IN THE COURT OF APPEAL
HOLDEN AT ASABA JUDICIAL DIVISION
ON THE 17TH DAY OF JANUARY, 2022
BEFORE THEIR LORDSHIPS

JOSEPH EYO EKANEM — **JUSTICE, COURTOF APPEAL**
ABIMBOLA OSARUGUE OBASEKI – ADEJUMO — **JUSTICE, COURT OF APPEAL**
MUSLIM SULE HASSAN — **JUSTICE, COURT OF APPEAL**

APPEAL NO: CA/AS/218C/2018

BETWEEN

VICTOR ONODAVWERHO — **APPELLANT**
AND
FEDERAL REPUBLIC OF NIGERIA — **RESPONDENT**

JUDGMENT

(DELIVERED BY ABIMBOLA OSARUGUE OBASEKI - ADEJUMO, JCA)

This appeal is against the judgment of the Federal High Court, *coram* **HON. JUSTICE I. N. BUBA** delivered on 9th February, 2018, wherein the lower court convicted the Appellant on a 4-count charge of offence punishable under section 14(1) of the Money Laundering Act, 2004.

The background fact is that a petition was received by the Economic and Financial Crimes Commission (EFCC) from the United Bank of Africa (the "**Bank**") against the Appellant bordering on fraudulent activities. The Petitioner alleged that the Audit and Investigation Department of the bank got a fraud alert from the Regional Auditor of the

CTC fees — ₦1,000.00

Bank, Ibadan that a fraud of ₦25 Million was uncovered in its branch at Asaba, and the Appellant was responsible for the fraudulent withdrawal from the customers' account using fictitious and forged documents. A formal report made by the Bank to the EFCC and Appellant was handed over to the EFCC. It was subsequently discovered that the sums fraudulently converted was up to ₦87 Million. Upon conclusion of the investigation, the criminal proceedings at the lower court leading to the instant appeal, was commenced by the Respondent against the Appellant.

During trial, the Prosecution/Respondent called nine (9) witnesses and tendered several exhibits in proof of the charge brought against the Appellant. The Appellant testified himself and called no other witness in his defence.

At the end of trial, the lower court found that the prosecution had established the case against the Appellant beyond reasonable doubt; and consequently, convicted and sentenced him to one-year imprisonment on each count and the sentences were ordered to run concurrently.

Dissatisfied, the Appellant filed a Notice of appeal dated 27th April, 2018.

In accordance with the practice in this court, both the Appellant and Respondent filed and exchanged their

respective briefs of argument. Appellant's brief of argument was filed on 4th December, 2021 and same was settled by O. O Ofiaeli Esq, Assistant Chief Legal Aid Officer, Legal Aid Council of Nigeria wherein the following issues were distilled for determination:

1. **Whether the constitutional right of the appellant was not breached in view of the fact that the lower court acknowledged in its judgment that the appellant has been convicted on the same set of facts by Delta State High Court. (Ground 3).**
2. **Whether the reliance on the judgment of Delta State High Court to convict the appellant by the trial court without first admitting the said judgment as an exhibit does not amount to preserve judgment. (Ground 4).**
3. **Whether the prosecution proved the 4 Count charge against the appellant beyond reasonable doubt as required by law in criminal trial (Ground 1 and 2).**
4. **Whether the appellant was given a fair hearing in view of the fact that the lower court failed to evaluate the evidence of the defendant. (Ground 5 & 6).**
5. **Whether there was a proper trial within trial of the appellant's objection to the admissibility of exhibits P22 – 29 upon which the entire judgment were founded.**

The Respondent also filed his Respondent's brief on 4th February, 2020 settled by Ifeanyi Agwu, Esq of the Economic and Financial Crimes Commission, wherein he distilled two issues as follows:

1. **Whether from the nature of the charge before the lower court, the constitutional right of the Appellant was breached as to term same as double jeopardy? (Ground 3)**
2. **Whether from the totality of evidence, the lower court was right in convicting the Appellant on all the counts of the charge bordering on Money Laundering? (Grounds 1, 2 & 5)"**

I have carefully considered the issues nominated by the parties in this appeal, and I am of the firm view that, save for semantics and the numbers, the issues in the light of the arguments canvassed thereon are substantially the same. I shall therefore be guided by the issues formulated by the Appellant in the determination of this appeal. However, before proceeding further, I must make the point that upon a careful consideration of the grounds contained in the notice of appeal as well as the issues formulated by the Appellant, it is obvious that issue five formulated by the Appellant has no foundational ground of appeal to stand on. For completeness, the issue is as to *whether there was proper trial within trial of the Appellant's objection to the admissibility of Exhibits P22 – P29 upon which the entire judgement were founded?* In the Appellant's brief of argument, the said issue was stated to derive its origin from ground 6 of the notice of appeal, which reads:

> *"GROUND 6*
>
> *The learned trial judge erred in law when he relied on exhibits P11 – P29 to enter a verdict of guilt when it was obvious that some of those exhibits are not admissible in law, thereby occasioning miscarriage of justice.*
>
> *PARTICULARS OF ERROR*

1. *Some of the documents were not tendered by their makers and still the court ascribed probative value to them.*
2. *Some of the documents did not pass through the fire of cross examination.*
3. *There was no evidence to rely on them to convict the defendant."*

It is thus plain that issue five formulated by the Appellant does not relate to ground six. Even as the Respondent's counsel rightly argued at paragraph 5.3 of the Respondent's brief of argument, the said ground six is vague and the particulars are of such nature that no one can, with precision, ascertain the Appellant's specific complaint in connection with the decision of the lower court. While the complaint in the issue relates to the purported failure by learned trial judge to follow the proper procedure for trial within trial before admitting Exhibits P22 – P29, the ground of appeal is in relation to complain about the error made by the learned trial judge in relying on inadmissible evidence because some of the exhibits were not tendered by their maker and did not pass through the fire of cross examination. Indeed, the issue does not relate the ground. Even if the Respondent did not object to the competence or otherwise of the issue or ground, by the

decision of the Apex Court in the case of **WACHUKWU & ANOR v. OWUNWANNE & ANOR (2011) LPELR – 3466 (SC)**, this court can, where it deems an issue formulated for determination of an appeal is not distilled from a ground of appeal, *suo motu* strike out the said issue, where it so finds in the course of writing his judgment. In the circumstance, issue five formulated by the Appellant is hereby struck out and the arguments canvassed thereon shall be discountenanced in considering the merit of the present appeal.

APPELLANT'S SUBMISSIONS

ISSUE 1

Counsel submitted that the lower court was wrong to have passed a verdict of 'guilty' on the Appellant thereby exposing the Appellant to double jeopardy in breach of his constitutional right. He referred to the lower court's judgment at pages 374, lines 20 – 23; 377, lines 20 - 23 of the record and further submitted that convicting the Appellant on the same set of facts and circumstances upon which the Appellant was convicted by Delta State High Court amounts to double jeopardy and a breach of the Appellant's constitutional right, contrary to Section 36 (9) of the 1999 Constitution (as amended).

FRIDAY v THE STATE (2016) VOL 257 LRCN 1 AT PAGE 3 RATIO 2 was cited in arguing that the conviction imposed on the Appellant is a wrong application of the principles of substantive law and procedure, and that the lower court ought to have struck out the charge before it upon arriving at a conclusion that the Appellant has been convicted on a similar set of facts by the Delta State High Court. The cases of **PML NIG LTD v FRN (2017) LPELR – 43480 (SC); NAFIU RABIU v THE STATE (1980) 2 NLR 117; SUNDAY v THE STATE (2017) LPELR – 42140 (CA)** were relied on.

ISSUE 2

Counsel submitted that the lower court was perverse because he relied on a document not properly before it to determine the guilt of the Appellant. He made reference to the decision of the lower court at page 374, lines 18 – 22 of the judgment and submitted that the lower court did not address the questions he raised, nor make any findings on these questions and that this amounted to a miscarriage of justice. The cases of **ONYEJEKWE v STATE (1992) 3 NWLR (PT 230) 444; ONYIBOR ANEKWE & ANOR v MRS MARIA NWEKE (2014) LPELR – 22697 (SC)** were relied upon by counsel.

Counsel contended that the judgment of the lower court was not admitted as an exhibit to form part of the proceedings of the trial court and that the lower court took into account certain matters which ought not to have been considered or where it shut its eyes to obvious or proved facts, relying on the cases of **ADEBIYE v STATE (2016) VOL 225 LRCN 145 at 149; BARIDAN v THE STATE (1994) 1 NWLR (PT. 320) 250; AKPENE v BARCLAYS BANK (1977) 1 ANLR 47 AT 59; MACFOY v UNITED AFRICAN COMPANY LTD (1962) 3 WLR 1405 AT 1409.** He further submitted that having not been admitted as exhibit in this proceeding, the judgment of Delta State High Court cannot constitute part of the record.

ISSUE 3

Counsel argued that the prosecution failed to prove the offence for which the defendant was convicted beyond reasonable doubt. It is the submission of counsel that before the Appellant can be said to have converted the alleged sums of money, to his credit, certain ingredients must be established, *to wit* **i**. The conversion allegedly done by the defendant must relate to the proceeds of crime **ii.** Such proceeds of crime must be kept or converted by him on behalf of another person; **iii.** He must have known or

suspected that the proceeds that he is holding on behalf of the other person are proceeds of crime.

Counsel further argued that the alleged sums in the 4-count charge which is being alleged to have been converted to the credit of account no 5940101000352O with fidelity bank cannot be said to be proceeds from crime. He referred to the testimonies of PW1, PW6 & PW7 on the legality and genuineness of the money in the Account of State Universal Basic Education Board Account and the Econet Loan Account and are not proceeds from crime.

The case of **NJOKU v STATE (2013) 2 NWLR (PT. 1339) 548** was cited to submit that a prosecution must prove both the *mens rea* and *actus reus* of the offence. He argued that there were material contradictions in the statement of PW8 & PW2 as to the existence of Mr. Theodore Wewele, the customer of the bank, and these contradictions go to the root of the action and ought to be resolved in favour of the accused, relying on **UWA EKWEGHINYA v STATE (2005) 4 ALL NLR 108.**

It is the contention of the Appellant that the recipients of the cheques were not called to give evidence in this case and the account officer who both PW2 and PW8 mentioned in their testimony exists. The said accountant made a

statement to the police who verified the address of the HTLAEW NIG account and confirmed his existence and address was not called as a witness. The case of **IGBERE v EMORDI (2010) 11 NWLR (PT 1204) 2** and Section 169 (d) of the Evidence Act were cited in aid.

Counsel submitted that the property alleged to have been converted has not been shown in the charge to belong to anybody and so the Appellant cannot be accused of stealing. He further submitted that the mere telling of lies by an accused person is not evidence of guilt of the commission of any offence, and the prosecution still has the duty to prove its case beyond reasonable doubt; **AIGBABOR v STATE (2000) NWLR (PT 666) 686 AT 704.** The cases of **NWOCHA v STATE (2012) 9 NWLR (PT 571); RASHEED LASIS v STATE (2013) 5 (PT 1) NSCQR AT P58 – 59; ALPHA v STATE (2007) 2 NWLR (PT 1019); KOPA v STATE (1971) AN NLR 15** were cited to submit that an admission obtained by oppression of the person who made it, or in conveyance of anything said or done which was likely to render the admission unreliable. Counsel also stated that the Appellant testified that he was told by the IPO, Ahmed Suleman and Oladimeji to write whatever they told him to write, and he was under duress

and undue influence to comply with their order. That a proper evaluation of the confessional statement would reveal that it is inconsistent with the facts which have been proved and therefore cannot be said to be true.

ISSUE 4

Counsel contends that the Appellant's right to fair heating was breached by the lower court; Section 36 (1) of the 1999 constitution (as amended); **WIKE NYESOM v DAKUKU PETERSIDE & ORS (2016) VOL 225 LRCN 27 @ 63 R 31** were cited in aid. He further contended that the lower court did not patiently consider and determine the issue canvassed on behalf of the Appellant. He submitted that no evidence was led to the existence of the account alleged in counts 1 – 4 of the charge and that the Appellant in his said confessional statement never made any admission that the various sum in the charge were credited to an account with Fidelity Bank Warri Branch with that specific account number.

SHANDE v THE STATE (2005) 12 NWLR (PT. 939) 301 at 308 SC; KADA v THE STATE (1991) 6 LRCN 1879; NWOGUGUA AGUMADU v THE QUEEN (1963) ALL NLR 201; COP v ODUSANYA (1982) 2 NLR 28; AKINLEMI BOLA v COP (1968) NMLR 73 at 74 were referenced in

submitting that the prosecution failed to establish that the Appellant has an account with fidelity bank, Warri branch, thus it was incumbent on the Court to discharge and acquit the Appellant.

In conclusion, Counsel urged that the appeal be allowed and the decision of the lower court be set aside.

RESPONDENT'S SUBMISSION

ISSUE 1

Counsel submitted that the plea of double jeopardy is not available to the Appellant, taking into consideration the fact that the Appellant was convicted for the offences of stealing, forgery and uttering by the Delta State High Court but the charge that gave rise to this appeal borders on money laundering with separate and distinct ingredients. The cases of **ONWUDIWE v FRN (2006) 10 NWLR (PT 988) 382 at 425; MATTARADONA v AHU (1995) 8 NWLR (PT 412) 255 at 235 – 236; FRN v NWOSU (2017) ALL FWLR (PT 883) 1483 at 1541** were cited to submit that in determining whether a lower court has jurisdiction to try an offence, the court is only mandated to consider the charge vis - a - vis the enabling law.

That the lower court rightly assumed jurisdiction over the charge preferred against the Appellant as conferred on it by the Section 19 (1) of the Money Laundering Act, 2004.

Counsel submitted that it is crystal clear that the offence of stealing, forgery and uttering for which the Appellant was convicted at the Delta State High Court is radically different from the offence of money laundering under which the Appellant was tried and convicted by the lower court herein.

ADEJOBI v STATE (2011) ALL FWLR (PT. 588) P. 850 at 873 PARAS E – F; DAUDU v FRN (2018) 10 NWLR (PT. 1626) 169 at 182, PARA H; KALU v FRN (2014) 1 NWLR (PT. 1389) 479 at 529, PARAS C – D; 553, PARA H; FRN v NWOSU (SUPRA); OGUNBODED v FRN (2017) 5 NWLR (PT. 1559) 337 at 347; OKOH v STATE (1984) 15 NSCC 705 were cited in stating the different ingredients of offences of stealing and money laundering.

ISSUE 2

Relying on **DAUDU v FRN (supra)** and **KALU v FRN (supra)**, counsel submitted the ingredients necessary to establish the offence of money laundering under Section 14 (1) of the Money Laundering (Prohibition) Act, 2004, contends that the evidence on record aptly captures all the

ingredients provided for under same. He submitted that the Appellant's statements admitted as Exhibit P25, P26, P27 and P28 further confirmed all the ingredients of the offence Counsel reproduced the relevant testimonies of PW2, PW3. PW4, PW5, PW6, PW7 & PW8 and stated that some of the extracts of PW8 testimonies as narrated by the Appellant are confessional in nature. The cases of **OLAMOLU v STATE (2013) 2 NWLR (PT 1339) 580 at 607; AROGUNDARE v STATE (2009) 6 NWLR (PT 1136) 29; JUA v STATE (2010) 4 NWLR (PT 1184) 217 BROWN v DUNN (1893) QR 67; OFORLETE v STATE (2000) 12 NWLR (PT 681) 45** were cited to submit that the Appellant who failed to question the deficiencies in defence at the trial in the lower court to now do so on appeal.

Counsel submitted that from the evidence and Exhibits tendered at the lower court, that the Respondent had discharged the burden on him to prove the case against the Appellant's beyond reasonable doubt, relying on **SOLOLA v STATE (2005) 2 NWLR (PT 937) 460 at 470; OLALEKAN v STATE (2001) 18 NWLR (PT 764) 79.**

Counsel submitted that the contention of the Appellant that the lower court did not properly evaluate the evidence is misconceived in its entirety, and the law is settled that

there is no mathematically accepted way of writing a judgment/ruling of a court, relying on **OBARO v HASSAN (2013) ALL FWLR (PT 681) 677 at 704.** It is the submission of counsel that the lower court carried a meticulous evaluation of the evidence before it and left no doubt that he believed in the evidence presented by the Respondent, citing **MOGAJI v ODOFIN (1978) 4 SC 91; MILITARY GOV. OF LAGOS v ADEYIGA (2012) ALL FWLR (PT 616) 396 at 424; AMADU v YANTUMAKI (2012) ALL FWLR (PT 626) 503 at 517.** The cases of **UKET v FRN (2008) ALL FWLR (PT 411) 923; AJAEGBU v IGP (1956) NNLR 104 at 105 – 106; ATTACHE v COP (1976) NNLR 42** were cited to submit that the Appellant was never misled all through the trial as he entered a plea of not guilty when the charge was read to him, and the counsel never objected to the charge being read to him.

In conclusion, Counsel submitted that all the contentions of the Appellant cannot stand in the face of the obvious facts against the Appellant and cited **ONWUDIWE v FRN SUPRA; DIBIE v THE STATE (2007) 9 NWLR (PT. 1038) 30** in aid. He urged the court to dismiss the appeal and affirm the judgment of the lower court.

RESOLUTION

On the first issue formulated on behalf of the Appellant, it is the contention of the learned Appellant's counsel that based on the principle of double jeopardy and in breach of the Appellant's constitutional right, the learned trial judge was in error when he relied on the judgment of the High Court of Delta State (the "**High Court Judgment**") in convicting the Appellant on an offence bordering on same set of facts and circumstances.

In Nigeria, the principle of double jeopardy derives its legal origin from the provision of section 36 (9) and (10) of the Constitution of the Federal Republic of Nigeria, 1999 (the "**Constitution**"). Section 36 (9) of the 1999 Constitution provides that *"no person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court."* The principle of double jeopardy reflects the importance of finality in the criminal justice system and protects against inconsistent results. With notions of fairness and finality in mind, the framers of the Constitution included the Double Jeopardy Clause to

prevent the government (the prosecution from trying or punishing a defendant more than once. Specifically, double jeopardy protects against (a) a prosecution for the same offense after an acquittal; (b) a prosecution for the same offense after a conviction, and (c) more than one punishment for the same offense. A defendant facing any of these scenarios can hold up the double jeopardy clause as a shield. In the case of **PML (NIG) v FRN (2017) LPELR – 43480 (SC)**, the Supreme Court, per **AUGIE, JSC** held as follows:

> **"Now, double jeopardy is a procedural defence that prevents an accused person from being tried again on the same or similar charges and on the same facts, following a valid acquittal or conviction - see Wikipedia. The doctrine of double jeopardy prohibits a person being tried or punished twice for the same offence with same set of facts...**
> **...By Section 36 (9) of the 1999 Constitution, an accused person, who shows that he had been tried for a criminal offence, and was convicted or acquitted, shall not be tried again for the same offence or for a criminal offence having the same ingredients as that offence. For the plea of autrefoit acquit or autrefoit convict to succeed, the following factors must be proved to the Courts satisfaction 1. That the Accused had previously been tried on a criminal charge. 2. The former trial must have been conducted before a Court of competent jurisdiction. 3. The trial must have ended with an acquittal or a conviction 4. The criminal charge for which the Accused was tried should be the same as the new charge against him**

or alternatively the new charge should be one in respect of which the Accused could have been convicted at the former trial, although not charged with it..."

See also **ROMRIG NIGERIA LTD v FRN (2014) LPELR – 22759 (CA); IGINEDION v FRN (2014) LPELR – 22766 (CA); ABACHA v FRN (2014) LPELR – 22014 (SC).** It is therefore evident that the legal defense will only avail an accused who is able to establish that: (a) he had been earlier tried by a competent Court of law; (b) the facts of the earlier matter and the new one are the same; and (c) the earlier trial resulted either in the discharge, acquittal, or some other form of punishment. See **ROMRIG NIGERIA LTD v. FRN (2014) LPELR - 22759 (CA).**

It will be recalled that the Appellant was arraigned and tried at the High Court of Delta State, Issele – Uku Division on a 12-count information stealing, forgery and uttering contrary to Section 390 (8), (b), 467, 486 of the Criminal Code Law Cap C21 Vol. 1 Laws of Delta state, 2006. See pages i to iv of the additional evidence on appeal. For easy comprehension, the counts of offence are reproduced thus:

"STATEMENT OF OFFENCE – 1ST COUNT

Stealing contrary to section 390 (8) (b) of the Criminal Code, Cap 21. Vol. 1. Laws of Delta state of Nigeria, 2009

STATEMENT OF OFFENCE – 2ND COUNT

Forgery contrary to Section 467 of the Criminal code Cap. C21 laws of Delta state of Nigeria, 2006

STATEMENT OF OFFENCE – 3RD COUNT

Uttering contrary to Section 468 of the Criminal Code Cap. C21 Laws of Delta State of Nigeria, 2006

STATEMENT OF OFFENCE – 4TH COUNT

Stealing contrary to Section 390 (8) (b) of the Criminal Code, Cap 21. Vol. 1. Laws of Delta state of Nigeria, 2006

STATEMENT OF OFFENCE – 5TH COUNT

Forgery contrary to Section 467 of the Criminal Code Cap C21 Laws of Delta State of Nigeria, 2006

STATEMENT OF OFFENCE – 6TH COUNT

Uttering contrary to section 468 of the Criminal Code Cap C21 Laws of Delta State of Nigeria, 2006.

STATEMENT OF OFFENCE – 7TH COUNT

Stealing contrary to section 390 (8) (b) of the Criminal Code. Cap. 21. Vol. 1, Laws of Delta State of Nigeria, 2006

STATEMENT OF OFFENCE – 8TH COUNT

Forgery contrary to Section 467 of the Criminal Code Cap C 21 Laws of Delta State of Nigeria, 2006.

STATEMENT OF OFFENCE – 9TH COUNT

Uttering contrary to section 468 of the Criminal Code Cap 21 Laws of Delta state of Nigeria, 2006

STATEMENT OF OFFENCE – 10TH COUNT

Stealing contrary to section 90 (8) (b) of the Criminal code Cap 21 Vol. 1. Laws of Delta State of Nigeria, 2006.

STATEMENT OF OFFENCE – 11TH COUNT

Forgery contrary to section 467 of the Criminal Code Cap C21 Laws of Delta State of Nigeria, 2006.

STATEMENT OF OFFENCE – 12TH COUNT

Uttering contrary to section 468 of the Criminal Code Cap C21 Laws of Delta State of Nigeria, 2006."

On the other hand, in the proceedings leading to this appeal, the Appellant was tried on a four-count charge

Amended Information contrary to section 14(1) of the Money Laundering Act, 2003. See pages 2 to 3 of the record of appeal, which reads thus:

> ***"COUNT 1***
> *That you, Victor Onadavwerho on or about 4th February, 2008 at Asaba within the jurisdiction of the Federal High Court whilst as Business/Relationship Manager of UBA PLC Asaba II Branch did convert the sum of N19, 000, 000. 00 (Nineteen Million Naira) to the credit of your Account No. 05940100035220 with Fidelity Bank Plc Warri Branch which sum you knew represents the proceeds of crime and thereby committed an offence punishable under section 14 (1) of the Money Laundering Act, 2004.*
> ***COUNT 2***
> *That you, Victor Onodavwerho on or about 19th February, 2008 at Asaba within the jurisdiction of the Federal High Court whilst as Business/Relationship Manager of UBA PLC Asaba II Branch did convert the sum of N1,900, 000. 00 (One Million, Nine Hundred Thousand Naira) to the credit of your Account No. 0594010100035220 with Fidelity Bank Plc Warri Branch which sum you knew represents the proceeds of crime thereby committed an offence punishable under section 14(1) of the Money Laundering Prohibition Act, 24.*
> ***COUNT 3***
> *That you Victor Onodavwerho on or about 1st April, 2008 at Abraka within the jurisdiction of the Federal High Court whilst as Business/Relationship Manager of UBA Plc Asaba II Branch did convert the sum of N 6, 500, 000. 00 (Six Million, Five Hundred Thousand Naira) to the credit of your account No. 0594010100035220 with Fidelity Bank Plc Warri Branch which sum you knew represent the proceeds of crime and thereby committed an offence punishable*

under Section 14 (1) of the Money Laundering Prohibition Act, 2004.

COUNT 4

That you, Victor Onodavwerho on or about 25th February, 2008 of Asaba within the jurisdiction of the Federal High Court whilst as Business/Relationship Manager of UBA Plc Asaba II Branch did convert the sum of N2, 800, 000 (Two Million, Eight Hundred Thousand) to the credit of your Account No. 0594010100035220 with Fidelity Bank Plc, Warri Branch which sum you knew represents the proceeds of crime and thereby committed an offence punishable under section 14 (1) of the Money Laundering (Prohibition) Act, 2004."

It is evident that even though the facts leading to the trial of the Appellant before the two courts are arguably interwoven and interlinked, the offences for which the Appellant was made to face are distinct requiring distinct elements to be established before the Appellants can be convicted. A careful perusal of the particulars of the offences the Appellant was tried upon at the Delta High Court shows that the Appellant was charged for offence that were committed on 31st January, 2008, 30th April, 2008, 17th June, 2008, 18th June 2009, 25th September, 2008 and 26th September, 2008. See i – iv of the additional evidence on appeal. On the other hand, the offences for which the Appellant was charged with at the Federal High Court leading to the instant appeal were committed on 4th

February, 2008; 19th February, 2008, 25th February, 2008 and 1st April, 2008.

In addition, it is not in dispute that a successful prove of the counts of offence in the criminal proceedings at the Delta High Court, is only at best a proof of the constituent ingredient of the offence for which the Appellant is charged before the lower court in the instant case. Put simply, it is necessary for the purpose of proving that the Appellant is guilty of the offence of money laundering to establish the illegal act or predicate offence committed by the Appellant and from which he derived the funds which were allegedly laundered contrary to section 14(1) of the Money Laundering Act, 2004. *A fortiori*, whereas the Appellant was arraigned and convicted by the Delta State High Court for the offences of stealing, forgery and uttering contrary to specific provisions of the Criminal Code Cap. C21 Laws of Delta State, 2006 – which involves a consideration of distinctive elements; the Appellants was arraigned and convicted of an offence prohibited by the Money Laundering Act, 2004.

Therefore, I am unable to accept as well founded that the trial of the Appellant for an offence under the Money Laundering Act, in the light of the Appellant's conviction

vide the High Court Judgment, constitutes double jeopardy, when the facts and circumstances of each offence are not the same – and occurred at different times. I refer to the decision of the Apex Court in the case of **REV. FR. SILAS C. NWEKE v THE FEDERAL REPUBLIC OF NIGERIA (2019) LPELR – 46946 (SC)**, where **EKO, JSC** considered similar facts and circumstances as in the instant case and held at **29 - 31, para B** as follows:

> **"The Appellant alleges that counts 1-12 at the Federal High Court expose him to double jeopardy on the ground that they are the same counts in respect of which he is also facing trial at the Magistrate's Court, Awka. The facts constituting the offences alleged, respectively, at the Magistrate's Court, Awka, and the Federal High Court are not the same. The charges at the Magistrate's Court Awka alleged the commission of offences in September 2008. Except count 11 at the Federal High Court, all other counts allege offences committed on 1st July, 2008 (count 12); in August, 2008 (counts 6, 7, 8, 9 and 10). Counts 1 - 4 allege offences committed on 19th December, 2008. Count 6 specifically alleges that the offence was committed on 20th December, 2008. Count 11, alleging that the offence was committed on 18th September, 2008 is specific that the sum obtained by false pretences was ₦930,000.00. This allegation or complaint, on facts, is not a replication of any charge before the Magistrate's Court, Awka. In the circumstance it is my firm view that Appellant did not prove his allegation of abuse of judicial process. While I agree that the preliminary objection predicated on abuse of Court's process could conveniently come under**

> **Section 36 (9) of the Constitution, as amended, as it raises an issue of double jeopardy" prohibited by the Constitution; the peculiar facts adduced in the preliminary objection do not avail the Appellant to the plea of "double jeopardy". ... All the Appellant is alleging in his preliminary objection, albeit unsuccessfully, is that it would be an abuse of Court's process for him to be allowed to be tried simultaneously on the same facts for the same offence (s) by the Magistrate's Court, Awka and the Federal High Court. I have just demonstrated that, on the facts, the offences the appellant is being tried for at the Magistrate's Court and the Federal High Court do not expose him to the risk of double-jeopardy under Section 36 (9) of the 1999 Constitution, as amended."** (Underlining mine)

See also **OGUNBODEDE v FRN (2017) 5 NWLR (PT. 1559) 337 at 347; OKOH v STATE (1982) 15 NSCC 705; FRN v NWOSU (supra)**.

One other point that remains to be considered under this issue is whether the new charge which the Appellant faced in the lower court is one in respect of which he could have been convicted at the other trial at the Delta State High Court. The answer to this question seems to me, obvious. By law, the offence of money laundering which the Appellant faced at the lower court can only be exclusively tried by the Federal High Court and cannot be the basis of a charge before the High Court of Delta State. Section 20 (1) of the Money Laundering Act Prohibition (Amended) Act

(which is the same as the section 19 (1) of the Money Laundering Act, 2004 (repealed) confers jurisdiction to try offences and impose penalties under the Act, on the Federal High Court of Nigeria. Therefore, the offence of money laundering brought pursuant to the provisions of the Act could not have been tried at the High Court of Delta State.

Ultimately, the only reasonable conclusion I am bound to reach is that the shield of double jeopardy enumerated under section 36(9) of the Constitution does not avail the Appellant in the instant case. The first issue is therefore resolved in the Respondent's favour.

The Appellant's second complaint is that the learned trial judge was in error to have relied on the High Court Judgment in convicting the Appellant, without first admitting the said judgment as an exhibit. By this contention, and in the light of the stance taken by the Appellant on the first issue, it appears that the Appellant's counsel is speaking from both side of his mouth. It is noteworthy that the Appellant had earlier invited the court to take cognizance of his arraignment and conviction which culminated in the High Court Judgment, in reaching the conclusion that he cannot be tried for the offence of money

laundering before the lower court. The same Appellant is now contending under the second issue that the aforesaid judgment cannot even be relied upon unless it is admitted as an exhibit by the trial court.

Be that as it may, I shall consider the issue on its merit. From the record before this court, it is noted that the High Court Judgment was tendered from the bar during the proceedings of the lower court of 8th February, 2018 recorded at page 349 of the record of appeal thus:

> *"ONI: ... We charged the defendant for money laundering. One of the predicate offence is if it had been proved. We have proved the other elements. The predicate offence is Stealing. We want to tender from the Bar the CTC of judgment of C. O. Ogisi J*
> *EMEFU: No objection.*
> *COURT: CTC of judgment of Ogisi J on 8/5/17."*

It is clear as daylight that a certified copy of the High Court Judgment was tendered by the prosecution counsel, *albeit* from the bar and without objection from the Appellant's objection. The law is that certified copy of a public document can be tendered from the bar without formally tendering it through a witness and once so tendered without objection, the court can admit it as evidence to be relied upon in proof of the case before the court. See **ESEZOBOR v SAID (2018) LPELR - 46653 (CA); OUR**

LINE LIMITED v S.C.C. NIGERIA LIMITED (2009) ALL FWLR (PT. 498) 210. In the instant case, even though the certified copy of the High Court Judgment was properly tendered by the Respondent's counsel without objection from the Appellant's counsel, it seems that the learned trial judge had inadvertently omitted to state that the said judgment was admitted and label it as such. To my mind, this is simply a mere omission which does not vitiate a reliance on the said judgment as evidence in proof of the Appellant's guilt. To the extent that the judgment was properly tendered, it can be relied upon by the court and such reliance cannot be tainted by the failure of the trial court to categorically state that the judgment was admitted as an exhibit and labelled as such. *A fortiori*, this Court is seised of the power pursuant to section 15 of the Court of Appeal Act to step into the shoes of the trial court and properly mark/label the High Court Judgment as an exhibit in the proceedings. Therefore, the Appellant's contention under the second issue is completely baseless. The second issue is thus resolved in favour of the Respondent.

The third issue essentially relates to the proof of the offence the Appellant was charged with. Notably, the Appellant was

charged under section 14(1) of the Money Laundering (Prohibition) Act, 2004 which reads:

> *"(1) Any person who —*
>
> *(a) converts or transfers resources or properties derived directly or indirectly offences form illicit traffic in narcotic drugs and psychotropic substances or any other crimes or illegal act, with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved in the illicit traffic in narcotic drug or psychotropic substances or any other crime or illegal act to evade the illegal consequences of his action, or*
>
> *(b) collaborates in concealing or disguising the genuine nature, origin, location disposition movement or ownership of the resources property or right thereto derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances or any other crime or illegal act, commits an offence under this section and is liable on conviction to a term of not less than 2 years or more than 3 years."*

The ingredients of the offence defined in the above section include:-(a) the accused converted or transferred resources or property; (b) the resource or property must have been derived directly or indirectly from drugs related offences or any other crimes or illegal acts; (b) the conversion or transfer of the resources must be with aim: (i) concealing or disguising the illicit origin of the resources or property; or (ii) aiding any person involved in any of the acts of drug related offences or any other crime or illegal act so as to evade the illegal consequences of his action.

It is the Appellant's contention that the prosecution failed to prove the charge against the Appellant beyond reasonable doubt. The Appellant's counsel made a futile attempt to contend that the sums of money contained in the four counts charged are not proceeds of crime but genuine money since it was established that the monies were domiciled in the account of the State Universal Basic Education Account and Econet Loan Account. Truly, I am unable to understand what the Appellant's counsel meant by genuine money in this context. By law, all that the prosecution is expected to prove is that the funds converted by the Appellant was derived from illegal acts or crimes, with the aim of concealing the origin of the funds so converted. In establishing the Appellant's guilt, the prosecution called nine witnesses – PW1 to PW9 and tendered Exhibits P1 – P22 as well as the High Court Judgment. At the conclusion of trial, the learned trial judge, faced with the daunting findings and conclusion reached by the trial judge in the High Court's Judgement held at pages 375 to 376 of the record of appeal as follows:

> **"... let me quickly say that the finding of the defendant guilty of stealing by the Delta State High Court has not only broken the vertebrae or backbone of the defendant. There is no way the defendant can submit in the light of that judgment that is**

binding on the defendant that the elements of money laundering has not been established...

Having said that, this court from the evidence of PW1 – PW9, the contents of Exhibit P11 – P29 and indeed the judgment of Delta State High Court had no doubt that the prosecution has proved the allegation against the defendant in 4 count charge before the court beyond reasonable doubt."

I must say that the above conclusion is unimpeachable, and the Appellant should queue behind it. The Supreme Court in the case of **DAUDU v FRN (2018) LPELR – 43637 (SC)**, per **AKA'AHS, JSC** at **13 – 14, paras B – E**, stated that *"proving money laundering cases is a herculean task because it requires a prior establishment of the predicate offence before the money laundering aspect can be established...."* A predicate offense – or predicate crime – refers to a crime which is a component of a larger crime. In a financial context, the predicate crime would be any crime that generates monetary proceeds. The larger crime would be money laundering or financing of terrorism. In the instance appeal, the prosecution has been able to establish the predicate offence of stealing as evidenced by the High Court Judgment, wherein the court, *coram* Ogisi, J. (Mrs.) in a well-considered judgment, after an exhaustive and comprehensive evaluation of the evidence presented by the

prosecution and the defence, made the following apt findings at pages 19 to 28 of the judgment:

> **"The thing postulated to have been stolen ... are the sum of N52,350,315.26 property of Delta State Government through Econet Loan Account No. 00160070000550 with the United Bank for Africa Plc, Asaba Branch II, the sum of N15,350,315.26 property of Delta State Universal Basic Education Board through Econet Loan account 0016007000550 with UBA Plc, Asaba Branch II, the sum of N11,250,000, property of Delta State Universal Basic Education Board through Contractors Disbursement Account No. 0016001000697 with UBA Plc, Asaba Branch II, and the sum of N2,050,000 property of Delta State Universal Basic Education Board through contractors Disbursement Account No. 0016001000697 with UBA Plc Asaba Branch respectively...**
>
> **The Accused person has in his statement Exhibit P15 stated clearly as follows: "Both Hilaew Nig. Ltd accounts with Fidelity Bank and UBA Plc are also operated by me. I incorporated the company and used it to clear the two drafts of N52.3m and N15.3m paid through the company. The signatories to both accounts are fictitious persons I used as fronts..." The Accused then went on in Exhibit P15 to reproduce the signatures against the names including Wewele the purported signatory to the account of Hilaew Nig. Ltd at Fidelity Bank Plc...**
>
> **Th(e) statement of the Accused person is consistent with the evidence of PW2 and Pw5 as it relates to the fact that he raised the instruction Exhibit P3 and P4, from SUBEB supposedly signed by PW2 and one Mr. J. O. Ominike transferring the sums of N11,250,000 and N2,050,000 to one Jonec Apartment Account with Access Bank Plc. And that the said Mr. J. O. Ominike and PW2 were not aware. PW2 has told the court that she and Mr. Ominike did not sign the said Exhibits P3 and P4.**
>
> **The Accused also clearly stated that he disbursed the money paid into the Jonec Apartment Accounts from the account of SUBEB's contractors Disbursement Account to pay his debts. This is clear evidence that the Accused intended to permanently deprive the said SUBEB, a parastatal of the Delta**

State Government of its monies, ₦11,250,000 and ₦2,050,000 through the contractors Disbursement Account with the UBA Plc, Asaba. I am also persuaded by the evidence before the court that the Accused was fraudulent, having fraudulently signed the signatures of PW2 and Mr. J.O. Ominike and unlawfully appropriated the monies stolen to his own use."

The court then concluded at pages 16 and 29 of the judgment that the prosecution had proved the offence of stealing against the Appellant beyond reasonable doubt. With the findings and conclusion made in the High Court Judgment, which the prosecution relies on in support of its case, it is evident that the Respondent has established the predicate offence necessary to proof the offence of money laundering which is the subject of the charge leading to the instant appeal.

It is noteworthy that the same persons who were called as witness in the proceedings before the High Court also gave similar testimonies in this case. As a matter of fact, PW1 – Oladimeji Ojo; PW4 – Omotosho Babatunde; PW6 – Mrs. Joyce Onweziri Enwa; PW7 – Mr. Gabriel Ogehenekevbe Igburehe; PW9 – Suleiman Ahmed testified in both trials and their testimonies were consistent, and in addition with the confessional statements elicited from the Appellant, forms part of the body of evidence upon which the Appellant's guilt was established. No doubt, the evidence

on record shows that the Appellant had utilized the monies which belonged to Delta State Government, and which the Appellant was adjudged to have stolen, to acquire several properties with the aim of concealing the illicit origin of the funds. In addition to the Appellant's confessional statement, the prosecution was able to establish the Appellant's guilt through the evidence elicited from PW8 which was not challenged during cross examination. PW8 gave vivid testimony of how the Appellant transferred the sum of ₦19,000,000 to one Hon. Ossai Ossai for the purchase of a property at Chevron Desmond Drive DLA in Asaba; how the sum of ₦1,900,000 and ₦6,500,000 was credited in favour of one Felix Obile for the purchase of another property including a 27 unit of one bedroom apartment at Abraka. It was also discovered that the sum of ₦2,800,000 was transferred to one F. C. Okechukwu for the purchase of a property along Madonna Road in Asaba. At pages 283 to 284, PW8 stated thus:

> **"... We also visited the property, we sent a letter to the management of fidelity bank on the HDlow account and they replied that the owner of the account is one Theodore Welweley and the address used is House 1, Koroko Estate Sapele. Findings showed that it is the accused that operates the account. The specific findings are the 4 instances mentioned. The four cheques I mention issued by the accused to purchase property. ... The managers cheques showed that**

the accused signed for the draft from the bank before they were paid to the fidelity bank account. We also sent specimen signature to the forensic documents examiner if they were the manager's signature. The signature were the same with that of the accused. The result is positive. All the cheques drawn on that HDlow account on fidelity account, we randomly picked 3 of all the cheques also compared with the accused signature and sent to the forensic examiner and the result also showed that the accused signed the cheques. The picture of Ewele that appeared we searched everywhere but we did not see the Ewele. We asked the accused and he said he actually operates that account...."

The above testimony is consistent with the extra judicial confession made by the Appellant as contained in Exhibits P27 and P28. The irresistible conclusion this court is bound to reach is that the prosecution was able to establish the essential ingredients of the offence for which the Appellant was charged with. The evidence of PW8 and other prosecution witnesses demonstrate clearly that some of the funds were retrieved and transferred by the Appellant transferred funds to the account of a fictitious company. It is important to place on record that the evidence of PW3 and PW9 also confirms the testimony of PW8. The efficacy of the evidence catalogued by the learned trial judge in this case and by the Delta State High Court in the High Court Judgment neutralises the Appellant's feeble evidence.

From the evaluation of evidence, the Respondent proved the necessary ingredients of the offences preferred against the Appellant beyond reasonable doubt as required by Section 135 (1) of the Evidence Act, 2011. Proof beyond reasonable doubt does not evince proof beyond all iota/shadow of doubt but beyond reasonable doubt. See **BANJO v STATE (2013) 16 NWLR (PT 1331) 455**.

In conclusion, I must state that, this appeal is a weak attempt by the Appellant to avoid paying for his offences, which are very appalling and disturbing, the Banks are considered as one of the safest place for hardworking Nigerians to safe their hard earned monies and when a trusted banker becomes the siphoning agent of monies kept by government then what becomes of the common citizens funds therein.

Before closing the curtain on this appeal, I must comment on some of the issues in which the Appellant's counsel has made heavy weather on and the first is in relation to the account number 059401010035220 with Fidelity Bank, Warri Branch, as contained in the charge, which Appellant's counsel argued is different from the account number 059401010003520 operated by HTLAEW NIG. LTD established by evidence. As the Respondent's counsel

rightly argued, the Appellant was not misled in anyway with the error in the account numbers with the addition of figure "2" to the account number stated on the face of the charge. There was abundant evidence on record showing the account details in which the Appellant is said to have perpetuated his illegal act. As a matter of fact, in the face of Exhibits P4 to P8, the cheques issued by the Appellant and the statement of account tendered without objection, the Appellant's complaint cannot be taken seriously. Also, by section 220 of the Administration of Criminal Justice Act, 2015 and the decision of the Apex Court in the case of **OGBOMOR v STATE (supra)**, a defect in a charge which does not render it bad in law cannot nullify a conviction so long as an offence known to law is disclosed against the accused.

In addition, the Appellant's complaint that the Respondent failed to call certain persons as witness has no leg to stand. The law is that the prosecution is not bound to call a host of witnesses, it is only under a duty to call relevant witnesses to establish all the ingredients of the offence and prove the allegation beyond reasonable doubt. See **ALI v STATE (2015) LPELR – 24711**. In this case, with the witnesses called and exhibits tendered, the prosecution has

been able to establish the guilt of the accused beyond reasonable doubt.

In the result, the judgment of the Federal High Court, Asaba Judicial Division, *per* **I. N. BUBA, J.** delivered on 9th February, 2018 wherein the Appellant was convicted on a 4 count charge for money laundering is hereby affirmed.

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO
JUSTICE, COURT OF APPEAL.

CERTIFIED TRUE COPY
SIGN: .....
SHERIFAT ADEBAYO ESQ.
PRINCIPAL REGISTRAR 1
DATE: 16.02.2023

APPEARANCE OF COUNSEL

O. O. Ofiali C legal Aid Officer with E. Y. Dansa P.SC for the Appellant

Respondent send Hearing Notice on 1/11/2021 via sms & phone call through O. Ofilli Esq.

APPEAL NO: CA/AS/218C/2018

(JOSEPH EYO EKANEM, JCA)

I had the privilege of reading in advance the lead judgment of my learned brother, **OBASEKI-ADEJUMO, JCA,** which has just been delivered.

I agree with the reasoning and conclusion therein to the effect that the appeal is devoid of merit. I adopt the same in dismissing the appeal and affirming the judgment of the trial court.

JOSEPH EYO EKANEM
JUSTICE COURT OF APPEAL

CERTIFIED TRUE COPY
SIGN: .....
SHERIFAT ADEBAYO ESQ.
PRINCIPAL REGISTRAR 1
DATE: 16.02.2023

APPEAL NO. CA/AS/216C/2018
MUSLIM S. HASSAN, JCA

I have had the benefit of reading in draft the leading judgment just delivered by my learned brother, **ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, JCA,** and I totally endorse the reasoning and conclusion that the appeal lacks merit and should be dismissed.

Appeal dismissed and the Judgment of the learned trial Judge is hereby AFFIRMED.

MUSLIM S. HASSAN
JUSTICE, COURT OF APPEAL.

CERTIFIED TRUE COPY
SIGN: .....
SHERIFAT ADEBAYO ESQ.
PRINCIPAL REGISTRAR 1
DATE: 16.02.2023