statement of

account. That it is in evidence that it was after the 1st Defendant's arrest by EFCC that he was shown the statement of account reflecting the payment for the first time.

That the point at which knowledge of the deposit of 400 million naira is relevant or material is the point or time that payment was made not afterwards. Learned Counsel submitted that if the 1st Defendant became aware of the source of the payment after the deed has been done, it still does not qualify as knowledge that the said 400 million naira was paid to it by ONSA. Learned Counsel further submitted that what is required here is not just the knowledge that the money was paid by ONSA but knowledge the money was proceeds of criminal breach of trust and corruption. Learned Counsel for the 1st Defendant made reference to the testimony of the 1st Defendant when he testified that when his account officer confirmed to him that there was an inflow of the sum of 400 million naira into the account, he did not ask

the source because he had already received a call from the President informing him that 400 million naira had been paid into his account. That he further testified that the inflow of the money was not surprising or strange as he has been expecting the President to mobilize him for the National assignment he gave him after the presentation he made with consultants at the Presidential villa. That he could not have gone to report the matter to the Police or EFCC because he knew the President had a lot of funds at his disposal that period from which he could effect the payment.

That the most crucial evidence on this point is the fact that the office of the National Security Adviser is in the office of the President and Col. Sambo Dasuki was an aide of the former President whom the 1st Defendant dealt with.

Learned Counsel also made reference to the evidence of DW3 Dr. Doyin Okupe whom Learned Counsel submitted that his evidence corroborates that of the 1st Defendant.

That the President informed him that he had instructed that the 1st Defendant be mobilized with the sum of 400 million naira for the National assignment. Learned Counsel urged the Court to accept that the 1st Defendant is right when he insisted that it was the President whom he dealt with that mobilized him with 400 million naira for special national assignment. That criminal liability cannot be imputed to the 1st Defendant if the President raised or instructed that he be mobilized from a wrong source. He submitted finally on count 1 that the 1st Defendant did not take possession of the sum of 400 million naira paid into the 2nd Defendant's account with the knowledge that the money was a proceed of criminal activity of Col. Mohammed Sambo Dasuki. Learned Counsel then submitted that there is no evidence on record that could rebut or that have rebutted the presumption of regularity that enures in favour of the e-payment mandate for the 2nd Defendant to be paid the sum of 400 million naira. That the prosecution have failed to prove the ingredients

of the offence in count 1 of the charge. Learned Counsel then urged the Court to discharge the Defendants on count 1.

My lords, I have considered argument of the 2nd Defendant's Learned Senior Counsel in paragraphs 4.01 to 11.08 of his written address that are substantially similar to the argument of the 1st Defendant with respect of count 1. I have again considered argument of the prosecution with respect to count 1 inclusive of the 1st and 2nd Defendants' replies on points of law.

This is the moment of truth

In respect of count 1

My lords under the provisions of section 15(2)(d) of Money Laundering prohibition Act 2011 as amended in 2012, in order to secure conviction, the prosecution must prove beyond reasonable doubt that the following ingredients of the offence in count I.

(i) That the 1st Defendant directly or indirectly took possession or control of 400million naira in account of the 2nd Defendant-Destra investment LTD.

(ii) That he knew that the said 400million formed part of the proceeds of unlawful act or

(iii) He reasonably ought to have known that the said 400million naira formed part of the proceeds of an unlawful act.

What is required here in my humble view is either actual or constructive knowledge.

Once the prosecution have been able to establish the above ingredients of the offence in count 1 in evidence, then the prosecution would have proved in evidence the act and the guilty mind of the 1st Defendant. Put differently, the prosecution would have proved the actus reus and mens rea.

I have already stated in this judgment that the burden is on the prosecution to prove the guilt of the 1st Defendant and not for him to prove his innocence see **section 36(5) of 1999 constitution as amended**.

The prosecution led evidence through PW3 Bali M. Ndam an officer from ONSA, PW4 Eno Mfon Bassey a banker from Diamond Bank plc and the 2nd Defendant's account

officer, the prosecution also called PW8 Juniad said an investigator with the EFCC to show that the sum of 400million naira was transferred from the account of ONSA in CBN on the mandate of col. M. S. Destra LTD the former NSA.

There is in evidence exhibit B a letter from ONSA with an attached E-payment mandate showing the transfer of the sum of 400million naira from the account of ONSA domiciled in the CBN to the account of the 2nd Defendant with Diamond Bank. See exhibit D1 the statement of account of the 2nd Defendant. This shows the inflow of the said sum of 400 million naira to the 2nd Defendant's account in Diamond Bank. The 1st Defendant also made statement to EFCC on 5th November, 2016. The statements were admitted in evidence and marked exhibit E6 (1-4). Therein, the 1st Defendant admitted in his statement the receipt of the said sum of 400 million naira.

In exhibit E6(2) being the 1st Defendant's extra judicial statement dated 5th January, 2016 made to the EFCC, he

stated that Destra Investment Ltd is neither a trading company nor is it for contract and supplies and therefore has no staff. That he cannot remember when Destra was ever used for government contracts. That the 2nd Defendant has not handled any public/government contract in the last one year. He also confirmed payment of 400million naira into Destra account on 24th November, 2014. He again stated that the 2nd Defendant is a general purpose limited liability company. From exhibit E6(2) in evidence, it is not in dispute that the 1st Defendant is the sole signatory to the account of the 2nd Defendant in Diamond Bank to which the 400million naira was paid. Exhibit D1 indicates that the credit balance of the 2nd Defendant on 20th November, 2014 was 6.6million naira before the inflow of 400 million on the same day. Exhibit E6(2) indicates that the 1st Defendant had actual knowledge of the inflow of 400 million naira into the account on 24th November, 2014.

Though the transfer of the sum of 400 million naira to the account of the 2nd Defendant in Diamond Bank in the e-payment mandate is for the purpose of security, the evidence of PW3 and PW8 was to the effect that there was no contract award by ONSA to the 2nd Defendant. This was also affirmed by the 1st Defendant in exhibit E6 (2) in his extra judicial statement to the EFCC.

My Lords the crux of the matter in this judgment which is crucial is whether or not the 1st Defendant had actual or constructive knowledge or no knowledge at all of the inflow of 400million naira into the account of the 2nd Defendant the fund that came from the office of national security adviser. This is so having regard to the fact that the 1st Defendant confirmed that neither himself nor the 2nd Defendant had any contractual relationship with ONSA. This is because if the 1st Defendant knew of the inflow of 400million naira into the account of the 2nd Defendant solely controlled by him and he had no contractual relationship between himself or between 2nd

Defendant and ONSA, then he should have been conscious of the consequence of dissipating such funds.

In his evidence both in chief and under cross examination, the 1st Defendant maintained that he did not have actual knowledge of the source of inflow of the sum of 400 million naira into the account of the 2nd Defendant which is controlled by him and of which he is the sole signatory. That he is unaware that the sum of 400 million naira came from ONSA. He maintained the position that the 400million naira was paid in by the former President that mobilized him for special national assignment.

My Lords I have my doubt if the 1st Defendant is telling the Court the truth in this matter. My Lords having regard to evidence placed before me, it is my view that as at the 24th November, 2014 the 1st Defendant indeed had actual knowledge of the inflow of the sum of 400million naira from ONSA into the account of the 2nd Defendant.

Under cross examination by the prosecution, the 1st Defendant stated that at the time of opening the account of the 2nd Defendant in Diamond Bank plc as the managing Director/Chief executive officer of the 2nd Defendant, he had supplied two telephone numbers to the bank. Undercrosss examination, 1st Defendant PW15 stated:

> "We did documentation before we opened the account in Diamond Bank plc. I supplied the Bank with my specimen signature I have. I also supplied the Bank with my passport photo for identification. All the requirements of opening account here duly complied with before the account was opened. I can not remember the requirement Diamond Bank needed at the time of account opening. I can only confirm my email address metuholisa@yahoo.co.uk. I have a number 08099900114. 08089880330 is my phone number not that of my son both numbers belong to me. I have seen account opening

documents. I can confirm that the document here bears my signature and it reflects my correct email address metuholisa@yahoo.com.uk and it has the mobile number 08089880330.

The above phone number is under my next of kin Derick Metuh but it is my phone number and not my sons phone number".

It is my view that having supplied his telephone numbers and email address to Diamond bank plc at the time of opening the account, this was step taken to receive communication and alerts from the Bank. Exhibit D28 was tendered to contradict the 1st Defendant where he feigned ignorance of factual knowledge that the inflow of 400 million naira came from ONSA. This is to the effect that Diamond bank alerts to customers upon transaction being carried out is on default. That is Bank alert is automatic whether a customer apply for such services or not.

Having given telephone numbers to the Bank, the practice now a days is for the bank's customers to automatically receive alerts upon transaction being carried out in the account whether they requested for such services or not.

Exhibit D28 was admitted in evidence upon the Court having delivered a considered ruling on 24th September, 2019. Rights of parties having been determined upon the admission of the document in evidence. If the 1st and 2nd Defendants were dissatisfied with the Court's ruling, they ought to have sought leave of Court to appeal the said interlocutory decision within 3 months from 24/9/2019 that the ruling was delivered. The 1st Defendant cannot in his final written address urged the Court that has determined the rights of parties on the issue to expunge same from evidence.

Having regard to the decisions in the following cases namely *Akinboyede v. Adebiji (2015) 3 NWLR pt. 1447 CA 6.5 p. 627 to 628, Nwosu v. Ude Oya (1990) 1 NWLr pt. 125 188 at 210 paragraph F-G,* this Court as

presently constituted lacks jurisdiction in this judgment to expunge exhibit D28 from evidence. Rather the Court shall give full weight to the import of exhibit D28 to the effect to the fact that transactions in a customer's account in the bank attracts automatic alert whether or not a customer applies for such services. If they were dissatisfied with the ruling admitting exhibit D28 in evidence, the Defendants ought to appeal the Court's decision.

The whole essence of 1st Defendant supplying his telephone numbers and email address at the time of opening of the account was for the bank to send customer's transaction alerts and other information concerning customer transactions. A decision of a Court of law subsists where there is no appeal.

Another issue is that the PW4 under cross examination on 27th November, 2016 stated that he spoke with the 1st Defendant last towards the end of last year that is

towards the end of 2015. That was the day he requested for his statement of account.

The question is why did 1st Defendant not ask for his statement of account as soon as he was told by the account officer of an inflow of 400 million naira to the account? Why did he wait till the end of 2015 before requesting his account officer for his statement of account? Assuming without deciding that he never had alert of the inflow of 400 million naira, if the Defendant had promptly requested for his statement of account, he would have noticed that the inflow of 400 million naira came from ONSA. His main concern was to start dissipating the funds without knowing the actual source of the funds. He claimed he did not receive alert of the inflow of the amount, the question again is why did the 1st Defendant not confront PW4 under cross examination as regard the reason Diamond Bank failed to send him that the funds came from ONSA.

As regard actual knowledge that the money came from ONSA, the 1st Defendant made strenuous effort to explain that it was the former President His excellency Dr. Goodluck Jonathan that provided the money which was expended on a national assignment given to him.

My Lords one of the persons that can validly corroborate this evidence in this regard is the former President of the country or Col. Sambo Dasuki not Dr. Okupe DW3, Yomi Badejo PW5 or on even DW5.

Though the 1st Defendant made effort to call former President to give evidence in this matter, he abandoned this course without any lawful excuse. Even before then, the 1st Defendant failed to confront DW8 col. Sambo Dasuki RTD that testified on his behalf whether indeed it was the former President that directed him to credit the account of the 2nd Defendant with the inflow of 400million Naira notwithstanding the existence exhibit B. Evidence of the former President or that of Col. Sambo Dasuki would have been crucial to corroborate the evidence of 1st

Defendant that it was the former President that paid 400million naira to the 2nd Defendant's account in Diamond Bank for him to execute the acclaimed special national assignment on security.

Initially for the reasons stated by the Court in the Court's considered ruling delivered on 23rd February, 2017 it refused to sign the subpeana to compel Col. Dasuki come to Court and testify in this matter. However the Court of Appeal in a unanimous decision later ordered the Court to sign the said subpeana. I complied with the order. Upon service of the subpeana on DSS, the Director-General of DSS promptly complied with the request and released Col. Dasuki to testify in this matter. I commend DG DSS in this regard. Col Dasuki was in Court on 1st November, 2017 and indeed testified. Even though Col. Sambo answered few questions but in the middle of his examination in chief, he refused to answer further questions contending that he lost his memory and asked for adjournment to enable him look at documents to refresh his memory.

Learned Counsel for the 1st Defendant Emeka Etiaba (SAN) that appeared for the 1st Defendant did not make any attempt to confront the witness whether indeed the 400 million naira in issue was paid in by the former President or whether the 400 million naira that he transferred to the 2nd Defendant through CBN is the money the 1st Defendant claimed that it was the former President that gave him for National assignment.

Col. Dasuki a principal staff officer in the office of the President was in the position to affirm or reject the evidence of the 1st Defendant whether indeed it was the former President that paid the said money to him.

Instead of confronting Col. Dasuki to ascertain the true position in this matter and let him answer or refuse to answer, Emeka Etiaba (SAN) was preoccupied with writing frivolous petitions against the Court, what he knows how to do best. Even Dr. Ikpeasu (SAN) that later examined Dr. Dasuki in chief on 3/11/2017 failed to confront Col Dasuki on the issue. That is as to whether it is right when

the 1st Defendant said it was the former President that paid in the money. Col Sambo Dasuki ought to have been asked the question let him elect to answer the question or not. Emeka Etiaba (SAN) rather asked for adjournment to enable the witness refresh his memory. Then the Court would have drawn certain inference from his demeanour in the witness box. As it stands now, the evidence of 1st Defendant that the money was given to him by the President is not corroborated.

Besides there is no documentary evidence before the Court other than the uncorroborated evidence of the 1st Defendant to show the approval of the said amount of 400 million naira came from the former President. I have my doubt if the former President could have authorized expenditure of 400million naira public funds just on verbal approval and even to the 1st Defendant that was not an agent or official of government or but a member of a political party.

Therefore the only evidence to show the actual source of 400million naira are exhibits B and D1 the e-payment mandate and the statement of account showing the inflow of 400 million naira from the account of ONSA domiciled with CBN. Where oral evidence is conflict with documentary evidence, it is the documentary evidence that the Court will rely on as it will be difficult to change the contents of the documents. Moreso, the oral evidence requires corroboration for it to be credible.

My Lords it has been established that the 1st Defendant had actual knowledge of the inflow that came from ONSA which is a public body created by law. Col. Dasuki RTD the then NSA at the material time was a public officer entrusted with public funds at the time the 400million naira was transferred from NSA's account domiciled in CBN to the 2nd Defendant's account with Diamond Bank. The evidence before the Court through PW3, PW8 exhibit E6 (2) confirmed that there was no contractual relationship of any kind between ONSA and the 2nd

Defendant to warrant the payment or transfer of the sum of 400 million naira into the 2nd Defendant's account. The office of NSA not being a charitable organization established to distribute public funds illegally to individuals and companies, the 1st Defendant upon becoming aware of the inflow of the sum of 400million naira into 2nd Defendant's account took no steps whatsoever to find out from Col. M. S. Dasuki RTD why such a huge amount was paid to the 2nd Defendant. This is so because that there was absolutely no business/contractual relationship with ONSA, there was no award of contract for security services to the Defendants to justify the payment of the sum of 400million naira to the 2nd Defendant.

My Lords, I agree entirely with Learned Counsel for the prosecution that it was unlawful having regard to the facts placed before the Court exhibit B that the former NSA breached public trust reposed in him and misappropriated public funds in favour of the 1st and 2nd Defendants who with the evidence had no contractual dealings with ONSA.

No record of the expenditure kept anywhere in gross violation of financial regulations of government.

Attachment to exhibit A confirms that public funds were just removed from the treasury with no evidence of contract executed to services rendered to government as value for the billions of naira paid out by ONSA to individuals/companies including the 2nd Defendant.

With the evidence place before me, I think the prosecution have satisfied the requirements or have proved, established or proved the essential ingredients as regard count 1. That the 1st Defendant knew or reasonably ought to have known that the inflow of 400 naira million formed part of the proceeds of an unlawful act. Knowledge here could be actual or constructive knowledge. Upon being told of the inflow of 400million naira by PW4, the 2nd Defendant's account officer, why did the 1st Defendant not demand for his statement of account if indeed he did not received alert? Why did he fail to ask PW4 the reason why the bank did not send alert if indeed

he did not receive alert? why did he not make proper enquires to ascertain the actual source of the funds? I agree with the prosecution that the 1st Defendant turned a blind eye to the obvious actual source of the inflow or failed to make adequate enquiries or failed to access facts and information which would have put him on notice.

There was no contract for the security job for which the 400million naira was paid to the 2nd Defendant. The 1st Defendant ought to have known that the former NSA did so in criminal breach of trust and the source of funds was of illicit origin not genuine. Therefore I disagree completely with the Learned defence counsel that Col. M. S. Dasuki has to be first pronounced guilty of the offences of either criminal breach of trust or corruption before the Defendants could be found liable on the secondary offence of money laundering. This argument is with respect to Learned defence counsel is misconceived. Rather, I agree with prosecution counsel, that primary or predicate offence and money laundering offence are

mutually exclusive. The success or failure of the predicate offence does not determine the success or failure of the money laundering offence.

Already exhibits E7 and E8 tendered by the prosecution are to the effect that Col. M. S. Dasuki (Rtd) is being tried at the FCT High Court on allegations of criminal breach of trust in respect of public funds entrusted in his care as National security adviser. There is no provisions in section 15(2) of the Act that provide that the prosecution must first prove predicate offence before money laundering offence or charge can be sustained. This cannot be the intention of the law maker. If for instance a person that is alleged to have committed a predicate offence and a person accused of alleged money laundering offence are charged before two courts of coordinate jurisdiction, the Court entertaining the case of the person that is alleged to have committed a predicate offence if for any reason is unable to conclude trial in the matter before the court that is trying money laundering offence,

it will not necessarily follow that the other Court trying a person alleged to have committed a money laundering offence will have to suspend proceedings to await the other court trying the predicate offence.

The two offences are mutually, separable or mutually exclusive. The success or failure of one does not depend on the other.

Once it is clear that the act giving rise to a predicate offence is unlawful as in this case, the Court can proceed and entertain a money laundering charge which is predicated on the predicate offence. Predicate offender need not be convicted of the predicate offence before money laundering offender is charged. It is sufficient the prosecution are able to place before the court the unlawful act giving rise to the predicate offence. I will return to this issue later in this Judgment.

It is my view that the prosecution have proved the allegation that the 1st Defendant took possession or

control of the sum of 400 million naira transferred to Diamond Bank account of 2nd Defendant without contract award when he reasonably ought to have known that the said 400 million formed part of the proceeds of unlawful act of Col. M. S. Dasuki (Rtd) the former NSA. The 1st Defendant is hereby found guilty in respect of count 1 and accordingly convicted I so hold. The 2nd Defendant is hereby found guilty with respect of count 1 and accordingly convicted. I so hold

On count 2 -

Conversion of the sum of 400 million naira,

The 1st Defendant stated that the prosecution are enjoined to prove beyond reasonable doubt:

(a) The sum of 400 million naira was transferred from the account of the National Security adviser with CBN without contract.

(b) That the Defendants converted it

(c) That the Defendants used the money for political activities of the PDP

(d) That the Defendants reasonably ought to have known that the 400 million naira was the proceeds of criminal breach of trust and corruption of Col. Sambo Dasuki.

Learned Counsel for the 1st Defendant defined conversion to be an act of willful interference without lawful justification with any chattel in a manner inconsistent with the right of the owner (or of another) with the intention of exercising a permanent or temporary dominion over it whereby that other person is deprived of the use and possession of that chattel. Learned Counsel on this relied on the case of **Boniface Anyika V. Uzor (2006) 15 NWLR pt. 1003 p. 560**.

Learned Counsel wondered that it cannot rightly be said that the Defendants exercised dominion or dealt with the said 400 million naira in a manner inconsistent with the right of ONSA. He submitted that when e-payment

mandate expressed that the 400 million naira was a payment it became conclusive proof that ONSA had shifted permanently, the exercise of its dominion over the 400 million naira to the Defendants therefore according to Learned Counsel, it cannot rightly be said that a person converted money being payment made to it for services rendered. Learned counsel further submitted that the 1st Defendant did not claim in his statement to EFCC exhibits 6(1) to exhibit 6(4) of his evidence in court that he received the money for political activities. That count 2 is based on a false premise and that it cannot stand.

Learned Counsel for the 1st Defendant made reference to evidence of PW8 the EFCC's detective that investigated the matter. He contended that PW8 stated that the 1st Defendant tore the third sheet of this statement where PW8 said that the 1st Defendant stated that the 400 million naira received from ONSA were used for PDP campaign activities and to settle his personal deals.

Learned Counsel urged the Court not to believe the witness on this issue that the 1st Defendant tore the 3rd page of his statement that the witness claimed that the 1st Defendant stated that the money was used for PDP political activities and to settle his personal deals. That the prosecution failed to tender video recording or CCTV footage of that event and also called some other detectives whom he said were present to testify in Court as to the said act of the 1st Defendant. That the prosecution having failed to do this, that the story is a tale for the ears only according to Learned counsel, it is like a cock and bull story which is meant for entertainment only.

Learned Counsel further made reference to the evidence of PW8 to the effect that investigation carried out did not reveal any security services carried out by the 1st and 2nd Defendants and that there was no contract between ONSA and the 2nd Defendant.

On this Learned Counsel submitted that the prosecution did not call vital witnesses that could establish that there were security services rendered by the 1st Defendant. He made reference to the evidence of PW5 who was part of those that attended the meeting in the presidential villa. That he made presentation based on which the President engaged the 1st Defendant to co-ordinate the assignment. That the prosecution ought to have called other persons who were present in the meeting for instance the NSA or the President himself to clarify or inform the Court whether security services were rendered by the 1st Defendant at the instance of ONSA. Learned counsel contended that the former president and former NSA became vital witnesses for the prosecution in view of the evidence before the court that is exhibit B1 and the testimonies of PW5, DW5 and the evidence of the 1st Defendant himself.

Learned Counsel submitted that the failure of the prosecution to call these persons as vital witnesses or even

to obtain statements from them in the course of their investigations of the issue is fatal to their case.

Learned Counsel relied on **LAIDE V. STATE (2017) 6 SC pt. 11 p. 107, ALAKE V. STATE (1997) LPELR - 403 SC p. 16 paragraph F - G.**

Learned Counsel made reference to the evidence of Yomi Badejo of CMC Connect that he engaged to carry out the media campaign in the National assignment and to do advocacy for the military against insurgency, that all the funds he spent that it is indicated to sponsor PDP adverts were retired. Learned Counsel submitted that the consultant having refunded cost of services rendered by him which were ascribed to PDP in error, Learned Counsel urged the Court to hold that the 400 million naira was not used for PDP campaign activities.

On the last point that the Defendants reasonably ought to know that the said sum of 400 million naira formed part of the proceeds of unlawful activity of Col. Sambo Dasuki,

Learned Counsel adopted his argument on count 1 in respect of this issue and then urged the Court to discharge and acquit the 1st Defendant on count 2.

My lords I have also considered argument of Learned Senior Counsel for the 2nd Defendant as regard count 2 in his paragraphs 12.01 to 12.15 of his written address which are substantially the same or similar to that of the 1st Defendant's Counsel on count 2 and their replies on points of law. I have also considered the prosecution argument on count 2 in their paragraphs 6.1 to 6.12 of their written address. This is my view:-

My lords conversion is an act of unlawful interference without lawful justification with any chattel or a thing in a manner inconsistent with the right of another where that other person is deprived of the use and possession of that chattel or thing.

My lords I think the prosecution have adduced credible evidence before the Court that the 1st Defendant

converted the sum of 400 million naira for political activities of a political party and his personal purpose.

PW3 gave evidence to the effect that the sum of 400 million Naira property of ONSA was transferred to the account of the 2nd Defendant owned and controlled by the 1st Defendant. It is in evidence that he is the sole signatory to the account. See exhibit 6(2) in evidence.

PW8 also testified that he withdrew the money for activities of a political party and for the personal purpose of the 1st Defendant.

PW8 stated that investigation carried out by EFCC revealed that all these monies were used for People's Democratic Party's campaign activities and for personal use by the 1st Defendant.

That the money used for the People's Democratic Party's campaign activities were from the sum of 400 million paid by ONSA. That among the disbursement made was a total sum of 77.5 million Naira paid to one Yomi Badejo and his company CMC Connect LTD to carry out campaign activities for People's Democratic Party. The witness also stated that the sum of 25 million Naira was paid to one Alhaji Abba Dabo to also carry out campaign activities for the People's Democratic Party. Some other disbursements from the account were the sum of 21,776,000.00 paid to chief Anthony Anenih. Another sum of 5 million Naira was discovered to have been paid to Chief Kema Chikwe. Another sum of 50 million Naira was found to have been transferred to the account of 1st Defendant and his wife in the name of Olisa and Kanayo Metuh. The sum of 500

million Naira was also discovered to have been transferred to Daniel Ford International LTD in two tranches of 200 million Naira and 300 million Naira respectively for the purchase of landed property in Banana Island in Lagos by the 1st Defendant.

My lords, I have dispassionately considered exhibit D1 in evidence. It is the statement of account of the 2nd Defendant in Diamond Bank Plc that is solely controlled by the 1st Defendant as its sole signatory. Debit entries on various dates in the statement of account corroborate evidence of PW8 that the 1st Defendant used the said inflow of 400 million Naira to fund political activities of People's Democratic Party and for his personal use. These disbursements of the 400 million Naira as explained by PW8 are inconsistent with the purpose for which the

money was paid to the Defendants by ONSA as seen on the e-payment mandate namely payment for security services.

The defence of the 1st Defendant here is that the money was spent on a national assignment given to him by the former President.

My lords, I have my doubt if the former President of this Country would have engaged a politician, a member of National Working Committee of People's Democratic Party to handle an issue concerning National Security where there are established national institutions created by law to handle issues that concern national security. If at all the 1st Defendant was engaged by the former President on any issue, it was certainly on issue that bordered on laundering the image of the former President as the

People's Democratic Party's flag bearer for 2015 presidential elections. The consultant that the 1st Defendant claimed carried out advocacy and public enlightenment campaigns in various parts of the country was just a campaign aimed at presenting the former President as good presidential candidate of People's Democratic Party (PDP) to win the 2015 presidential elections. Infact the money was released to fund the political activities of People's Democratic Party (PDP) and brighten the fortunes of People's Democratic Party (PDP) in the 2015 general elections. If indeed the meeting at the presidential villa was geared towards national security, there were not in attendance service chiefs other than members of People's Democratic Party (PDP).

It was merely said that the money was for security purpose all due processes observed to divert attention of the Court as there was no contract signed between 1st, 2nd Defendants and ONSA. There is no presumption of regularity here as contended by Counsel to the 1st Defendant because there is no contract in place. No shred of documentary evidence was placed before the Court to show the approval of the said amount of 400 million Naira by the former President. 400 million Naira Public funds cannot be expended on mere verbal approval.

With the evidence placed before me that I will soon demonstrate, I am inclined to believe PW8 that the 1st Defendant tore the 3rd page of his extra judicial statement made to EFCC on 5/1/2016 where it is claimed by the Prosecution that he stated that the money he

received from ONSA was used for People's Democratic Party's (PDP) campaign activities and to settle his personal deals.

My lords, I had to critically look at the extra judicial statement of the 1st Defendant made to EFCC on 5/1/2016 admitted in evidence as exhibits E6(1), E6(2) and E6(3) and E6(4) respectively.

The second page of exhibit E6(2) and the first page of exhibit E6(3) are relevant here. In the last paragraph of page 2 exhibit E6(2), the 1st Defendant stated

"The fact is that sometime in early November 2014 I was invited by the then President Jonathan to make a presentation on the challenges of my duties. This presentation was done in the presence of the then vice president, senate president,

national chairman of People's Democratic Party (PDP) and "

The word "and" is the last word on page 2 of exhibit E6(2). My lords the word "and" signalled the end of his statement in exhibit E6(2). The 1st Defendant then signed to acknowledge the end of his statement in exhibit E6(2).

My lords, the word "and" at the end of the second page of exhibit E6(2) is suggestive that the statement of the 1st Defendant continues at the next page. That next page is not in evidence. The question is, Where is the third sheet of the statement of the 1st Defendant?

When PW8 tendered the statement in his evidence in chief, he said they were five sheets of the statements made by 1st Defendant but he only tendered four sheets. Learned Counsel that appeared for the 1st Defendant on

9/2/2006 Dr. Ikpeasu (SAN) did not raise objection to the admissibility of the incomplete statements of the 1st Defendant in evidence. Learned Counsel for the 1st Defendant Dr. Ikpeasu (SAN) did not raise issue as regard the whereabout of the third sheet of the 1st Defendant's statement made to EFCC on 5/1/2016.

PW8 also testified that having destroyed the third sheet of his statement that he did not give him the last sheet of his statement to endorse. In truth, the fourth sheet was not endorsed by the 1st Defendant though made in his handwriting.

Under cross examination the 1st Defendant's Counsel Dr. Ikpeasu (SAN) did not confront PW8 with the issue as regard the fact that the 1st Defendant destroyed the 3rd third sheet of his statement to EFCC.

I have also looked at exhibit E6(3) that supposed to be the fourth sheet of the 1st Defendant's statement in evidence. It is now the third sheet of the 1st Defendant's statement to EFCC. The opening sentence of exhibit E6(3) is not related at all to the word "and" that is the last word in the second page of the second sheet of the 1st Defendant's statement. The third sheet ordinarily ought to have been the continuation of the last sentence in the second page of the second sheet.

The commencement of the third sheet of the 1st Defendant's statement now in evidence reads "account - other payment into account" where the commencement of the third sheet is now in evidence compared with the word "and" as the last word in the original page 2 of exhibit E6(2), it does not follow.

The irresistible conclusion here is the original third sheet of the 1st Defendant's statement is missing. The missing sheet in my view is the statement the 1st Defendant that PW8 stated that he admitted that he used the said 400 million Naira in issue for campaign activities of People's Democratic Party (PDP). It is the statement that he destroyed. The defence did not challenge the evidence of PW8 that the pieces of the torn sheet were then recovered from him and registered with the exhibit keeper of the commission.

This evidence cannot by any stretch of imagination be the tale for the ears only or cock and bull story meant for entertainment as submitted by the Learned Counsel for the 1st Defendant rather it is a serious issue that concerns the credibility of the 1st Defendant whether he is a

witness of truth and whether the Court should believe his evidence in this matter. It is stated that he destroyed a confessional statement that he made to the effect that the 400 million Naira he received from ONSA was used to fund the campaign activities of People's Democratic Party (PDP). The 1st Defendant thought having destroyed the original third sheet of his statement that he made the confessional statement, that was all.

However my lords, apart from the above, the 1st Defendant also in exhibit E6(2) made another confessional statement when he said:

"I was invited by the then president Jonathan to make a presentation on the challenges of my duties".

A Court of law can act on a confessional statement of a Defendant to secure conviction if made voluntarily and it is direct, cogent, credible and positive. It is sufficient to ground a conviction even without corroboration of any sort. See the following cases -

(i) **KEMKA VS. STATE (2018) 8 NWLR pt. 1621 270**

(ii) **SALAWU VS. STATE (1971) 1 NWLR 249**

(iii) **AKINFE V. STATE (1998) 3 NWLR pt. 35 p. 729**

(iv) **YAHAYA VS. STATE (1986) 12 SC p. 282**

That is the 1st Defendant was invited by the former President **to make presentation on the challenges of his duties as National Publicity Secretary of People's Democratic Party (PDP)**. This has explained it all that he

was not called by the former President as contended by him to make presentation on issues relating to security of the nation as regard the activities of Boko haram in the North East, or militancy in the South South, or MOSSOP or IPOB in the South East.

The so called engagement of the 1st Defendant by the former President on special national assignment was nothing other than the presentation that had to do with the image of People's Democratic Party (PDP) because at the time the Party was embarking on national elections, the candidate of People's Democratic Party (PDP) was the former President.

On this issue, I agree with the Prosecution that the disbursement of 400 million Naira were made for the campaign activities of People's Democratic Party (PDP).

The people that attended the meeting at presidential villa were only principal and national officers of People's Democratic Party (PDP) with other party faithfuls, Service Chiefs were not in attendance, No civil or public servant (except political appointees) were in attendance.

Exhibits E1 to E5 are copies of several vouchers issued by various media organizations and publications of various campaign activities of People's Democratic Party (PDP) paid from the said in flow of 400 million Naira. The 1st Defendant in the course of his defence made heavy weather as regard exhibit D20 and exhibit D21. These are the President's special assignment account dated 28/11/2014 and final account of 400 million Naira released for special National Assignment. These were put in place to demonstrate the supposed expenditure of the sum of

400 million Naira unlawfully transferred to the account of 2nd Defendant by ONSA. Exhibits D20 and 21 have no probative value in this natter. They were produced by the 1st Defendant as an afterthought merely to divert the attention of the court from exhibit D1. In the first instant, the 1st Defendant in his extra judicial statement to EFCC dated 5/1/2016 exhibit E6(2) made a confessional statement that is direct, clear and positive to the effect that he was invited by the President to make presentation on the challenges of his duties as a National Publicity Secretary of People's Democratic Party (PDP). How can the challenge of his duties then transforms into "special national assignment on security"? The 1st Defendant is not a witness of truth. Exhibit D1 is the statement of account of the 2nd Defendant in Diamond Bank showing the

movement of funds which is the real expenditure of the sum of 400 million Naira.

The 1st Defendant has not offered any valid or good explanation for the transfer of 50 million Naira from the inflow of 400 million Naira public funds in favour of Kanayo and Olisa Metuh that I reasonably believe is a joint account of his wife and the 1st Defendant.

This is because the photograph on the data page of the International passport of the account opening document of Destra Investment Limited shows the name of the Lady as Kanayo Olisa Metuh. The transfer made from the 400 million Naira inflow from ONSA shows how public funds were filtered away into private hands yet the 1st Defendant claimed the funds was released for security services that was not really in place.

I agree entirely with Learned Counsel for the Prosecution S. Tahir that the Defendants having not shown that they executed any contract of security services for which the sum of 400 million Naira was expressly paid to them by ONSA, given the clear evidence of how the monies were dissipated for reasons unconnected with the purpose as shown in exhibit B, e-payment mandate, it is manifestly clear and beyond doubt that the Defendants converted the funds for political party campaign and for the 1st Defendant's personal purpose.

I hold the view that the Prosecution have proved the essential ingredients of the offence contained in count 2. I hereby find the 1st Defendant guilty and accordingly convicted in count 2. I find the 2nd Defendant guilty and accordingly convicted in count 2. I so hold.

Count 3

That is on retention/concealment of the sum of 400 million Naira.

On this, Learned Counsel for the 1st Defendant submitted that the Defendants never retained the money on behalf of People's Democratic Party (PDP) for party's campaign activities. Learned Counsel further submitted that the money was also not concealed in that account by the 1st Defendant himself on the national assignment. Learned Counsel relied on exhibits D20 and D21 tendered in evidence by the Defendants, which he claimed to be unchallenged, insightful and instructive.

That the 1st Defendant narrated the circumstances of the cheque/cash swap with Dr. Mrs. Kema Chikwe and it was in evidence according to Learned Counsel how the 1st

Defendant was spending money in respect of the national assignment both from the account of the 2nd Defendant into which the 400 million Naira was paid and from his other personal accounts. Learned Counsel made reference to the evidence of PW4 under cross examination on 27/1/2016. According to Learned Counsel, the evidence of PW4 under cross examination corroborates the fact that he spent money in respect of the national assignment both from the account of the 2nd Defendant into which the 400 million Naira was paid and from his other personal accounts. Learned Counsel made reference again to DW5's testimony and exhibit D23 that is the 1st Defendant's statement of account in Guaranty Trust Bank. This according to Learned Counsel equally established that the 1st Defendant did not retain or conceal the money but

spent it for the national assignment from his various accounts.

On this issue, I have also considered argument of the 2nd Defendant on count 3 in paragraphs 13.01 to 13.12 of its written address. I have again considered the written addresses of the Defendants in their replies on points of law, I have again considered the Prosecution address on this issue in paragraphs 7.1 to 7.7 of their written address.

On count 3, I adopt my reasoning and conclusions in count 1 here. The evidence of PW3, PW4 and PW8 are instructive. This is to the effect that the sum of 400 million Naira was transferred into the 2nd Defendant's account in Diamond Bank controlled by the 1st Defendant as a sole signatory to the account, same concealed by him for the political

activities of People's Democratic Party (PDP) and also for personal use. Please see exhibit D1 and exhibits E(1) to E(5) in evidence.

Having regard to the evidence of PW3, DW4 and PW8 and exhibits D1, E(1) to E(5), I have no difficulty at all in coming to a conclusion that the Prosecution have proved count 3 beyond reasonable doubt and I hereby find the 1st Defendant guilty on count 3 and accordingly convicted. I also find the 2nd Defendant guilty in count 3 and according convicted.

On count 4 that is the charge of the usage of the sum of 400 million Naira for the campaign activities of the People's Democratic Party (PDP) and other personal purposes.

Learned Counsel for the 1st Defendant on count 4 adopted his argument on counts 2 and 3 and indeed all the legal expositions under count 1.

Learned Counsel however referred the Court to what he referred to as unchallenged evidence of Defendants as contained in exhibits D20 and D21 and submitted that the Defendants duly executed the assignment and expended the money that was paid to them and as such it cannot be said that the 1st Defendant used the 400 million Naira for People's Democratic Party (PDP) campaign activities or personal purposes. This is because according to the Learned Counsel evidence before the Court is to the effect that the 1st Defendant in the course of executing the assignment was making payments from his various accounts.

My lords, I have again considered argument of the 2nd Defendant in respect of count 4 in its paragraphs 14.01 to 14.11 of his written address. I have of course considered the written addresses of the 1st and 2nd Defendants in their replies on points of law.

I have again considered the Prosecution arguments on count 4 in their paragraphs 8.1 to 8.21 of their written address dated 15/11/2019.

The Prosecution have placed credible evidence before the Court that the 1st Defendant used the sum of 400 million Naira for the campaign activities of People's Democratic Party (PDP) and other personal purposes. The inflow of the 400 million Naira here directly represented the proceeds of an unlawful act of Col. M. S. Dasuki Rtd. the former National Security Adviser to the former President.

Evidence of PW3, Bali Ndam, a staff from the office of National Security Adviser, PW4 Eno Mfon Effiong a staff of the Diamond Bank Plc., PW5 Yomi Badejo of CMC Connect LTD., PW7 Abba Dabo special adviser political in the office of the then vice president and PW8 Junaid Said the detective from EFCC are crucial here. Evidence of PW5 is clear and straight forward. He stated that he knows the 1st Defendant in the dock. That he is Chief Olisa Metuh, the National Publicity Secretary of People's Democratic Party (PDP). That they were the one that paid them for the job they did. That the 1st Defendant was desirous of repositioning the People's Democratic Party (PDP) as a vehicle for national transformation. That the substantial part of that work required communication which is what they are well vast in. He stated clearly that

on the invitation of the 1st Defendant, he attended a meeting at the presidential villa that the former President was in attendance, though he met the meeting in progress, that he was able to pick from what they were saying since it had to do with how to win the general elections.

The witness acknowledged receipt of 7.5 million naira on 1/12/2014 and another cheque of 70 million Naira on 15/12/2014. The witness also said that they ran materials which they titled facts speak. The essence of this was to draw attention of people to some of the achievements of People's Democratic Party (PDP) as a party. The witness also stated that when they started, the President had just been confirmed as a candidate for the People's Democratic Party (PDP) through the party convention.

PW5 also stated thus -

"we did a double spread in 3 Newspapers thanking Nigerians and promising that he won't fail them. We also did series of other materials which ran into January 2015. We sent daily media monitoring to People's Democratic Party (PDP) that tells them whatever appeared in the media concerning the party."

In conclusion, the witness also stated:

"In essence all the jobs I undertook for my company, CMC Connect on the instructions of 1st Defendant borders purely on People's Democratic Party (PDP) campaign activities."

In the meeting held at presidential villa PW5 in attendance, persons present there were all People's Democratic Party (PDP) top notchers, People's Democratic

Party (PDP) chieftains. The 1st Defendant said the meeting discussed issues of grave national importance bordering on security yet the service chiefs or head of various security agencies were not in attendance.

My lords, for the upteempth time, the 1st Defendant is not a witness of truth. It is my view that the meeting discussed the repositioning of People's Democratic Party (PDP) as a vehicle for national transformation strategy to win 2015 general elections in the country. Exhibits E1 to E5 are campaign activities of People's Democratic Party (PDP) published by PW5's company CMC Connect LTD on the instructions of the 1st Defendant. No more no less. Debit entries of 16/12/2014 in exhibit D1 indicate that the 1st Defendant paid PW7 Abba Dabo the sum of 25,000,000.00 still from the same 2nd Defendant's account

in Diamond Bank from the 400 million Naira that was transferred to it by ONSA. He admitted receipt of the said sum of 25,000,000.00 from the 1st Defendant. He stated on oath the 1st Defendant engaged him to do media advocacy work for the party. He stated that the 1st Defendant was apprehensive and concerned about the social media becoming stringent in the criticism of People's Democratic Party (PDP). That Hausa service radio station were even more vicious in their attack at both Government and the party. That the 1st Defendant engaged him to assist in this initiative on account of his antecedent as a media person and that the 1st Defendant gave them the sum of 25 million Naira. See Debit entry on 16/2/2014 in exhibit D1. That he used the said sum of 25 million Naira he got from the 1st Defendant to set up a team of

facilitators and young IT active people to run a website which they called whatsup Naija and used the said 25 million Naira they got from the 1st Defendant to pay salaries and allowances.

The witness of truth in the person of PW7 stated that when he knew or realised the source from where 25 million Naira came from ONSA, he decided on his own to make refund because it was linked to a botched or failed arm purchase deal. Exhibit D1 also indicates that from the same 400 million Naira inflow, the 1st Defendant paid chief Anthony Anenih 21,776,000.00, Chief Mrs. Kema Chikwe the sum of 5,000,000.00 and 31,500,000.00 paid to Richard Ihediwa DW5.

DW5 also testified that he disbursed the said amount to the representatives of some media houses for advertorials

in the Newspapers, news jingles etc. See exhibits D2 to D10 in evidence.

The DW6 and DW9 Jacob Segun a journalist with the Nigerian Tribune Newspapers, Adebayo Bodurin Journalist with Daar communication LTD/AIT respectively confirmed receipt of monies from DW5 for media services rendered by the outfits they represented.

Evidence of PW8 and statement of account of the 2nd Defendant from Diamond Bank Plc in evidence indicate that the 1st Defendant on 4/12/2014 paid Kanayo and Olisa Metuh and Daniel Ford International the sum of 50, 000,000.00 and 200,000,000.00 respectively.

I agree entirely with the Learned Counsel for the Prosecution S. Tahir in his well-articulated brief of argument that was a delight to behold that the evidence

of PW5, PW7, PW8 and the contents of exhibit D1, exhibits E(1) to E(5) have uprooted and exposed the contents of the 1st Defendant's exhibits D11, D20 and D21 as tissue of lies. Learned Counsel for the Prosecution called it cock tail of lies which I agree.

Apart from the fact that exhibits D11, D20 and D21 are after thought designed to shift or divert the Court's attention, they were hurriedly and desperately put in place by the 1st Defendant to suggest that the expenditure given by PW5 and PW7 was not from 400 million Naira transferred to the account of the 2nd Defendant by former NSA Col. M. S. Dasuki Rtd.

Even with a low grader, I have my doubt that 1st Defendant will uproot the contents of debit entries in the statement of account of the 2nd Defendant domiciled in

Diamond Bank Plc showing how he dissipated 400 million Naira public funds transferred to his account with underhand dealing/endorsement "payment for security Services" whereas in truth there was no contract for security services signed between ONSA and the 2nd Defendant.

Upon being shown the statement of account by Learned Counsel for the Prosecution on 27/9/2019 under cross examination, the 1st Defendant confidently without being shaken, showing no remorse watching his demeanour from the witness box (though with permission of Court he testified outside the box, close to the witness box) without any indication of being remorseful, acknowledged as of right that those payments were made by him. One could see Public funds filtered into private hands not for

development of the country and benefit of her people but to finance the campaign activities of People's Democratic Party (PDP) and the 1st Defendant's personal needs. No wonder the Defendants and their Counsel erected several road blocks to frustrate this matter being heard and again frustrate justice from running its course. See the findings of the Supreme Court in the case of **Destra Investment LTD & Anor V. FRN Supra** P. 343 paragraph F to G.

The Defendants claimed that the 400 million Naira was expended on an alleged special national assignment given to him by the former President.

This is not true. The 1st Defendant is not a witness of truth.

Evidence of DW2 Colet Odenigbo consultant, DW5 Richard Ihediwa special assistant to the 1st Defendant, evidence

of DW10 Emeka Onyia consultant MD/CEO of Gwins Investment LTD, evidence of DW11 Oladeji Bamidele consultant MD/CEO Castle Media Limited and that of the 1st Defendant (DW15) on the issue of alleged national assignment given to the 1st Defendant by the former President are not truth and misleading. I am not inclined to believe them. They are tales for the ears and if I can borrow 1st Defendant's Counsel expression, their evidence on the issue are like cock and bull stories which are meant for entertainment only. They have no probative value. The evidence were only adduced to divert the attention of the Court from the real issues placed before it.

The consultants did not place any material before the Court to give any indication that the former president engaged the 1st Defendant on national assignment

regarding the nation's security as at then. The Court also rejects exhibits D11, D20 and D21 as being doctored. They cannot stand side by side with the exhibit D1 being the statement of account of the 2nd Defendant from Diamond Bank showing how the 1st Defendant dissipated the 400 million Naira inflow from ONSA. Exhibits D11, D20 and D21 cannot survive a minute longer. They have to be struck down today. They cannot supercede, override or in any way contradict exhibit D1. Therefore I find the 1st Defendant guilty in count 4 and accordingly convicted. I find the 2nd Defendant guilty in count 4 and accordingly convicted.

My lords, it is convenient at this stage for the Court to take count 7. The charge of transfer of the sum of

21,776,000.00 to Chief Anthony Anenih before making findings on counts 5 & 6.

Count 7.

Learned Counsel for the 1st Defendant submitted that the ingredients of the offences contained in this charge have to be proved by the Prosecution as created by law and as constituted in the particulars of the charge. That section 15(2) of the Act did not create a strict liability offence. That it provides that the person who is making the transfer is doing so knowingly or reasonably ought to have known that the fund he is transferring or from which he is making the transfer is or forms part of proceeds of an unlawful act. Learned Counsel for the 1st Defendant then submitted that the ingredients or particulars which the Prosecution must prove in this count is that the

Defendants did transfer the sum of 21,776,000.00 to Chief Anthony Anenih knowing that the sum directly represented the proceeds of crime. Learned Counsel then adopted his arguments already canvassed in respect of counts 1, 2, 3, 4 of the amended charge.

In addition, Learned Counsel submitted that the evidence of DW5 and DW15 in relation to the reason for the money given to Chief Anthony Anenih is unchallenged. He stated further that the mere transfer of money to Chief Anthony Anenih does not constitute an offence. That what could make any transfer of money an offence is the source of the money, the intent and or purpose of the transfer. That it is when these elements are expressed or shown that the Court could come to a conclusion one way or the other. That the purpose of the transfer was to execute

special national assignment. That in that regard renting office space and equipment in Asokoro was through Chief Anthony Anenih. That the Prosecution failed to prove that the 400 million Naira from which the amount was transferred to chief Anthony Anenih directly represented proceeds of criminal breach of trust and corruption by Col. Mohammed Sambo Dasuki. That this count is bound to fail. That it is only when the Prosecution have proved the illicit origin of the fund that the next burden of proving the Defendant's transfer of funds with the knowledge of its illicit origin would come to play. That in this case the Prosecution have failed to prove both the illicit nature of the funds and the requisite mens rea on the part of the Defendant. Without much ado, Learned Counsel urged the Court to discharge the Defendants on this count.

I have also considered the 2nd Defendant's argument on count 7 in its paragraphs 15.01 to 15.11 of its written address dated 29/10/2019. I have also considered the 1st and 2nd Defendants' replies on points of law. I have again considered the Prosecution arguments on count 7 in paragraphs 9.1 to 9.8 of their written address.

This is what I have to say here. I hereby adopt my reasoning and conclusions in my findings as regard counts 1, 2, 3, 4 of the amended charge in this judgment.

The Prosecution have proved that there is a transfer of funds as stated by them in exhibit D1. It is clear in exhibit D1 that on 4/12/2014, the 1st Defendant transferred the sum of 21,776,000.00 to Chief Anthony Anenih. This funds formed part of the sum of 400 million

Naira transferred by Col. Dasuki Rtd., the former NSA to the 2nd Defendant's account in Diamond Bank.

Under cross examination and being confronted with exhibit D1, the 1st Defendant confirmed that on 4/12/2014 he transferred the said amount to Chief Anthony Anenih. The debit entry in exhibit D1 is conclusive. I hereby find the 1st Defendant guilty with respect to count 7 and accordingly convicted, I hereby find the 2nd Defendant guilty on count 7 and accordingly convicted.

On counts 5 and 6. The charge of making cash transaction of sums of money above the statutory threshold of 5 million for individual and 10 million Naira for corporate body.

Learned Counsel for the 1st Defendant submitted that under counts 5 and 6 that the Prosecution must prove beyond reasonable doubt the following, as regard count 5, That the Defendants through their agent Nneka Ararume made cash payments. (b) That the payment was to Kabiru Ibrahim a non-financial institution. That the payment was to the tune of 1,000,000.00 USD.

As regard count 6, that the Prosecution must prove that the 1st Defendant through their agent Nneka Ararume made cash payments. That the payment was to Sie Iyenome of Capital Field Investment. That Capital Field Investment is a non-financial institution.

On this issue, Learned Counsel submitted that Nneka Ararume was not an agent of the Defendants. That Nneka Ararume was never in the employment of the Defendants.

That at the time of the transaction, she was a staff of ARM (Asset and Resources Management). That apart from being the account officer of the 2nd Defendant at ARM, that she was in the house of the 1st Defendant to discuss on the Defendants' portfolio at ARM. That at all times material to this case she has been a staff and representative of the ARM delegated by ARM to handle the portfolio of the Defendants. Learned Counsel made reference to the case of **DANJUMA V. SCC (NIG) LTD (2017) 6 NWLR PT. 1561**, which defines an agent as a person authorized by another to act for him, one entrusted with another's business.

Before I go further in this judgment, I have to commend Learned Counsel for the 1st Defendant A. C. Ozioko. Apart from providing citation in LPELR, he also made efforts in

providing citation of cases in Nigerian Weekly Law Report. This has really assisted the Court in making reference to cases cited by him in Nigerian Weekly Law Report. I am commending him because though it may look insignificant but it has gone a long way in assisting the Court lay hands on authorities cited by him. Some Counsel would have stopped at citing the Law Pavilion Electronic Law Report but Learned Counsel did not stop there, he also provided the citation in Nigerian Weekly Law Report.

Learned Counsel then submitted that PW1 was the agent of the institution she worked for that is ARM. That when PW1 received the Dollars in issue, she received it from the 1st Defendant on behalf of ARM to be invested in the said ARM. That the Prosecution failed to prove in evidence that PW1 was the agent of the 1st Defendant.

That as regard Sie Iyenome that testified as PW2, that in his testimony, he stated that he operates a Bureau de change. That he came into the transaction as a Bureau de Change operator. That he deals with Bureau de Change agencies buying and selling foreign currencies and sourcing foreign exchange from CBN, Banks and sometimes individuals. That himself and PW6 Kabiru Ibrahim dealt with the PW1. That it was PW1 that gave them the account number into which they transferred the money. That the Prosecution have not proved that it was the Defendants that made the cash payment.

That PW2 and PW6 have established that the said Capital Field Investment named in the charge by the Prosecution are Bureau de Change companies which qualify as financial institutions under section 25 of the Act. That the burden

is on the Prosecution to prove that Capital Field Investment named in the charge and ARM were not registered to carry out the business of Bureau de Change and financial institution respectively. That in the absence of such proof by the Prosecution, then the Court has to rely on the said PW2 and PW6's testimonies that they legitimately carried out the transaction. In that case according to the Learned Counsel, it is of no moment whether PW1 was agent of ARM or that of the Defendants. Learned Counsel urged the Court to discharge the Defendants on this count. That the Prosecution have failed to prove the essential ingredients/particulars of the offence in count 6 beyond reasonable doubt. That the Court should discharge the Defendants in both counts 5 and 6.

I have again considered arguments of the 2nd Defendant on counts 5 and 6 in its paragraphs 16.01 to 16.25 of its written address dated 29/10/2019. I have also considered the 1st and 2nd Defendants' replies on points of law. I have again considered the Prosecution argument on counts 5 and 6.

My lords, counts 5 & 6 deal with the allegations of making cash transactions above the statutory threshold through non-financial institutions. It is a strict liability offence. Under subsection 1 of the Act that the 1st and 2nd Defendants have been charged with, proof of mens rea, mental element or guilty mind is completely ruled out.

Under counts 5 and 6, the Defendants were charged with the offence of making cash transactions in excess of statutory limit or threshold of 5 million Naira through

individuals Nneka Nicole Ararume, Kabiru Ibrahim and Sie Iyenome PW1, PW6 and PW2 respectively.

My lords, I agree with the Prosecution that the said transactions is in violation of section 1 of Money Laundering Prohibition Act 2011 (as amended) in 2012.

In this case, the Prosecution have proved that it was a cash transaction involving the Defendants. The 1st Defendant handed over a whooping sum of 2 million dollar cash to PW1, Nneka Ararume. The transaction was above N5,000,000.00 or its equivalent. The transaction was not made by the Defendants through a financial institution.

In respect of count 5, the Prosecution led evidence through PW1, PW6 and PW8 to show that the 1st Defendant invited PW1 to his residence at Prince and Princess Estate Abuja and handed over raw cash of 2

million USD with a verbal instructions to change same into Naira equivalent and pay into the account of the 2nd Defendant in Diamond Bank Plc.

PW1 in her evidence in chief on the 25th/1/2016 stated that in pursuance of the verbal instructions by the 1st Defendant, she invited PW6 Kabiru Ibrahim and handed over the 1 million USD to him to convert same to its Naira equivalent. PW6 an unregistered and unlicenced Bureau de Change operator collected the cash of 1 million USD changed same into Naira equivalent of 183 million naira and paid same through an individual account bearing his name (not a registered Bureau de Change account into the account of the 2nd Defendant). This is reflected in exhibit D1. The 2nd Defendant's statement of account shows that on 2/12/2014 PW6 Kabiru Ibrahim an individual (not

registered Bureau de Change Company) paid in the sum of 183 million naira into the 2nd Defendant's account.

On this, I agree with the Prosecution that origin of the initial sum of 2 million US Dollars, which belong to either of the Defendants remained undocumented which goes against the essence of the Anti-Money Laundering Prohibition Act that is financing of terrorism and disguising concealment of laundering the origin of the funds.

On this issue, I reject the evidence of DW13 Theodora Ijeoma Obyiaku the 1st Defendant's elder sister. Her evidence is not reliable. I have my doubt if she could source 2 million Dollars within the period she mentioned in her evidence.

My lords, there was no official, formal communication between the 2nd Defendant and ARM on how to apply the funds. Since the 1st Defendant claimed that the 2nd Defendant maintained several domiciliary accounts with some Banks, the Two million USD ought to have been transferred to the 2nd Defendant's account at ARM. Inviting the PW1 to his house in Prince and Princess and handing over cash of 2 million USD, the 1st Defendant made attempt to hide the source or origin of the illicit funds.

A Corporate entity in my view relates or communicates with its customers officially. No evidence has been led by the Defendants to show that the ARM knew that the PW1 was in the private residence of 1st Defendant to carry out

the said transaction. Therefore PW1 for this purpose was the agent of the 1st Defendant.

There was no evidence of any board meeting of the 2nd Defendant, the resolutions passed minutes of meeting which under sections 233, 241 of CAMA 1990, they are required to keep minutes of meetings and Board Resolutions in its official dealings. The PW1 dealt with PW6 not in ARM's (Assets resources management) office to give the transaction a toga of officialdom.

From the statement of account of the 2nd Defendant in evidence exhibit D1, I agree with the Prosecution that the 1st Defendant used the proceeds from 2 million US Dollars and part of the sum of 400 million Naira received from ONSA to buy property from Daniel Ford International. This the 1st Defendant did not involve the

Assets Resource Management (ARM) the acclaimed portfolio manager. The transaction between the 1st Defendant and Daniel Ford International did not involve ARM, the acclaimed fund and wealth manager of the Defendants.

The involvement of PW1, PW2 and PW6 by the 1st Defendant in exchanging the 2 million dollars and the equivalent deposited in the account of the 2nd Defendant in Diamond Bank Plc was the Defendants' attempt to conceal the origin or the source of the Two million Dollars to circumvent the anti-money laundering law.

Surely as regard count 5, the 1st Defendant dealt with PW1 in excess of the threshold of the statutory limit of 5 million naira for an individual or 10 million naira its equivalent by a corporate body.

As it is, PW1 and PW6 testified that the sum of 1 million Dollars was converted at the prevailing exchange rate of N183.00 per one dollar amounting to 183 million naira and the said amount deposited in the account of the 2nd Defendant in Diamond Bank. The transaction clearly was in excess of the statutory threshold. Whether the money belonged to the 1st Defendant or 2nd Defendant, they were obliged to act strictly in conformity with the mandatory requirement of section 1 of Money Laundering Prohibition Act 2011 (as amended) in 2012.

The evidence of PW8 in chief on 9/2/2016 in connection with the offence in counts 5 & 6 is relevant. PW8 stated -

"Upon the analysis of the statement of account of Destra Investment Limited investigation revealed that after the payment of 400 million Naira from

the office of National Security Adviser, a total sum of 366 million Naira was paid. Kabiru Ibrahim who paid in 91 million Naira and one Etionye paid in 92 million Naira. The sum formed the Naira equivalent of 2 million dollars which the 1st Defendant gave to one Nneka Ararume cash".

PW8 further stated the same day as follows:

"Investigation revealed that Nneka Nicole Ararume was given in cash the sum of 2 million dollars by the 1st Defendant to obtain Naira equivalent. She then gave the cash sum of 1 million dollars to one Kabiru Ibrahim in order for him to pay the Naira equivalent which was the sum of 183 million Naira to pay into Destra Investments Limited account. She also gave the sum of 1 million Dollars cash to

one Sie Iyenome (PW2) Nneka Ararume, Kabiru Ibrahim and Sie Iyenome are natural persons'".

Under cross examination by 1st Defendant's Counsel Dr. Ikpeasu SAN, PW8 interlia stated as follows:

"Financial documents between financial institutions and their customer are expected to be documented".

It is also instructive to mention here that at the time of the said transaction between PW1 and PW6, PW6 Kabiru Ibrahim stated that he dealt with PW1 as an individual not acting for Asset Resources Management. The issue of PW1 acting as agent of ARM does not arise. Under cross examination the witness stated thus that is PW6-

"During the said transaction I did not see Mr. Metuh. That is I did not deal with him personally.

It was PW1 Nneka Ararume that gave me the account number that paid the money into Diamond Bank. I do not know that PW1 worked with company that deals on foreign exchange transaction". Underlining mine for emphasis.

PW1 and PW6 dealt in the transaction of 1 million Dollars as individuals not acting for a corporate body for instance ARM.

As regard count 6, evidence of PW1, PW2 Sie Iyienome and PW8, the EFCC's detective are also relevant.

PW1 Nneka Ararume stated that she gave PW2 One million Dollars out of the Two million Dollars given to her by the 1st Defendant to change/convert into Naira equivalent.

Evidence placed before me here indicates that PW1 did not invite PW2 to her office at ARM where she works

rather it was PW1 who took the money to PW2 in his office at Wuse II. PW2 confirmed this that PW1 gave him One million US Dollars in cash.

My lords, there is no evidence that PW2 at that time of transaction was a duly registered Bureau de Change operator. He said he did a brokerage transaction by giving the sum of $500,000.00 Dollars to Capital Field Investment Trust who converted the money and paid the Naira equivalent to the 2nd Defendant's account.

PW2 further stated that the balance of $500,000.00 was given to one Etionye an individual and a non-financial institution who also converted the money and paid the Naira equivalent to the 2nd Defendant's account in Diamond Bank.

Exhibit D1 in evidence that is the 2nd Defendant's statement of account in Diamond Bank Plc revealed that on 3/12/2014 the said Etionye a non-financial institution paid in the sum of 92 million Naira into the 2nd Defendant's account in his personal name Etionye Oyin in four tranches in the sum of 30 million naira each and 2 million naira respectively.

On this issue, I also agree entirely with the Prosecution that from the nature of the transaction neither the name of the 1st nor the 2nd Defendant featured as the original owner of the sum of 2 million dollars thereby defeating the essence of Anti Money Laundering Law. No records are kept in any financial institution on the said transaction neither was any report made to the Nigerian Financial Intelligence Unit.

The 1st Defendant has not explained convincingly and the explanation worthy of being believed where he got the Two million Dollars that he gave to PW1. Whatever is the source of the Two million Dollars is not known to the Court by way of evidence. I agree with the Prosecution that is a violation of the Anti-Money Laundering Law.

The Prosecution having proved beyond reasonable doubt the ingredients of the offence charged in counts 5 and 6 against the 1st and 2nd Defendants, I hereby find the 1st Defendant guilty in Court 5 and accordingly convicted. I also find the 2nd Defendant guilty in count 5 and is hereby convicted.

I also find the 1st Defendant guilty in count 6 and is accordingly convicted. I also find the 2nd Defendant guilty in count 6 and accordingly convicted.

Proof of predicate offence

On the issue of proof of predicate offence, Learned Senior Counsel for the 2nd Defendant Chief Tochukwu Onwugbufor (SAN) in his paragraphs 11.01 to 11.08 of his written address relied on the Ratio of their Lordships of the Court of Appeal in **FRN V. YAHAYA (2016) 2 NWLR Pt. 1496 252** and submitted that the predicate offence must first and fore most be established before an offence of money Laundering can subsequently be proved against the Defendants. Learned Senior Counsel forcefully submitted that in the instant case, the predicate offence in counts 1, 2, 3, 4 & 7 is the offence of the breach of trust and corruption.

That the Prosecution are bound to prove that the Defendants not only committed the offence of Money

Laundering charged but also the offences of breach of trust and corruption were committed by Col. Sambo Dasuki or any other person in the course of the transaction leading to the payment of 400 million Naira to the Defendants.

Learned senior Counsel for the 2nd Defendant Chief Onwugbufor (SAN) that did so much for the 1st and 2nd Defendants in this matter through his advocacy on some serious issues of law, for instance this instant issue that the Prosecution must prove predicate offence before the offence of Money Laundering could be raised, the Learned Senior Counsel that has been punctual in his appearances in this matter since he appeared in this matter then made reference to evidence of PW3 and exhibits 7 and 8 that he is aware that Col. Sambo Dasuki is in Court yet to be

convicted, Learned SAN then submitted that the Prosecution have led no evidence to show that there was any unlawful act that Col. Sambo Dasuki committed that is an unlawful act of corruption and breach of trust.

That exhibits E7 & E8 do not show that Col. Sambo Dasuki was charged in respect of the fund of 400 million Naira.

That from the 7 counts amended charge neither the Defendants nor Col. Sambo Dasuki is charged with the offence of breach of trust or corruption. The charge of unlawful act only stems from the mere ipse dixit of the Prosecution to determine whether or not a crime is committed.

That it is not the function of the Court to do so. The Court is urged to resist the attempt by the Prosecution to take over that functions.

4, & 7 is the offence of the breach of trust and corruption.

However, I respectfully depart from Learned SAN in his submission that the Prosecution must prove that Col. Sambo Dasuki Rtd. Committed the offences of breach of trust and corruption or any other person in the course of the transaction which gave rise to the charges against the Defendants. I also disagree with the Learned SAN that Col. Sambo Dasuki Rtd. must be convicted of the offences of breach of trust and corruption before the Defendants could be charged of offences of Money Laundering.

The case of **FRN V. YAHAYA** supra though well founded is inapplicable in this case. The facts and issues in **FRN V. YAHAYA** supra are clearly distinguishable from the facts and issues in this case.

My lords, it is my view that it is not mandatory for the Prosecution to provide evidence of Dasuki's conviction of offence of the breach of trust and corruption before the Defendants are charged with offence of Money Laundering.

To demand for the conviction of an alleged predicate offender before the Defendants are charged with Money Laundering offence arising from predicate offence will be to command the impossible. The Law does not command the impossible. This is because there are a lot administrative issues involved in the Prosecution of a criminal matter before a Court of law, issues like delay and congestion of cases in Courts e.t.c. will come into play.

Besides, there is no requirement in the Money Laundering Act, 2011 as amended in 2012 that a person alleged to

have committed a predicate offence should be convicted first before charges under the Money Laundering Act is prepared against the Defendants, therefore the defence cannot read into an enactment what is not provided.

It is sufficient that the Prosecution adduce credible evidence before the Court that the Court can reasonably infer that the action of Col. Sambo Dasuki Rtd. led to criminal breach of trust and corruption in the course of discharge of his functions as the then National Security Adviser.

In this case, the 1st Defendant in his extra judicial statement to EFCC made on 5/1/2016, exhibit E6(2) confessed that the former President invited him to make presentation on the challenges of his duties. The presentation was made relating to the activities of PDP

towards winning 2015 general elections and to enhance the image of PDP towards winning the 2015 presidential elections.

The President did not in any way engage the 1st Defendant on any national assignment.

There is no documentary evidence or credible evidence that the former President released 400 million Naira to the 1st Defendant. From nowhere Col. Sambo Dasuki Rtd. being the then National Security Adviser issued e-payment mandate exhibit B directing CBN to transfer the sum of 400 million Naira to the 2nd Defendant's account in Diamond Bank being a purported payment for security services without award of contract. The 1st Defendant himself admitted that neither him nor the 2nd Defendant had contractual relationship with ONSA.

him by the 1st Defendant for the purpose of publicity campaign of the PDP. He said he refunded the money upon becoming aware that not only that the money came from office of National Security Adviser but because the money was linked to a botched or failed arms purchase deal.

This evidence is coming from one of the persons the 1st Defendant gave the money. The fact of the return of 25 Million naira by Abba Dabo is an independent evidence showing that the 400 million naira came from an unlawful source. The prosecution in my humble view would not require the conviction of Col. Sambo Dasuki on the issue of criminal breach of trust and corruption before they will proceed against the Defendants in Money Laundering offence.

Upon receipt of the money from ONSA, the 1st Defendant ought to have known that having no contractual relationship with ONSA, that the said funds was a proceed of unlawful activity of Col. Sambo Dasuki Rtd. The Prosecution in my firm view need not have evidence of conviction of Col. Sambo Dasuki before proceeding to charge the Defendants under Money Laundering Act.

Once there is evidence to show an unlawful act (exhibit B) constituting a predicate offence, I think the Prosecution can proceed to charge the Defendants on Money Laundering offences that arose from the predicate offence, evidence of corruption and breach of trust forms part of predicate offences under section 16(1) of the Act .

It is in evidence that Abba Dabo PW7 a distinguished Nigerian refunded 25 million naira of the money given to

The return of 25 million naira by Abba Dabo is a conclusive proof that 400 million naira out of which 25 million naira was given to him came from an unlawful source. There is no evidence before the Court to show that Abba Dabo was forced by EFCC to return the money. Abba Dabo PW7 stated -

> **"I decided to refund the money on my own because it was linked to the failed or botched arms purchase deal"**

The defence did not contradict this piece of evidence under cross examination. Infact even under cross examination, Abba Dabo was firm and remained unshaken and testified that Chief Olisa Metuh -

> **"gave him 25 million on 16/12/2014 for the purpose of publicity compaign for the party**

which he faithfully carried out by the whatup Najia and media support system".

Still under cross examination PW7 said -

"I was helping Olisa Metuh when he briefed me for this publicity work. I was helping him to discharge his obligation as National Publicity Secretary of the party".

He said that the proposal made by Metuh was to enhance the image of the party not any special National Assignment. He ended up by saying that the party benefited from the work he did.

Where there is an independent evidence in the matter from one of the persons that the 1st Defendant gave part of the money that <u>the money came from an unlawful source</u> and used for campaign activities of a Political Party

not connected with the reason that the money was released, the prosecution need not wait for the conviction of the person through whom the release was made before proceeding against the Defendants on Money Laundering offence. For the upteenpth time, the fact that part of the money was refunded is a clear indication that the 400 million naira inflow to the 2nd Defendant's account in Diamond Bank came from unlawful or illegal source.

This is the feature that distinguished this case from **FRN V. YAHAYA supra.** In **FRN V. YAHAYA supra,** the Prosecution were unable to prove that the 64.8 million Naira that PW1 deposited in the account of the Defendant in Zenith Bank Gasau for fertilizer was not genuine or obtained from other crimes or illegal act.

That was what gave rise to the Court of Appeal pronouncement in that case that the Prosecution had to do more to prove the illegal act which was a vital ingredient of each of the offences in the charge. The Defendant was discharged and acquitted because the Prosecution in that case did not prove that the Defendant obtained the money directly or indirectly from any illegal act.

In this case, the Prosecution through exhibit B have proved that the transfer of 400 million Naira to 2nd Defendant arose from criminal breach of trust and corruption on the part of Col. Sambo Dasuki Rtd. that released the money to the 2nd Defendant in the absence of a contract for a purported "payment for security services". The evidence of Dasuki was not even helpful here. He did not say if the former President directed him

to release the money or why he released the funds. He merely prayed the Court for adjournment to enable him recover his memory of course the application was refused.

The second issue to be resolved here is the issue as regard non calling of vital witnesses by the Prosecution as contended by the defence.

It is my view that the Prosecution had no need to call the former President as a witness in the matter. The former President had no role to play in the case of Prosecution. Exhibit B shows the person that directed the transfer to be made. Exhibit D1 shows that the transfer was indeed made to the account of the 2nd Defendant that is controlled by the 1st Defendant. The defence cannot dictate to the Prosecution to call a particular witness in

the matter. It is within the pronegative of the Prosecution.

See **ADEYEMO V. SATE (2015) 16 NWLR PT. 1485 SC, OKANLAWON V. STATE (2015) 16 NWLR PT. 1485 SC 445 OR 481.**

Indeed it is the defence that had a duty to call the former President to testify in this matter. They made attempt to call the former President but later without any lawful excuse failed to ensure that the witness was in Court to give evidence in this matter. If at all the former President engaged the 1st Defendant on a purported special national assignment the Defendants would have been desirous to get the former President in Court.

On the application of Indoor Management Rule. That is the principle in **Royal British Bank V. Turguard (15)6 E & B 3 & 7.**

In the course of Learned senior Counsel for the 2nd Defendant's argument as regard ingredients of count 1 which the Prosecution must prove the ingredients that the 1st Defendant reasonably ought to have known that the 400 million Naira formed part of the proceeds of an unlawful act of Col. M. S. Dasuki the former NSA. Learned Senior Counsel for the 2nd Defendant submitted that the Prosecution must establish three things:-

a. The Defendants are employees of the office of the National Security Adviser.

b. Alternatively that the Defendants have been dealing with the office of the National Security Adviser.

c. That the 2nd Defendant was in fiduciary or close relationship with the office of the National Security Adviser.

Learned Senior Counsel argued that the Prosecution failed to establish those enumerated facts in evidence. Learned senior Counsel contended that the Defendants are third parties who are not government functionaries or associates of the functionaries of government and thus not in a position to know the facts contained in the charge. Learned Counsel relied on **Royal British Bank V. Turguard (1843-1860) AER Rep. 435 at 437-438.**

My lords, I think Learned Senior Counsel relied on Indoor Management rule in **R.B.B. V. Turguard supra** out of context.

It is my view that the Indoor Management Rule and the protection under the Rule applies to persons who have dealings with a corporation.

Having regard to the evidence of PW3, PW8 and indeed DW15, the 1st Defendant himself and exhibits E6(1) to (4) that is the 1st Defendant's extra judicial statement, the Defendants had no contractual relationship or any dealing with ONSA that would have warranted ONSA to transfer the sum of 400 million Naira to the 2nd Defendant's account. That goes to show that act of transfer of 400 million naira is the illegal activity of Col. Dasuki. The funds itself being proceeds of unlawful act. Therefore the 1st Defendant ought to have known that the funds in his account was a proceed of an unlawful act. The fact that the 1st Defendant proceeded to dissipate funds even

without requesting for his statement of account constitutes constructive knowledge of the illicit origin of the funds. With respect to the Learned SAN, the Indoor Management Rule is not applicable.

On the issue of the PW1 not being the agent of the Defendants in the transactions involving Two million US Dollars.

It is not in dispute that the 1st Defendant invited PW1 to his house that is his private residence and handed over to her the sum of Two million dollars.

There is no evidence before the Court that PW1 went to 1st Defendant's residence on behalf of ARM. PW1 gave One million dollars to PW6 to convert to the Naira equivalent. There is no record indicating that ARM received the Two million dollars.

Under cross examination, PW6 stated on oath that PW1 gave him the dollars to exchange and also gave him the account number of the 2nd Defendant in Diamond Bank Plc to deposit the money. He also stated that he did not know that PW1 worked with company that deals on foreign exchange transaction.

From the evidence of PW6, it is clear that PW1 acted to the knowledge of PW6 not as an agent of ARM but rather as an agent of the Defendants. An agent is a person authorized by another to act for that person, one entrusted with another's business.

The 1st Defendant in his evidence in chief told the Court that the 2nd Defendant a limited liability company had investment in ARM, another Limited Liability Company. The 1st Defendant did not tender evidence of his investment between the 2nd Defendant and ARM. The transaction

between two corporate entities cannot be carried out orally. The 1st Defendant did not produce evidence, minutes of meeting of directors of the 2nd Defendant and board resolutions sanctioning the investment of Two million dollars. The oral evidence of the 1st Defendant making allusions to the transaction between the 2nd Defendant and ARM is weak and manifestly unreliable for the Court to act on same. The 1st Defendant did not furnish the Court with any evidence of transaction between ARM and 2nd Defendant. The Court cannot speculate here.

If PW1 was not the Defendants' agent why did they not deposit the dollars in their accounts for the transfer of the funds of $2 million to their account directly from their Diamond Bank or their other accounts. It was convenient for the 1st Defendant to deal with PW1, directly to avoid answering questions as regard the source of the illicit funds in his various Bank accounts. In this

regard, it is my view that PW1 acted as the agent of the Defendants in the transaction of Two million dollars.

The 1st and 2nd Defendants having been convicted in all 7 counts amended charge, Learned Counsel for the 1st and 2nd Defendants shall now present their Allocutus. I so hold.

Hon. Justice O. E. Abang
Judge
25th February, 2020

SENTENCE

My lords, I have dispassionately considered the allocutus ably presented by Learned Counsel for the 1st convict and the Learned senior Counsel for the 2nd convict.

The facts of this case revealed a story of shame and has reflected a moral decay of the times and age we live in this country. Dissipating public funds recklessly by those that have connections with public officers as the 1st

convict in this case and public officers themselves is an endemic disease that has eaten deep into the fabric of our Nigerian society. This requires careful urgent and quick diagnosis so as to get at its root for an adequate and urgent treatment.

A drastic situation or problems demand a drastic solution. A Court of law should enforce the law for the attainment of social engineering and by so doing our desire as a Nation to attain a national rebirth and regeneration can be assured.

With the facts of this case, especially what happened when he recorded his statement that is by destroying his confessional statement, the 1st Convict planted thorns and cannot expect to gather flower.

The convict had the opportunity to have resolved this matter amicably with the Complainant without coming to Court. I mean the state through EFCC. Even when he was confronted with exhibit D1 that is the statement of account of the 2nd Defendant in Diamond Bank Plc that he

as the sole signatory transferred the sum of 50,000,000.00 on 4/12/2014 from that account to a bank account of his wife jointly controlled by him, the convict ought to have been sober, remorseful and found way of resolving embarrassing situation with EFCC because the money was transferred to an account jointly controlled by him and his wife. The interest of his immediate family members should have been paramount.

If I may ask, is the 50,000,000.00 naira transferred to an account jointly controlled by his wife and himself part of the special national assignment that the former President purportedly gave him? My lords, I think not. The mere fact that 50 million Naira was transferred from the account that had inflow of 400 million Naira public funds was linked to his wife was sufficient for the 1st convict to do everything within his reach to ensure that this matter was not brought to Court.

Instead the 1st convict became hardened, difficult, stubborn joined issues with the team of investigators,

destroyed confessional statement that he voluntarily made that the inflow of 400 million naira was used for the campaign activities of PDP, came to Court with assistance of his Counsel, transferred his aggression to the Court. The 1st convict and his Counsel especially Emeka Etiaba (SAN) and Dr. Ikpeasu OON (SAN) used every opportunity open to them to humiliate the Court in writing hopeless, reckless and frivolous petitions against the Court. One of their petitions against the Court is in the Court's file dated 11/3/2016.

The 1st convict and his Counsel Emeka Etiaba (SAN), Dr. Ikpeasu (SAN) used a section of the press especially A.I.T. and sponsored blackmail against the Court and presented it as inhuman and heartless. They even took this matter to International press. The day the 1st convict fell down in the Courtroom just to have unmerited sympathy from international community it was aired in CNN portraying the Court in bad light. It was only God that used my immediate family to sustain me throughout the

four years of hostility coming from the convicts and his team of lawyers.

I saw it all. Except towards the end of the proceedings in this matter precisely few weeks to the end of proceedings that the 1st convict and his team of lawyers began to be friendly with the Court but before then they had thoroughly humiliated the Court just because I discharged my functions without fear or favour, affection or ill will.

I had nobody to speak for me except God that sustained me throughout one of the most of difficult periods of my judicial career on the bench of the Federal High Court. During this period, I prayed that my employer should withdraw this file from my Court but it was not forth coming. I did not assign this case to this Court, I did not in any way direct the 1st convict to dissipate public funds the way it is stated in exhibit D1 the statement of account of the 2nd Convict. Part of the money was transferred to Daniel Ford Foundation to buy a property in Banana island. The origin of Two million dollars that was converted to

Naira equivalent and deposited in the account of the 2nd convict cannot be ascertained. The investigator said it is suspected to be funds shared to delegates from 2015 PDP national convention. This was not ascertained.

This country cannot go on like this. There must be a change in altitude of the ways things are done in this country. Public funds being dissipated in this manner is a story of shame.

There is nothing that I did not see in this matter.

When EFCC applied to Court to revoke the Bail of the convict because the 1st convict was not in Court and rightly so, I had sympathy for him. I did not revoke his bail. I gave him opportunity to be in Court and adjourned the matter to a latter date. The next Court's appearance, the 1st convict was in a stretcher, motionless just to portray the Court as being heartless and inhuman because the Court did not release his International passport for him to travel out of the country. The reason that the passport was not released to him was not the fault of the court but

because his team of lawyers were not able to file a competent application. He came in a stretcher without any medical personnel except his people that accompanied him to Court. He asked for 4 weeks adjournment, I gave him 6 weeks. Thereafter the 1st convict appealed to the Court of Appeal that the Court is bias. The Court of Appeal dismissed the appeal and held that a Judge that gave him 6 weeks adjournment when he asked for 4 weeks cannot be biased in the matter against him and the appeal dismissed. Infact except for one decision, all the appeals that the 1st convict appealed against my decisions were affirmed by the Court of Appeal and the Supreme Court.

Recently the 1st convict and his Counsel used channel televisions a national television to review my decisions and used that medium to attack my person portraying the Court as being inhuman just to further humiliate the Court. This aspect of the matter is currently on appeal at the Court of Appeal.

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ABUJA
3/2/20

On 23/2/2017 in this matter, one of the senior Counsel that appeared for the convicts Dr. Ikpeasu OON (SAN) in the open Court accused the Court of bias and applied that the Court to rescue itself from the matter and if one may ask the reason for the application, it was because I delivered a ruling against the 1st convict. The law is settled on this issue that a party or Counsel cannot in the open Court accuse the Court of bias or that he has no confidence in the Court to do justice in the matter, that is contempt in the face of the Court. I would have summarily dealt with the Learned senior Counsel but having been trained to have the patience of the biblical Job, I developed thick skin over the contemptuous conduct of Dr. Ikpeasu (SAN). I allowed him to go home without a twist in his body chemistry not out of fear or cowardice but the Court had to show maturity and restraint at that trying period in this matter. We have been trained not to be angry when found fault with or finding fault when angry. I only advised Dr. O. Ikpeasu (SAN) that a Counsel that

makes it a habit of scandalizing a judge for no just cause except that the judge only discharged his functions to the best of his ability but in line with the law and the facts of the case the way the judge understands the law that Counsel is breaking the bridge that himself will cross. It is like living a glass house throwing stones. I then left him to his conscience.

As regard the proceedings of the Court on 23/2/2017, I commend Learned Counsel for the prosecution S. Tahir that his submission/candeur saved the day for O. Ikpeasu (SAN) and the 1st convict. Learned Counsel pleaded on their behalf and prayed for adjournment even at the instance of the defence.

My lords, I have seen it all in this case. I cannot in this forum state all the negative things I passed through in this matter. God has been so faithful to me and my immediate family in this matter, may His name be praised. I have forgiven everybody, the 1st convict, Emeka Etiaba

(SAN), O. Ikpeasu (SAN) and all persons that maltreated me in this matter. It was a traumatic period for me.

Now looking at the sentence to be passed on the convict, I have no discretion under section 15(3) of Money Laundering Prohibition Act, 2011 as amended in 2012. The punishment in count 1, 2, 4 & 7 is clear not less than 7 years and not more than 14 year. I thought I would have a discretion in this matter. I would have exercised my discretion in favour of the 1st convict notwithstanding what I passed through in this matter. I did not make law, my duty is to apply the law to the facts of the case placed before me.

This case should be a lesson to others when faced with two evils, choose the lesser evil. Put differently, when the facts of the case are clear and straight forward like this case, the person involved should not be stubborn, assertive but try to resolve the matter amicably with EFCC. Moreso where the facts of the case link a member of the convict's immediate family that I guess was not privy to what the 1st

convict did. This is a timely warning that no lawyer can change the facts of the case.

Except for Justices of the Court of Appeal and Supreme Court that affirmed my decisions severally nobody spoke on my behalf. The Justices of the Court of Appeal and Supreme Court affirming my decisions severally was what encouraged and motivated me to do my best in this matter to the Glory of God.

It is on record that the decision of the Supreme Court to the effect that there cannot be an order staying proceedings in a criminal matter emanated from the decision of this Court.

A decision of the Supreme Court to the effect that a trial Court cannot decide issue concerning jurisdiction in a criminal trial except in the final Judgment emanated from the decision of this Court.

A decision of the Supreme Court on a no case submission in a criminal case that a party requires leave to appeal from

the decision of the Judgment also emanated from the decision of this Court.

A decision of the Court of Appeal where a trial Judge that adjourned a matter over and above a period requested for by a Defendant in a criminal matter that Judge cannot be accused of bias also emanated from the decision of this Court.

I cannot exhaustively use this medium to state the various decisions of this Court that have been affirmed on appeal.

Their Lordships of the appellate Courts' affirmation of these decisions encouraged, strengthened, motivated me and infact boasted my morale in the discharge of my functions. I am eternally grateful to Their Lordships in this regard.

In conclusion with respect to count 1, I hereby sentence the 1st convict Chief Olisa Metuh to 7 years imprisonment with effect from today.

Count 2 - I hereby sentence the 1st convict Chief Olisa Metuh to 7 years imprisonment with effect from today.

Count 3 - I hereby sentence the 1st convict to Chief Olisa Metuh to 5 years imprisonment with effect from today.

Count 4 - I hereby sentence Chief Olisa Metuh to 7 years imprisonment with effect from today.

Count 5 - I hereby sentence Chief Olisa Metuh to 3 years imprisonment with effect from today.

With respect to count 5, the 2nd Defendant shall pay a fine of 25, million naira to Federal Government of Nigeria.

With respect to count 6, I hereby sentence Chief Olisa Metuh to 3 years imprisonment with effect from today.

With respect to count 6, the 2nd Defendant DESTRA INVESTMENT LIMITED shall pay the fine of 25,000,000.00 to the Federal Government of Nigeria.

With respect to count 7, I hereby sentence Chief Olisa Metuh to 7 years imprisonment with effect from today.

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ABUJA 3/3/2022

The terms of imprisonment for the 1st convict in count 1, count 2, count 3, count 4, count 5, count 6 and count 7 shall run concurrently I so hold.

I hereby make the following consequential orders pursuant to section 321 of ACJA.

(1) That the 1st convict Chief Olisa Metuh shall return, refund or pay back to the Federal Government of Nigeria the victim of crime the outstanding balance of the 375 million naira public funds paid into his account by Col. Sambo Dasuki Rtd for security services where there was no contract award. PW7 ABBA DABO having refunded 25 million naira

(2) Federal Government of Nigeria is at liberty to dispose of the real or personal property of the 1st convict to recover the sum of 375 million naira already adjudged in its favour.

(3) The Accounts of Destra Investment Limited is hereby closed in Diamond Bank Plc and Asset

Resources Management. Any amount standing to the credit of Destra Investment Ltd in its account in Diamond Bank Plc and Asset Resources Management are hereby forfeited to the Federal Government of Nigeria.

(4) Destra Investment Limited is hereby wound up. Enrolment of Judgment order to be served on CAC. I so hold

Hon. Justice O. E. Abang
Judge
25th February, 2020

Appearances:

Slyvanus Tahir for the Prosecution with him are O. M. Ali Ahmed, G. A.

A.C. Oziokor for the 1st Defendant with him J. J. Nwosu Mrs & Ime Daniel (Miss)

T. Onuwugbufor (SAN) for the 2nd Defendant with him Owen Francis and C. Onwugbufor Esq