IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA
IN THE AGBARHO JUDICIAL DIVISION HOLDEN AT ORHO- AGBARHO
BEFORE HIS LORDSHIP, THE HON. JUSTICE A. A. ONOJOVWO (JUDGE)
ON THURSDAY THE 18TH DAY OF FEBRUARY, 2020.

CHARGE NO. W/EFCC/1C/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT

VS.

GODWIN OPIRI-OGHI ..... DEFENDANT

JUDGMENT DELIVERED ON THURSDAY THE 18TH DAY OF FEBRUARY, 2021.

COUNSEL:
M. T. Iko Esq for the Prosecution
L.U. Ovwromoh Esq with him Mrs P.U Pela Esq for the Defendant

The Defendant was arraigned on a two count information which reads:

"Statement of offence: Count 1"

Stealing contrary to **Section 390 (8) (b)** and **(9)** of the **criminal Code Cap C21, Vol. 1, Laws of Delta State 2006.**

Particulars of Offence

That you Godwin Opiri-Oghi (m) sometime in the year 2012 at Warri... while being the treasurer of Erhuvwu Cooperative Society... with intent to defraud fraudulently converted the sum of #2,693,600

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(two million, six hundred and ninety three thousand, six hundred naira) only property of Erhuvwu Cooperative Society of St. James Anglican Church... Warri...and thereby committed an offence.

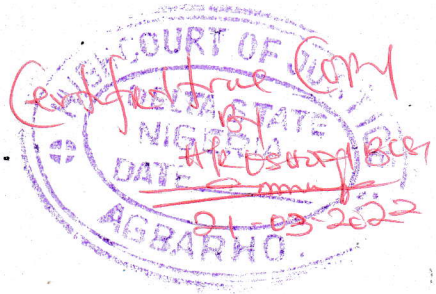
Statement of offence count 2

Dishonoured cheques contrary to **Section (1) (a)** and **(b) (i)** and **(ii)** of the **Dishonoured Cheques (Offence) Act Cap (i) II,..**

Particulars of offence count 2

That you Godwin Opiri-Oghi "m" doing business in the name and style of Gosam Nigeria Company on or about the 30th day of April, 2013 at Warri... did fraudulently issue an Access Bank Plc cheque with No. 00000204 dated 30th April, 2013 in the sum of # 1,665,000 (one million, six hundred and sixty five thousand naira) only in favour or Erhuvwu Cooperative Society which said cheque was presented for payment within three months of its issue, it was dishonoured due to insufficient funds standing to your credit and thereby committed an offence".

Before hearing commenced, Defence counsel **L.U. Ovwromoh Esq** raised a preliminary objection urging the court to quash the information on the grounds that the offence charged in count 1 is not within the jurisdiction of the Economic and Financial Crimes Commission (E.F.C.C.) and that the offence charged in count 2 is not disclosed by the statements and documents in the proof of evidence. In a considered ruling delivered by this court on 1-11-2016, the court



In a considered ruling delivered by this court on 1-11-2016, the court overruled the objection in respect of count 1 but upheld the objection in court 2 and quashed same.

The prosecution fielded two witnesses one of who, PW2, did not concluded his evidence. When the PW2, the investigating officer from the EFCC, on 2-5-2017 sought to tender statements recorded from the Defendant, defence counsel, objected to their admissibility on the ground that they were not voluntarily made, the court ordered a trial within trial. The investigating officer testified in the trial within trial and the Defendant testified in his defence. As at 12-4-2018 when the court was to deliver a ruling in the trial within trial, the **Administration of Criminal Justice Law** had come into force in Delta State and by its **Section 300** it abolished trial within trial. In line with its provisions, ruling was then reserved to be delivered along with the judgment in the charge. PW2 never returned to conclude his evidence in chief or nor made himself available for cross examination. Like the PW2, prosecuting counsel walked away from and abandoned the case. After several fruitless adjournments for prosecuting counsel to attend court, the Defendant entered his defence and addressed the court in the absence of prosecuting counsel.

PW1 **Evangelist Prince Johnson Ogadje Abotu** testified that he and the Defendant attended the St. James Anglican church, Warri

which had a Cooperative Society of about 89 men and women. He is the chairman of the Cooperative called Erhuvwu Cooperative Society, which collects money from members, the Defendant is the treasurer and one Augustine Onoriode, now late was secretary. Money collected is handed to the Defendant to take to the Bank and the Defendant would show tellers to show he had paid the money into the bank at the end of November of every year, they collected their money from the bank and distribute to each member what is due to him/her. Things went well for many years up till November, 2012 when they could not find the Defendant who had stopped coming to church. The Cooperative delegated the secretary one member and himself to go to the house of the Defendant where they met the Defendant absent but met his wife at home. She informed them that the Defendant travelled to Maduguri and would be back in December 2012. They went to the bank and discovered the account of the Cooperative had only #35,000 (thirty five thousand naira) instead of #2,663,600 (two million, six hundred and sixty three thousand naira) contributed by members.

When the Defendant later returned the parishioner counsel of the church called a meeting to resolve the matter. The Defendant admitted the money was with him and undertook to repay the money in three installments by posted dated cheques of Access Bank Plc. A member of the church, who is a lawyer, drafted an agreement, Exhibit

"A" which they all signed and the Defendant gave them a post dated cheque Exhibit "A1". The Defendant only paid #700,000 (seven hundred thousand naira) and a fraction and he finally wrote a petition, Exhibit "B" to the E.F.C.C.

Cross examined by defence counsel **L.U. Ovwromoh Esq** PW1 said he wrote the petition for the E.F.C.C to help them recover the debt owed by the Defendant, #2,663,600 which is the total of the amount of money handed to him every Sunday contributed by different members , Augustine Onoriode now late, Mr Aghwadoma, a lady who works in the church and the Defendant collect money from members. He did not hand any money to the Defendant and he does not know how much Augustine Onoriode received from members or how much he gave to the Defendant but they are recorded in the books of the Cooperative. He does not also know how much Mrs Aghwadoma collected from members or handed to the Defendant but they are recorded in the books of the Cooperative. He does not know how much the lady Rose Edenoma collected from members or paid to the Defendant. He and his wife made a joint contribution of about #300,000 (three hundred thousand naira) but his contribution is recorded in the name of his wife who is a member of the Cooperative in her own right. The money the Defendant is alleged to have taken includes the money contributed by

the Defendant who admitted taking the money, signed Exhibit "A" and made some repayment.

PW3 **Augustine Obiajulu Okwor** is the staff of the E.F.C.C assigned to investigate the petition, Exhibit "B" written against the Defendant. He said PW1 adopted the petition of the Erhuvwu Cooperative Society of the St. James Anglican Church, Warri. The Defendant was arrested and brought to a conducive office where he saw, read and confirmed the truth of the petition, Exhibit "B" and wrote a total of six statements.

As stated already after the trial within trial occasioned by the objection of defence counsel, PW2 never returned to conclude his evidence.

Defence

Defendant **Mr Godwin Oriri-Oghi** denied the charges and told the court he is the treasurer of Erhuvwu Cooperative Society, he receives monies collected from members from three persons, Augustine Onorode, Evans Eghwadana and Rose he does not collect money from members directly and he banks the monies he received. On 5-12-2012, he travelled to Maiduguri and returned on 20-12-2012 only to hear from his wife that PW1 and one other came looking for him and that they collected all the books of account and pass book relating to the account of the Cooperative and all the records kept by him of the

money handed to him were taken away by PW1. Without sitting down to reconcile records, PW1 reported the matter to the church authorities and the matter was eventually reported to the E.F.C.C. He was arrested and taken to the E.F.C.C. office in Port Harcourt where he made a statement to PW2 who was asking him questions and wrote as he answered him through which process he made two statements, TWT 1 and TWT 2. PW2 advised him to admit he is owing so that he could be paying installments on their office. He made payments about seven times and each time he did, he was given something to write and he wrote "TWT3"-"TWT6 ". Throughout his stay in E.F.C.C. custody there was no reconciliation of accounts with the three persons he received money from.

Address

Defence counsel **L.U. Ovwromoh Esq** submitted that the prosecution has failed to prove its case against the Defendant beyond reasonable doubt. He reminded the court of the ruling on the admissibility of statements of the Defendants reserved and pointed out that the PW2 did not conclude his evidence .

He submitted that even if the court admits the statements, "TWT1" –"TWT6", they should be ignored as PW2 did not conclude his evidence since he did not come back for cross examination. On the ingredients of stealing, he relied on **Chianugo Vs. State (2001)FWLR(Pt.**

74) 274, at 250-251. He cited **Section 390 (8) (b)** of the **C.C.L.** and submitted that the prosecution must show the existence of the property and that it was entrusted to the Defendant. He relied on the evidence of PW1 and stressed that the PW1 said under cross examination that the Defendant was never given the sum of #2,663,600 at any time and that the sums were collected by three named persons who were never called to give evidence in this case.

He contended that there is no evidence of how much was given to the Defendant, if any money at all was given to the Defendant. He submitted that the three named persons are material witnesses whose absence fatal to the case of the prosecution. He relied on **Okoroji Vs State (2001) FWLR (Pt. 77) 871, at 888.** He argued that the absence of the three persons created doubt as to whether any money was handed to the Defendant which doubt must be resolved in favour of the Defendant. He cited **Chianugo Vs State (supra) at 253.**

He contended that Exhibit "A" relates to a civil transaction outside the realm of stealing or conversion. He pointed out that the money allegedly stolen includes the one contributed by the Defendant and argued that the Defendant cannot be accused of stealing the part contributed by him which is unknown.

He urged the court to believe the evidence of the Defendant which he described as unchallenged and uncontroverted and to discharge and acquit him.

Admissibility of the Statements of the Defendant. "TWT1" – "TWT6" in the TWT.

The objection of the defence to the admissibility of the statements made to the E.F.C.C by the Defendant is based essentially o three grounds, (1) of inducement with the promise that he admitted owing the money, things will be easy for him (2) the statement "TWT1" and "TWT2" were recorded by question and answer sessions (3) every time he made a payment he was given a paper to write a statement leading to the making of a "TWT3", "TWT4", "TWT5" and "TWT6" . In his evidence in the trial within trial, the investigating officer, denied promising the Defendant anything and that it was after the Defendant was shown the petition written against him, Exhibit "B" and the agreement he entered into with the Cooperative, Exhibit "A" that the Defendant voluntarily made "TWT1" and that when his boss wanted clarification as to the contents of "TWT1", the Defendant was requested to make "TWT2" for clarification. He explained that he only put questions to the Defendant regarding the introduction of himself and that otherwise the other parts of the statement were not done by question and answers.

With regard to "TWT2" which the Defendant was requested to make for clarification, it is my view that the statement having been made by the Defendant at the request of the officials of the E.F.C.C and not on the volition of the Defendant himself "TWT2" was not voluntary and it is therefore inadmissible by virtue of **Section 29 (2)** of the **Evidence Act 2011.** See **State Vs Salawu (2011) LPELR (SC) 25-26.** As for "TWT1", I do not believe the Defendant that the "PW2 promised him any benefit for him to admit what he did in that statement to the authorities. It is in pith and substance, a mere repetition of what he had earlier admitted in Exhibit "A", with which he was confronted and buttressed by his cheque, Exhibit "A1" already issued to the Co-operative .

From the evidence of "PW2" and the Defendant in the trial within trial, as well as the contents of "TWT1", it is not in doubt and I find as fact that "PW2" put some questions to the Defendant in the process of him making the statement he wrote in his own handwritten. However, it would appear and I believe the Defendant that the questions put to the Defendant by the "PW2 only had to do with introductory matters and not the substance of the allegation against him. In fact, in his evidence in the "TW1", the Defendant said, inter-alia, when the "PW2" asked of his name, the number of wives, children, where he worked and the place he was from and such other questions, he protested against the interjection but he did not suggest, beyond alleging he told him to co-

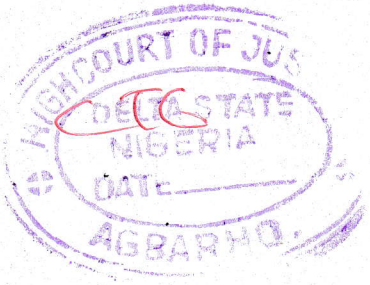
operate so that things will be easy for him (which I do not believe), anything of substance relating to the charge which the "PW2" questioned him about.

Undoubtedly, it has been held in several cases, including decisions of the Apex Court, that a confession recorded by a question and answer session may not be regarded as free and voluntary. See **Namsoh Vs State (1993) 6 SCNJ (Pt 1) 55 @ 66-77** where **Kutugi JSC** (as he then was) observed:

> "Exhibit "H" was a product of the questions and answer section between the two of them, the police recorder "PW7" was putting questions already prepared by his superior on a sheet of paper to the Appellant, while the "PW7" also recorded the answers. This procedure is already wrong … I cannot see how a statement such as Exhibit "H" herein will be regarded as free and voluntary when it is evident that the so called evidence was as a result of questions selected and put to the accused by the police officer himself"

See as **Salawu Vs State (2009) LPELR (CA) 41-42.**

Notwithstanding the foregoing, I do not understand the law on the point to mean that whenever an officer asks a Defendant any question and he answers in the process of recording a statement from him, it automatically renders the statement involuntary and inadmissible. It must necessarily depend on whether the questions are oppressive and

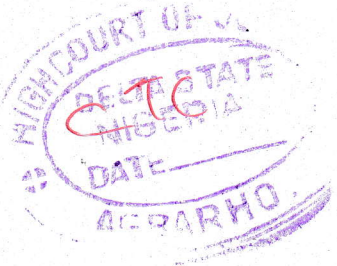


meant to sap the free will and indeed sapped the free will of the Defendant. It is only when that method does so that the statement will be regarded as involuntarily and inadmissible. In **Ogba Vs State (2012) LPELR (CA) 19-21, Ikyegh JCA at pages 19-21** stated the law thus:

> "Normally, a confessional statement arising from oppressive question and answers session between the police recorder and the accused is inadmissible in evidence... A sober look at Exhibit "J" does not bear out the allegation that it was the product of specific or selected questions already prepared by the police to extract inculpatory answers from the Appellant. Consequently, I do not agree with the Appellant that Exhibit "J" was the product of question and answer session between "PW4" and the Appellant to render the confession in Exhibit "J".

In **Jimoh Salawu Vs State (2012) 20 WRN 1 @ 25-26,** it was held:

> "It is perhaps necessary to emphasize it is not a rule of our criminal procedure law and the law of evidence, where in the course of recording the statement of an accused person, a police officer asks questions and records the answer by the accused person therein, the statement automatically becomes involuntary and thus inadmissible in law. That was not the



principle on which Namsoh's case was decided…A careful look at **Namsoh's** case shows that specially prepared questions were oppressive on the accused in the sense that they were meant to sap and indeed sapped the free will of the accused person and thus rendered the ensuing statement involuntary… The mere assertion by PW1, that in the course of recording the statement of the Respondent, he asked question and recorded the answers, does not *ipso facto* render the statement involuntary."

The Defendant has not shown any oppressive question asked him, sufficient to sap his will and the fact that "PW2" asked him several introductory questions about himself, does not render "TWT1" involuntary, especially as the Defendant did the recording in his own hand.

As for the Defendant's statements "TWT3"-TWT6", the evidence of the Defendant, which I believe and accept, is that whenever he made any payment , he was given a sheet of paper to make a statement to cover the payment. It should be obvious that there being no necessity on the part of the Defendant to make such statement he did not make them on his own volition, but at the behest or prompting of the "PW2" and other officers who obtained them from him. A payment by the Defendant to the Cooperative Society does not necessitate him making further statements admitting owing, stealing or embezzling money of the

Cooperative. The investigating authorities do not have authority to obtain statements from him, having told him he is not obliged to say anything. See **State Vs Salawu (2011) LPELR (SC) 25-26.**

It is my firm view that "TWT3"-"TWT6" having been obtained by the PW2 from the Defendant instead of being voluntarily made by or out of the free will of the Defendant, they fail the litmus test of admissibility in **Section 29** of the **Evidence Act, 2011.**

In the result, I sustain the objection of defence counsel in respect of "TWT3" of 11-3-2014, "TWT4" of 12-5-2014, "TWT5" of 20-11-2014 and "TWT6" of 27-11-2014. They are all therefore rejected and ordered to be marked as rejected.

As for "TWT1", having found that it was voluntarily made, Defendant's objection is accordingly overruled and the statement of the Defendant made on 15-2-2014; "TWT1" is hereby admitted in evidence and marked as Exhibit "C".

Now to the judgment proper. The law is well settled and elementary that whenever a Defendant is charged with the commission of any criminal offence he/she is presumed to be innocent, until his guilt is proved beyond reasonable. See **Section 36 (5) CFRN (1999)** as amended. The prosecution bears the burden of proof of the alleged offence, which burden does not shift and the Defendant does not bear any corresponding duty to prove his innocence. If on the totality of the evidence before the court, it is left in a state of doubt or some doubt

arises from the case presented by the prosecution, the court will be duty bound to resolve any such doubt in favour of the Defendant. See **Udosen Vs State (2007) AFWLR (Pt. 356) 669 2 689; Akeem Vs State (2017) LPELR (SC) 42-43; Esseyin Vs State (2018) LPELR (SC) 10-11; Ekpo Vs State (2018) LPELR (SC) 5-6.**

The **Criminal Code Law of Delta State** defines stealing in **Section 383 (1), (2), (3)** and **(4)** to include among others, the fraudulent taking of a thing capable of being stolen belonging to some other person or fraudulent conversion it is his own use. In **Ayeni Vs State (2016) LPELR (SC) 25, the Supreme Court (per Kekere-Ekun), JSC** stated:

> "A person who fraudulently takes anything capable of being stolen of fraudulently converts to his own use or to the use of any other person, anything capable of being stolen is said to steal that thing"

See **Oyebanji Vs State (2015) LPELR (SC) 16-17.**

As earlier pointed out the prosecution's case is erected on the evidence of PW1, who testified in full and the evidence of PW2, who abandoned the witness box without even concluding his evidence in chief. The law is that a court cannot act on the evidence of a witness who did not make himself available for cross examination after giving evidence in chief. This is because his evidence goes to naught and carries no weight. See **Isiaka Vs State (2011) AFWLR @ 584 966; Al-Mustapha Vs State (2013) LPELR (CA) 102-103.**

In this case, PW2 having failed to submit himself for cross-examination, his evidence, save for the evidence given in the trial within trial, goes to naught and carries no weight. I shall therefore discountenance his evidence.

I have earlier set out in a summary the evidence given by PW1, who is the chairman of the complainant Cooperative Society. The following points can be distilled from his evidence:

(1) He and the Defendant are members of he Erhuvwu Cooperative Society of Saint James Anglican Church Warri. While he is the Chairman, the Defendant is its treasurer.

(2) Members of the Cooperative make contributions which are collected by now late Mr Evans Aghwadoma and Rose Adenoma which is handed over to the Defendant for banking, he being the treasurer.

(3) In November of every year, the Cooperative withdraws its funds from the bank through the Defendant and members of the Cooperative are paid their entitlement based on their individual contributions for the year.

(4) In November 2012, when it became due for the Cooperative to distribute money to its members, the Defendant, who had stopped coming to church, was no where to be found and when a delegation including

himself, went to the house of the Defendant he was absent and his wife told them he had travelled to Maiduguri and that he would return in December.

(5) He and other officials of the Cooperative went to the bank and discovered that the Defendant paid in only N35,000 ,00 (thirty five thousand naira only) instead of two million, six hundred and sixty six thousand naira).

(6) When the Defendant returned, he admitted that the money was with him and undertook to liquidate it by installments and promised to issue post dated cheques as guarantee.

(7) The Defendant and the Cooperative then entered into an agreement, Exhibit "A" prepared by a member of the church who is a lawyer and the Defendant issued a post dated Access Bank Plc cheque.

(8) When the Defendant succeeded in paying only #700,000 (seven hundred thousand naira) over a long period of time, they were constrained to write a petition, Exhibit "B" to the EFCC which caused the arrest of the Defendant.

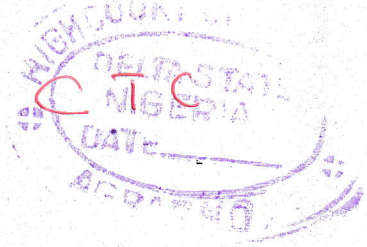
Under cross-examination, PW1 admitted that he did not personally hand any money to the Defendant and he does not know how much any of the other persons who collected money from members handed to the

Defendant. He explained that record of monies handed to the Defendant are contained in the account books of the Cooperative. None of these persons who allegedly collected money from members and paid same to the Defendant was called. The books of account of the Cooperative were not tendered and the statement of the account with the bank to show the financial standing of the Cooperative was not tendered.

I agree completely with Defendant's counsel that the three persons, except for the one who died, who handed money to the Defendant he is alleged to have stolen or embezzled are material witnesses. In fact, I think these persons are more accurately described as vital witnesses as their evidence could assist the court to resolve this matter one way or the other and failure to call any of them is fatal to the case of the prosecution. See **Lase Vs State (2017) LPELR (SC) 52-53; Amadi Vs A G. Imo State (2017) LPELR (SC) 7-8.**

It is also my view that the financial record and bank statement of the Cooperative are material documents which the prosecution ought to **have tendered and that their failure to do so leaves a lingering uncertainty about the amount of money allegedly paid to the Defendant.**

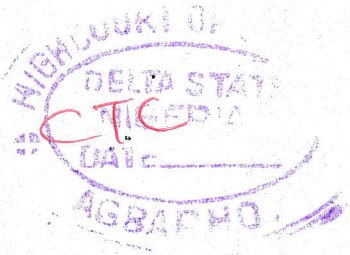
It is therefore my view, that the evidence of PW1 did not prove any money was paid to the Defendant or if any money was paid to him, the amount paid. The effect, too, is that the prosecution did not prove through PW1 any money of the Cooperative that could have been stolen by the Defendant.



The prosecution tendered Exhibit "A", the agreement between the Defendant and the Cooperative and Exhibit "C", the Defendant's extra-judicial statement to the EFCC. In Exhibit "A" the Defendant admitted that as treasurer of the Cooperative he was unable to account for the sum of #2,665,000 which he under took to repay to the Cooperative. In Exhibit "C", he admitted that he deeped his hands into the money of the Cooperative to the tune of #2,665,000 which he invested in oil business in respect of which he was duped and he asked for time to pay back the money. Clearly the Defendant admitted that he could not account for #2,665,000 in Exhibit "A" and confessed converting that sum to his personal use in Exhibit "C". The combined effect of Exhibits "A" and "C" is that the Defendant confessed to stealing the sum of #2,665,000 (two million, six hundred and sixty five naira) belonging to members of the Cooperative.

The law regards a confessional statement as the best proof of what a Defendant had done. See Asimi Vs State (2016) LPELR (SC) 10 where **Rhodes-Vivour, JSC** stated succinctly:

> "A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. A confessional statement is thus that best evidence that the accused person committed the offence for which he is charged; A direct acknowledgement of guilt should be regarded as a confession:'.



See also **Jua Vs State (2010) 29. Fabiyi Vs State (2013) LPELR (S.C) 26; Ogu Vs C.O.P (2017) LPELR (SC) 16-17**

Where a confession is voluntary, direct, positive and unequivocal and the court is satisfief of its truth, the court may convict a Defendant on it alone. See **Kamila Vs State (2018) LPELR (SC) 14; Ugboji Vs. State (2017) LPELR (SC) 32-33.**

It must be noted however that while a court can convict on the confession of a Defendant, a confession does not relieve the prosecution of its unshifting burden of proof. It still bears the burden of proving the offence confessed to beyond reasonable doubt. In **Adekoya Vs. State (2017) LPELR (SC) 29**, the **Supreme Court** held:

> "It is trite law on the issue of burden of proof that where an accused in his statement to the police admitted committing the crime, the prosecution is not relieved of the burden. Any failure to discharge this burden renders the benefit of doubt in favour of the accused."

See also **Taiye Vs State (2018) LPELR (SC) 7.**

I think it makes good sense for the prosecution to prove first that an offence was committed before beginning to look for the offender or criminal. If no offence is proved, a confession to the commission of an offence will not avail the prosecution and the court cannot convict on such a confession. There must be stealing to have a thief, there must be armed robbery to have an armed robber and there must be murder to

have a murderer. I have indicated that the prosecution did not prove the Cooperative had or handed the money allegedly on stolen to the Defendant. That being so the admission/confession of the Defendant in Exhibits "A" and "C" is of no moment and I cannot convict him on it. In the final result my conclusion is that the prosecution failed to prove the offence in count 1beyond reasonable doubt as required by law. Consequently I enter a verdict of **Not Guilty** in count 1 and **Discharge** and **Acquit** the Defendant **Mr Godwin Opiri-Oghi** in respect thereof.

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Hon. Justice A.A. Onojovwo
(Judge)
18/2/2021