

IN THE HIGH COURT OF JUSTICE OF DELTA STATE
IN THE ASABA JUDICIAL DIVISION
HOLDEN AT ASABA
BEFORE HON. JUSTICE ONOME MARSHAL-UMUKORO
ON THURSDAY, THE 1ST DAY OF JUNE, 2023

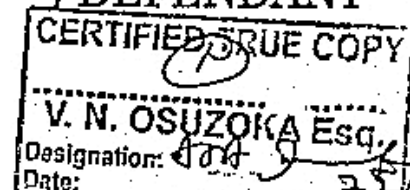
SUIT NO: A/ICPC/1C/2022

FEDERAL REPUBLIC OF NIGERIA } COMPLAINANT

v.

ADJEKE AKPOGHENE JOHN } DEFENDANT

JUDGMENT



The defendant was arraigned on an Amended One Count Information of cheating contrary to and punishable under Section 421 of the Criminal Code Law of Delta State. He is alleged to have fraudulently received the sum of N14,525,550:00 as salary from the Ughelli South Local Government of Delta State as a Supervisory Councillor while also being a public officer in full time employment and receiving emoluments from the Delta State House of Assembly Service Commission for the period covering 24th May, 2008 to 28th September, 2012 which is a period of over 4 years.

The defendant pleaded not guilty and the matter proceeded to trial. The prosecution led by V. O. Iwoba (Mrs) and S. N. Chibuzor, Legal Officers of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) called four witnesses and tendered several documentary

exhibits and closed its case. The defendant, led by W. O. Ekokifo, testified alone in his defence and tendered documentary exhibits.

The final written address of the defendant is dated 28th December, 2022 but filed on 9th January, 2023 containing legal arguments in support of the following issue raised for determination:

- 1) Whether the prosecution has proved the offence of cheating against the Defendant?

The undated final written address of the prosecution was filed on 30th January, 2023 containing legal arguments canvassed in support of the following issue formulated for determination:

- 1) Whether the prosecution has proved the offence of cheating against the defendant beyond reasonable doubt?

The defendant also filed a Reply on Points of Law dated 4th February, 2023 but filed on 6th February, 2023 in response to issues and arguments raised in the prosecution's final written address.

The very simple issue for determination is **WHETHER OR NOT THE PROSECUTION HAS PROVED ITS CASE AGAINST THE DEFENDANT BEYOND ALL REASONABLE DOUBT AS TO WARRANT HIS CONVICTION?**

The standard proof of crime in criminal proceedings as stipulated in **SECTION 135 (1) and (2) of the EVIDENCE ACT, 2011** is proof beyond reasonable doubt. The section provides that:

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"If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond all reasonable doubt"

"The burden of proving that any person has been guilty of a crime or wrongful act is, subject to the provisions of Section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.

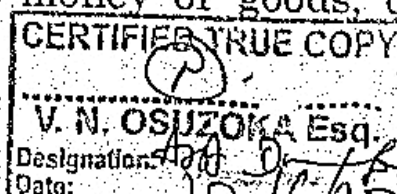
The burden on the prosecution in a criminal trial is to prove the offence charged beyond reasonable doubt. Proof beyond reasonable doubt does not mean proof beyond all shadow of doubt but where the evidence adduced is strong as to leave only a remote probability. Proof beyond reasonable doubt means proof of an offence with the certainty required in a criminal trial; that certainty is, that the offence was committed, and that the person charged therewith is responsible in committing the offence. Where the evidence adduced established these two facts, then the case is proved beyond reasonable doubt. Proof beyond reasonable doubt does not mean proof of a mathematical certainty. It also does not mean proof beyond all possible doubt. A charge is proved beyond reasonable doubt when the facts and circumstances of the case and the quality of the evidence adduced is compelling and reliable to establish the guilt of the accused person. There must be a high degree of probability that the accused person committed the offence. The doubt must be of a reasonable man and the standard must also be of a reasonable man. See the cases of **RAPHAEL EWUGBA v. STATE** (2018) 7 NWLR (PART 1618) 262, **SAIDU HARUNA v. STATE** (2018) 11

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NWLR (PART 1631) 559, BELLO OKASHETU V. THE STATE (2016) 15 NWLR (PART 1534) 126, INNOCENT IJIFA v. THE STATE (2019) 16 NWLR (PART 1697) 45, DANIEL NZEGBUNE v. THE STATE (2020) LPELR-49670 (CA), SUNDAY ANADUE v. THE STATE (2020) LPELR-49669 (CA) and DANIEL BIRIFOU v. THE STATE (2020) LPELR-49673 (CA).

“Reasonable” means fair, proper or moderate under the circumstances; according to reason. “Doubt” means to question or hold questionable, uncertainty of mind; the absence of a settled opinion or conviction. “Reasonable doubt” therefore means such a doubt as would cause a reasonable and prudent person to pause and hesitate to act upon the truth of the matter charged. It does not mean a mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. Not all doubts are reasonable. Reasonable doubt automatically excludes unreasonable doubt, fanciful doubt. Imaginary doubt and speculative doubt which is a doubt borne out by facts and circumstances of the case. See the case of MUHAMMADU SANI KALGO v. THE STATE (2021) 10 NWLR (PART 1784) 309 at 324, para. C, 327, paras. A-B, 325, para. D and 324, paras. B-C.

SECTION 421 OF THE CRIMINAL CODE LAW OF DELTA STATE provides that any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods, or any



greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, is guilty of a misdemeanour, and is liable to imprisonment for two years.

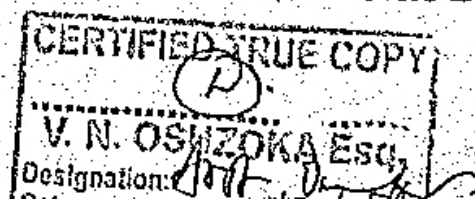
The Supreme Court held in the case of **UZOAGBA v. C.O.P.** (2014) 5 NWLR (PART 1401) 441 at 457, PARAS. A-C; 463-464, PARAS. G-A that the elements of cheating are:

- 1) that the person deceived delivered to someone or consented that some person shall retain certain property; and
- 2) that the person deceived was induced by the accused to part with the property; and
- 3) that the person deceived acted upon the inducement of the accused; and
- 4) that the accused acted fraudulently or dishonestly when inducing that person.

In the case of **OLADEJO V. STATE** [1994] 6 NWLR [PART 348] 109 at 123-124, PARAS. H-A, the Court of Appeal held that the ingredients that have to be proved to secure conviction for the offence of cheating under Section 325 of the Penal Code include:-

- 1) that the person deceived delivered to someone or concerted that some person shall retain certain property;
- 2) that the person deceived was induced by the accused;
- 3) that the person acted upon the inducement in consequence of his having been deceived by the accused;
- 4) that accused acted fraudulently or dishonestly when so inducing that person.

The Court of Appeal in the case of **MAJOR I. O. AMACHREE v. NIGERIAN ARMY** (2003) 3 NWLR (PART 807) 256 at 275,



paras. C, F-G., 274-275, paras. G-C) held that the gist of the offence of cheating under Section 113 (1) of the Armed Forces Decree, 1993 has all the hallmarks of the offence of obtaining by false pretences and this encompasses intent, a material element constituting the offence of cheating and it involves deception occasioning loss or the risk of it to a person. Section 113 of the Armed Forces Decree 1993 is identical to Section 421 of the Criminal Code. Consequently, decisions of courts in which the latter statutory provision was construed guide the courts as regards the provisions of the former.

See also the cases of ANNA OMUEDA v. FEDERAL REPUBLIC OF NIGERIA (2018) LPELR-46592 (CA) and ADAMU HUSSAINI v. COMMISSIONER OF POLICE, GOMBE STATE (2022) LPELR-58217(CA),

The law gives the prosecution three avenues/means to prove the ingredients of the offences as charged. They are through direct evidence of witnesses, by circumstantial evidence and also by reliance on a confessional statement of an accused person voluntarily made. The prosecution can choose to rely on one alone or all of the above means. The discretion to lead such evidence is totally theirs as they are the master of their case. See the cases of OKASHETU v. STATE supra at 147, paras A-B; C-E; 160, paras. E-G; 163, paras A-D., DONDOS v. STATE (2021) 9 NWLR (PART 1780) 24 at 46-47, paras. H-A., OJOH v. THE STATE OF LAGOS (2021) 3 NWLR (PART 1764) 462 and SAMUEL POSU v. STATE (2021) 4 NWLR (PART 1767) 434. With all these statutory and judicial authorities in mind, let us now examine the evidence led by the prosecution to see if the ingredients of the offences of

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cheating are present after all the burden rests on them to do so beyond all reasonable doubt.

PW1 is Enimiebi Mary Ebize, one of the investigators with the Independent Corrupt Practices and Other Related Offences Commission (ICPC) assigned to investigate the petition leading to this charge which she tendered as Exhibit P1. She stated that during the investigation, her team discovered that the defendant received double salaries from Delta State House of Assembly Service Commission (herein after called the Commission) and Ughelli South Local Government Council (herein after called the Local Government). Statements were recorded from the Defendant and other witnesses from the Local Government and the Commission who were interviewed. Exhibits P2 and P3 are the extra-judicial statements of the defendant dated 13/07/2021 and 29/07/2021 wherein the defendant admitted that he received double salaries from the Commission and the Local Government without obtaining leave of absence from the Commission.

She stated that her team discovered that the defendant was offered a probationary appointment as a Clerical Officer on Grade Level 04 by the Commission in November, 2005. His appointment was confirmed on the 18th of November, 2008 and he was upgraded to Level 08 on the 30th of October, 2009. She stated further that in November, 2009, the Defendant was nominated to take up an appointment as a Supervisory Councillor at the Local Government while he was still in the employment of the Commission and that he served as a Supervisory Councillor at the Local Government till 2012 and received salaries on full time from the Local Government and

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the Commission simultaneously. After the expiration of his four-year tenure, the defendant returned to the Commission and continued with his job. She also stated that the Commission issued him a query but allowed him to keep his job and ordered him to refund all salaries he earned during the period in question. She further testified that in the course of investigation, she discovered and recovered Exhibits P4 to P12.

Exhibit P4 is certified true copy of a letter dated 2nd November, 2009 written by the Secretary to the Ughelli South Local Government informing the Leader of the Legislative Arm of the Ughelli South Local Government Council of the nomination and request for screening of the defendant as one of the Supervisors on the direction of the Executive Chairman of the Ughelli South Local Government Council. Exhibit P5 is a certified true copy of a letter dated 30th November, 2009 written by the Secretary to the Ughelli South Local Government to the defendant informing him of his appointment as the Supervisory Councillor for Special Duties/Finance.

Exhibit P6 is a letter dated 24th January, 2020 written by the Director, Admin and Finance of the Delta State House of Assembly Service Commission querying the actions of the defendant serving as a Supervisory Councillor in Ughelli South Local Government Council between 24th May, 2008 and 28th September, 2012 without permission sought and obtained from the House of Assembly Commission and also earning salaries from two government agencies, i.e. the House of Assembly Service Commission and the Ughelli South Local Government Council. Exhibit P7 is a reply to the query dated 2nd March, 2020 written by the defendant

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addressed to the Secretary, House of Assembly Commission. In that reply, the defendant stated that he was employed as a Clerical Officer on Salary Grade Level 04 in 2005 with his appointment confirmed on 14th November, 2008. He was then also subsequently appointed as a Supervisory Councillor in Ughelli South Local Government and served from 24th May, 2008 to September, 2012. The defendant stated that as at the time of his appointment as a Supervisory Councillor, he had just spent 3 years in service as a Clerical Officer and was naïve and not conversant with the Rules as it related to taking up another appointment though his superiors were aware but his attention was not drawn to the fact that he had to apply and be granted a leave of absence for that purpose. He pleaded with the management to be compassionate towards him and temper justice with mercy as his action was not deliberate but borne out of ignorance.

Exhibit P8 is a certified true copy of the letter dated 14th November, 2005 offering probationary appointment as a Clerical Officer on Grade Level 04 in the Delta State House of Assembly Service Commission to the defendant. The appointment offered to the defendant was confirmed on 2nd December, 2007 by a letter dated 18th November, 2008 as contained in Exhibit P9.

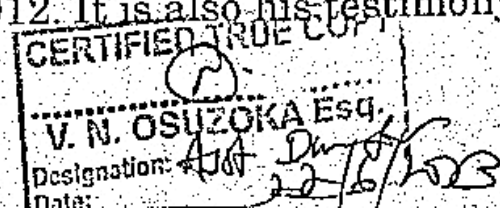
Exhibits P11 and P12 are letters both dated 20th February, 2020 written by the Executive Chairman, Ughelli South Local Government to the Chairman, Delta State House of Assembly Service Commission confirming the fact that the defendant served as a Supervisory Councillor for Special Duties and thereafter, Supervisory Councillor for Finance in the local government between 24th May, 2008 and 28th September, 2012. From the payment vouchers attached to Exhibits P11

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Date: 22/6/2023

and P12, the defendant received the total of N14, 525, 550:00 as salaries and emoluments from June, 2008 to September, 2012.

Under cross-examination, PW1 testified that based on a petition the Defendant was demoted from level 12 to level 10. She admitted that the charge before the court is in respect of the salary the Defendant received from the Ughelli South Local Government for the period he worked and that the N14,000,000 is owned by the Delta State Government who derive their funds from the Federal Government. She admitted being aware that the Delta State House of Assembly in its wisdom after discovering that the Defendant did not work for the money it received from Delta State Government House of Assembly Commission, was asked to refund that money. It is her further evidence that the defendant worked in both the commission and local government, and he was receiving emoluments from both places and that he did work in both the Delta State House of Assembly Commission and the Ughelli South Local Government at the same time and received salaries from both at the same time. She also admitted being aware of the fact that her investigation revealed that the Defendant has started refunding the money he received from Delta State House of Assembly Service Commission since 2020 as that was the disciplinary action given to him by the service commission.

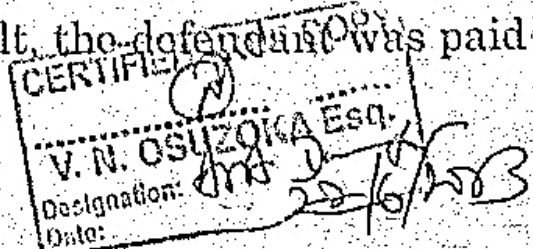
PW2 is Austin Emadukwu who is currently the Head of Personnel Management, Ughelli South Local Government. It is his evidence that he knows the defendant, Adjeke Akpoghene John as he served as a Supervisory Councillor for Special Duties/Finance at Ughelli South Local Government Council from 2009 to September 2012. It is also his testimony



that the defendant was paid salaries and other remunerations due to him as a political office holder during the period he served at the Local Government and was not aware that the defendant was employed anywhere else before he took the political appointment. It is also his testimony that it was the Chairman that nominated and recommended the defendant to the Legislative House for screening and clearance, before the Administration Department will prepare him for swearing in and assumption of office and that no form was designed for political appointees that will indicate their employment history. He identified Exhibits P11, P4, P5 and P12.

Under cross-examination, it is his testimony that Exhibit P12 is a reflection of the salaries and allowances earned by the defendant in course of his political appointment as a Supervisory Councillor in his local government and that they represent his official entitlements. He admitted that it is not out of place for a civil servant to be given political appointment and after the service, he goes back to his office. He also testified that the N14 million reflected in Exhibit P12 is not as a result of embezzlement but that the figure there was his entitlements for the period he served as a political office holder.

PW3 is Mrs. Nwabuwkwu Isioma who is the Secretary of the House of Assembly Service Commission who knows the defendant as a Staff of Delta State House of Assembly Service Commission. It is her testimony that she was not aware that he served as a Supervisory Councillor at Ughelli South Local Government Council. She also stated that the defendant did not at any time obtain any permission or leave to go and serve in any political office and as a result, the defendant was paid



his full salaries at the Delta State House of Assembly Service Commission throughout the period he was absent from his duties because they were not aware of his absence from work. She identified Exhibits P6, P8, P9, P10 and P11.

Under cross-examination, she testified that it is true, that a civil servant can take up political appointment but must get approval from the office. She also testified that the defendant can be paid salary there but that is after approval has been given. If approval is given in his new appointment, he is not expected to take salary from there while he is taking from the House of Assembly but if he is to take salary there then they are supposed to stop his salary in the House of Assembly. She further testified that the defendant did not take express permission and he was not given express permission to go, hence he was queried after the petition was drawn to their notice. She further testified that he responded to the query at the end of investigation and was made to refund the salaries he was paid from the Commission and as well demoted from Salary Grade Level 12 to 10. She maintained that the Commission is not aware of his political appointment. She also stated that she could not speak for the departmental head as the departmental head is in the Assembly while she is in the commission overseeing the staff of Assembly. She stated that there is no record in the Commission to show that the departmental head was aware. She further testified that as at the time the petition came, there was nothing in his file to show that he even applied to the Commission for leave of absence as he left on his own. There were no records to that effect in the Commission and so they are not aware of anything like that. She also stated that there is a procedure in public service to the effect that if he is to go on a leave of

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Date: *22/6/2023*

absence, he should write through his department to the Clerk of the House to the Commission to the Chairman of the Commission. She stated that assuming he had applied for the leave of absence, he would have been entitled to just one salary because it is the same government, and it is possible also that he would not have been given approval. She further testified if he had applied for leave of absence and granted, he would have been entitled to his salary from the Local Government. She admitted that in her Commission as in the civil service, a staff is entitled to study leave with pay after approval has been given. She also stated that according to their rules, he is supposed to have gotten approval before proceeding if he was going to study, because getting the approval does not only entail writing from the chairman. It would have been subjected maybe to a committee, maybe in the Secretariat for them to know whether what he is going to study is even beneficial to the House or to the Commission. Based on that, approval will be given to him to go and study not that he would on his own just proceed on a study leave and thereafter he will come and get approval. No, that is not the procedure. She also stated that it is also correct to say that because he did not apply before taking up the appointment, he was made to refund the salaries he was paid during the period from the Commission and that he has been paying that salary. She also stated that she became aware that he took up political appointment with Ughelli South Local Government council through a petition which came after he had finished his tenure and resumed duty in the commission.

PW4 is Oshareshiren Francisca who is a Customer Service Manager of Ecobank Nigeria Ltd. All she did was to tender

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the account opening package and statement of account of the defendant domiciled at Ecobank showing the salaries received by the defendant from January, 2007 to June, 2012 as Exhibit P13.

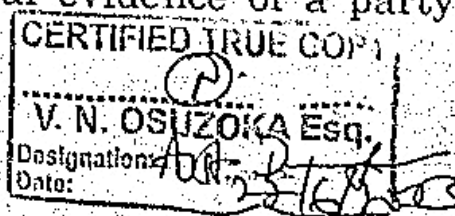
Under cross-examination, she stated that she is not a computer engineer or scientist. She also stated that aside the statement that was printed and the certificate of identification, she also uses that system to carry out other functions and they were perfectly done as at that time that certificate and the statement were issued.

The defendant testified alone in his defence in which he virtually admitted committing the offence for which he is standing trial. He tendered a letter dated 12th August, 2020 written by the Secretary to the Delta State House of Assembly Commission addressed to him stating that he was found to have taken up appointment as a Supervisory Councillor with Urbelli South Local Government Area without taking a leave of absence between the period 24th May, 2008 to 28th September, 2012 and that he should refund the salaries received from the Commission during the said period he served with the Local Government Council and provide evidence of payment to the Commission as Exhibit D1 while Exhibit D2 is a letter also dated 12th August, 2020 by which the defendant was also demoted from Salary Grade Level 12 to Salary Grade Level 10 with effect from September, 2020.

Under cross-examination, he testified that he told the commission that when he was being interviewed by the commission that he did not know that he was supposed to apply for leave before he takes up another appointment under the local government. Looking at Exhibit P13, he admitted

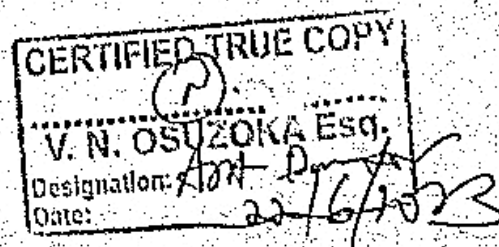
that he actually received double salaries and that is why he is here in Court. He admitted that he did not know he was supposed to apply for leave of absence before he took up an appointment. He also admitted that when he worked for Ughelli Local Government upon his appointment, he was paid salaries. He stated that he was absent from the commission without leave of absence which is what he should have obtained but did not because he was not aware that he should have done so.

Now, there are certain facts which are not in dispute between the prosecution and the defendant. In other words, while the prosecution has presented such facts with documentary evidence as proof, the defendant has admitted and has not denied that such facts do exist. Now it is said that documentary evidence is the best evidence as it usually retains information in permanent or near permanent form and that makes it more attractive except where fraud is alleged or pleaded. A document tendered in court is the best proof of the contents of such a document and it is usually and best used to assess oral evidence. It is also the law that documentary evidence should be used as a hanger to assess oral evidence. See the cases of **IBRAHIM v. DOGARA (2015) LPELR-40892 (CA)**, **MAHMOOD MOHAMMED NASIR v. EFCC (2020) LPELR-51427 (CA)**, **MRS. RAKIYA ISA BALA v. EFCC (2021) LPELR-56469 (CA)**, **KEYSTONE BANK LIMITED v. MARKETING AND MEDIA LIMITED (2016) LPELR-41290 (CA)**. It is said that documentary evidence is the hanger upon which to assess oral evidence of a party.



Where documentary evidence supports oral evidence, oral evidence becomes more credible. See the case of **BAC ELECTRICAL CO. LTD v. ADESINA (2020) 14 NWLR (PART 1745) 548**. Where there is oral as well as documentary evidence, the document(s) should be used as the hanger from which to assess the oral evidence. Further, documentary evidence is the best form of evidence. Therefore, no oral evidence will be admitted contradicting or discrediting the contents of documentary evidence except where fraud is alleged. See also the case of **RAMADA INT'L & PHARM. LTD. v. EZEONU (2016) 14 NWLR (PART 1533) 339**. Documentary evidence is the best form of evidence where the existence of facts is sought to be proved. The best proof of facts in issue is the documentary evidence that tends to establish the fact alleged, unless and until same is established to have been forged or produced in aid of nonexistent facts. See the case of **MAUTECH v. YARAI (2020) 15 NWLR (PART 1748) 395**. The most reliable, if not the best evidence, is documentary evidence. It is certainly more reliable than oral evidence. See the case of **ALH. ISIYAKU YAKUBU ENT. LTD. v. TERU [2020]16 NWLR (PART 1751) 505**.

The charge against the defendant is fraudulently receiving the sum of N14,525,550:00 (Fourteen Million, Five Hundred and Twenty Five Thousand, Five Hundred and Fifty Naira only) as salary from the Ughelli South Local Government of Delta State as a Supervisory Counsellor while also being a public officer in full time employment and receiving emoluments from the Delta State House of Assembly Commission for the period covering 24th May, 2008 to 28th September, 2012 which is a period of over 4 years.



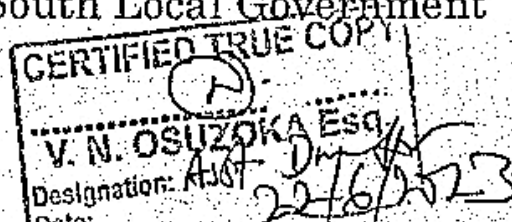
What is the evidence led by the prosecution to show that he was employed in both the Delta State House of Assembly Commission and Ughelli Local Government Council at the same time? Exhibit P8 is a certified true copy of the letter dated 14th November, 2005 offering probationary appointment to the defendant as a Clerical Officer on Grade Level 04 in the Delta State House of Assembly Service Commission. The appointment offered to the defendant was confirmed on 2nd December, 2007 by a letter dated 18th November, 2008 as contained in Exhibit P9. Exhibits P11 and P12 are letters both dated 20th February, 2020 written by the Executive Chairman, Ughelli South Local Government to the Chairman, Delta State House of Assembly Service Commission confirming the fact that the defendant served as a Supervisory Councillor for Special Duties and thereafter, Supervisory Councillor for Finance in the local government between 24th May, 2008 and 28th September, 2012.

Exhibit P4 is certified true copy of a letter dated 2nd November, 2009 written by the Secretary to the Ughelli South Local Government informing the Leader of the Legislative Arm of the Ughelli South Local Government Council of the nomination and request for screening of the defendant as one of the Supervisors on the direction of the Executive Chairman of the Ughelli South Local Government Council while Exhibit P5 is a certified true copy of a letter dated 30th November, 2009 written by the Secretary to the Ughelli South Local Government to the defendant informing him of his appointment as the Supervisory Councillor for Special Duties/Finance.

What is the evidence led that he was receiving salaries and emoluments from both offices? From the payment vouchers

attached to Exhibits P11 and P12, the defendant received the total of N14, 525, 550:00 as salaries and emoluments from June, 2008 to September, 2012. Exhibit P13 is the account opening package and statement of account of the defendant domiciled at Ecobank showing the salaries received by the defendant from January, 2007 to June, 2012. So, it is clear that the defendant was a Clerical Officer of the Delta State House of Assembly Commission as at 2005 and at the same time, also took up appointment as a Supervisory Councillor with the Ughelli South Local Government between 2008 and 2012. It is also clear that he was earning salaries and emoluments from both places and offices where he was employed and took up appointment.

The evidence of PW2 is to the effect that the defendant was a Supervisory Councillor of the Ughelli Local Government Council and was not aware that he had a previous or subsisting employment with the Delta State House of Assembly Commission though it is not out of place for a civil servant to take up political appointment. The evidence of PW3 is that the defendant is a staff of the Delta State House of Assembly Commission and was not aware that the defendant had also taken up another appointment with the Ughelli Local Government Council as a Supervisory Councillor. When they became aware of that fact, the defendant was queried, demoted and made to refund salaries he earned from the Commission for that period as he did not seek and obtain requisite approval for leave of absence. Exhibit P6 is a letter dated 24th January, 2020 written by the Director, Admin and Finance of the Delta State House of Assembly Service Commission querying the actions of the defendant serving as a Supervisory Councillor in Ughelli South Local Government



Council between 24th May, 2008 and 28th September, 2012 without permission sought and obtained from the House of Assembly Commission and also earning salaries from two government agencies, i.e. the House of Assembly Service Commission and the Ughelli South Local Government Council. Exhibit P7 is a reply to the query dated 2nd March, 2020 written by the defendant addressed to the Secretary, House of Assembly Commission. In that reply, the defendant stated that he was employed as a Clerical Officer on Salary Grade Level 04 in 2005 with his appointment confirmed on 14th November, 2008. He was then also subsequently appointed as a Supervisory Councillor in Ughelli South Local Government and served from 24th May, 2008 to September, 2012. The defendant stated that as at the time of his appointment as a Supervisory Councillor, he has just spent 3 years in service as a Clerical Officer and was naïve and not conversant with the Rules as it related to taking up another appointment though his superiors were aware but his attention was not drawn to the fact that he had to apply and be granted a leave of absence for that purpose. He pleaded with the management to be compassionate towards him and temper justice with mercy as his action was not deliberate but borne out of ignorance.

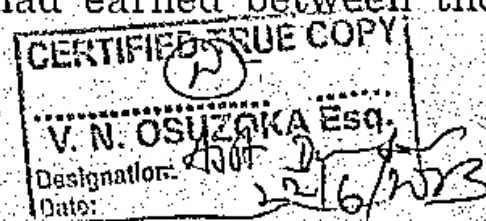
Upon his interview by the ICPC during the course of investigation, the defendant made two confessional statements in response to the allegations made against him. In the case of MOHAMMED MUSA v. THE STATE (2022) 3 NWLR (PART 1817) 285 at 310-311, paras. F-E, the Supreme Court held that:

“Confession is an admission made by an accused person stating or suggesting the inference that he

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Date: 22/6/2028

committed that crime. A confessional statement is the most effective proof of the culpability of an accused person of the part he played in the commission of the offence. Thus, a confessional statement, which is made voluntarily, even if subsequently retracted, is sufficient to sustain a conviction."

Exhibit P2 is the extra-judicial statement of the defendant dated 13/07/2021. It states that the defendant read and understood the above cautionary words and freely volunteered giving the statement without any duress or intimidation. The defendant stated that he started his work experience with the Delta state House of Assembly, Asaba as a Clerical Officer on Salary Grade Level 04. He is presently on Grade Level 10 as he was demoted from Grade Level 12 to Grade Level 10 based on the fact that at the point of entry as a Clerical Officer, he was also nominated and appointed as a Clerical Officer in his local government, Ughelli South as a Supervisory Councillor for Finance. The defendant also stated that when he was appointed as a Supervisory Councillor for Finance, he was never given any form to fill to give details of any previous appointment. The defendant also stated that having risen to the position of a Principal Administrative officer on Salary Grade Level 12 and having availed himself of the extant rules, he came to realise that it was wrong for him to have collected double salary from the same Delta State Government Treasury. The defendant indicated his remorse and felt bad about what had happened. He stated that he was queried by the Delta State House of Assembly Civil Service Commission which he answered and he was subsequently asked to pay back the salary he had earned between the



period he was absent from his job as a Clerical Officer between 24th May, 2008 and 28th September, 2012. The defendant stated that he has since been paying and was demoted from Grade Level 12 to Grade Level 10 as additional punishment which also took effect from 12th August, 2020 till date. The defendant again expressed his total sense of remorse to pay back the total amount earned during the said period which he has already started refunding as he did not work for the monies he received.

Exhibit P3 is the extra-judicial statement of the defendant dated 29/07/2021. The defendant stated that as a Clerical Officer, his salary rose from N17,264:47 to N17,780:30 to N27,000:00 to N40,384:75 to N63,446:96 between the period of 2008 to 2012. The defendant also stated that while he was also working as a Supervisory Councillor, his salary was N90,000 with an imprest depending on the allocation at the disposal of the Chairman. The defendant also stated that he never denied working in two offices and receiving salaries from both offices. He states that though he was ignorant of the law which is not tenable in law, he was duly punished by being demoted and asked to pay back the monies he received for the period in question. The defendant stated that as a result of his actions, he has lost a total of six years in service which he will never get back and also further expressed his remorse about his actions.

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The defence of the defendant is quite simple. He admitted not seeking and obtaining the required leave of absence. He admitted that he did not know that he had to seek such an approval before taking up the appointment as a Supervisory Councillor with the Ughelli Local Government Council.

Exhibit D1 tendered by the defendant is a letter dated 12th August, 2020 written by the Secretary to the Delta State House of Assembly Commission addressed to the defendant stating that the defendant was found to have taken up appointment as a Supervisory Councillor with Ughelli South Local Government Area without taking a leave of absence between the period 24th May, 2008 to 28th September, 2012 and that he should refund the salaries received from the Commission during the said period he served with the Local Government Council and provide evidence of payment to the Commission. By Exhibit D2, a letter also dated 12th August, 2020, the defendant was also demoted from Salary Grade Level 12 to Salary Grade Level 10 with effect from September, 2020. In my considered view, Exhibits P6, P7, D1 and D2 corroborates Exhibits P2 and P3 which are the defendant's extra-judicial statements made to the ICPC in the course of the investigation conducted in this case. Corroboration is evidence that holds up the story of the main evidence and implicates the accused. The essence of the corroborative evidence is to give support or strength to the assertion of the prosecution. I dare say the defendant also helped in his own investigation as the facts against him were very clear with no room for denial or escape.

It is clear from the evidence of PW2 and PW3 that had they known that the defendant had taken up appointment as a Supervisory Councillor of the Ughelli South Local Government Council while being also employed as a Clerical Officer of the Delta State House of Assembly Service Commission, his salary as a Clerical Officer would have been stopped by the Delta State House of Assembly Commission to enable him earn the salaries and allowances as a Supervisory

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Councillor of the Ughelli South Local Government Council. It would also have been recorded officially that he was on a leave of absence as a Clerical Officer in the Delta State House of Assembly Service Commission to function as a Supervisory Councillor with the Ughelli South Local Government Council.

For him not to seek and obtain the required approval for leave of absence from the Delta State House of Assembly Service Commission, for him to be absent and not to be at his duty post as a Clerical Officer without the requisite approval and to function as a Supervisory Councillor with the Ughelli South Local Government Council and for him to continue to earn and enjoy the salaries, allowances and emoluments accruing to both offices as a Clerical Officer and as a Supervisory Councillor, the intention of the defendant was very clear. It was to cheat the Delta State Government by receiving salaries, allowances and emoluments from the same government treasury for two different jobs/appointments at the same time. It is also very clear that the act of withholding the fact that he was employed and earning salaries as a Clerical Officer of the Delta State House of Assembly Service Commission from the Ughelli Local Government Council, he deceived the Ughelli Local Government Council into paying him salaries, allowances and emoluments accruing to his office as a Supervisory Councillor.

In every criminal trial, the basic components that must be established by the prosecution are actus reus and mens rea. That is, the doing of the act or omission complained of and the guilty mind that procured the act or omission. That means, apart from doing the act, which in this instant case is the receipt of the sum of N14, 525, 550:00 as salaries, allowances and emoluments from the Ughelli South Local Government of

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Delta State as a Supervisory Counsellor, the mens rea which is the guilty mind was the withholding of the information from the Ughelli South Local Government Council that he was also a public officer in full time employment and receiving emoluments from the Delta State House of Assembly Commission for the period covering 24th May, 2008 to 28th September, 2012. The guilty mind is also present in the lack of approval to take up such an appointment so as not to deceive both employers into paying him salaries, allowances and emoluments at the same time. The principles of actus reus and mens rea are well defined. See the cases of **EZE V. THE STATE (2017) LPELR-42006 (CA)**, **TANKO V. THE STATE (2009) 4 NWLR (PART 1131) 430**, **OKEWU V. FRN (2012) LPELR-7834 (SC)**, **IDAGU V. THE STATE (2018) LPELR-44343 (SC)** as well as **DR. IBRAHIM ADO ABUBAKAR V. FRN (2022) LPELR-58650 (CA)**.

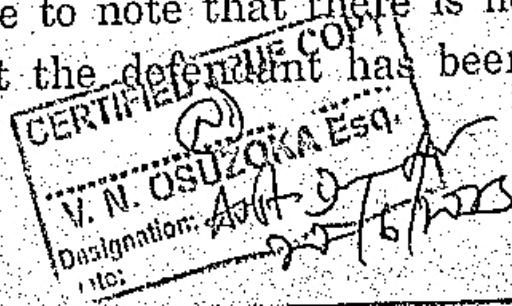
Now the question is, is the defence of the defendant being ignorant of the law an excuse or a valid legal defence that would exonerate him of the consequences of his actions? In law, "ignorantia juris non excusat" (Latin for "ignorance of the law excuses not"), or ignorantia legis neminem excusat ("ignorance of law excuses no one"), is a legal principle holding that a person who is unaware of a law may not escape liability for violating that law merely by being unaware of its content. Ignorance of the law is no excuse because it is the rule that every man must be taken to be cognisant of the law; for otherwise there is no saying to what extent the excuse of ignorance might not be carried: it would be urged in almost every case. Ignorance of the law has never afforded anybody an excuse; for everybody is supposed to know the law. See the

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case of REV. JOLLY TEVORU NYAME v. FEDERAL
REPUBLIC OF NIGERIA (2021) 6 NWLR (PART 1772) 289.

SECTION 22 OF THE CRIMINAL CODE LAW OF DELTA
STATE provides that ignorance of the law does not afford any
excuse for any act or omission which would otherwise
constitute an offence, unless knowledge of the law by the
offender is expressly declared to be an element of the offence.
Everyone is deemed to know the law. Accordingly, even if the
consequences of an act were not fully appreciated, a person is
presumed to know the law and to have intended the probable
or the natural consequences of his actions. If every defendant
is allowed to plead that he was not aware of the existence of
the law he has contravened, the whole administration of law,
order and justice would come to a standstill as everyone will
plead ignorance as a defence to every crime. Nobody would be
liable or guilty. People would just go about freely breaching
the law, committing various offences and simply plead the
defence of ignorance. Sentiments command no place in
judicial deliberations.

The further poverty of the defence of the defendant is also
present in the final written address of his counsel who
submitted that the defendant had already been punished with
a demotion and has been refunding the salaries and as such
the prosecution has failed to prove its case against the
defendant. It is not in doubt that certain administrative
infractions may in some cases constitute offences. The
offender can then be subjected to administrative punishment
and reprimand in line with the extant Civil/Public Service
Rules as the case may be. The offender can also be prosecuted
in a Court of law. It is instructive to note that there is no
evidence in proof of the fact that the defendant has been



refunding the salaries he earned for the period. What he was asked to refund are the salaries he earned from the Delta State House of Assembly Service Commission while he is being prosecuted for earning salaries as a Supervisory Councillor in the Ughelli South Local Government Council.

Having considered, examined and evaluated the evidence led, it is my considered view that the prosecution has indeed proven its case against the defendant. The defendant is therefore found guilty as charged.

The law providing for the offence of cheating stipulates a punishment of two years imprisonment. **SECTION 335 (1) OF THE ADMINISTRATION OF CRIMINAL JUSTICE LAW, 2022** provides that where the Court returns a guilty verdict, it shall ask the defendant if he wishes to call any character witness and after hearing any character witness, ask the defendant if he wishes to make any statement or produce any evidence or other information to mitigate the punishment. **SECTION 335 (3)** also provides that the Court shall in determining the appropriate sentence, consider all aggravating and mitigating evidence or information concerning the defendant in each case. **SECTIONS 513, 514 and 516** also enjoins this Court to consider the gravity of the offending act including the offender's degree of culpability, the extent of any loss, damage, or harm resulting from the offence, the age of the offender, the remorse shown by the offender, any evidence of the offender's previous good character, any agreement between the offender and the victim as to how the offender may remedy the wrong, loss or damage caused by the offender or ensure that the offending act will not continue or reoccur, any remedial action taken by the offender in relation to the circumstances of the offending

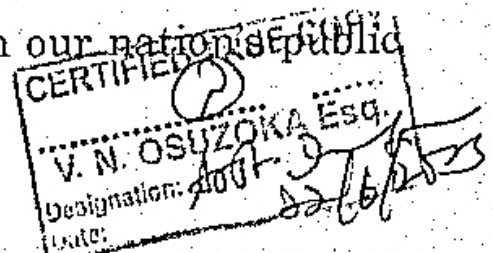
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V. N. OSUZUWA, ESQ.
Designation: JUDGE
22/10/2023

act amongst other factors in determining the appropriate sentence to be imposed on the convict in this case.

Exhibit D1 tendered by the defendant is a letter dated 12th August, 2020 written by the Secretary to the Delta State House of Assembly Commission addressed to the defendant stating that the defendant was found to have taken up appointment as a Supervisory Councillor with Ughelli South Local Government Area without taking a leave of absence between the period 24th May, 2008 to 28th September, 2012 and that he should refund the salaries received from the Commission during the said period he served with the Local Government Council and provide evidence of payment to the Commission. By Exhibit D2, a letter also dated 12th August, 2020, the defendant was also demoted from Salary Grade Level 12 to Salary Grade Level 10 with effect from September, 2020. I have also taken into account the testimony of the convict that as a result of his actions, he has lost a total of six years in service which he will never get back and also further expressed his remorse about his actions. The convict also stated in Exhibit P2 that he came to realise that it was wrong for him to have collected double salaries from the same Delta State Government Treasury. The actions of the defendant are one of the corrupt practices prevalent in our nation's public service.

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I have seen the pay slips of the defendant for the months of March, April, May, October, 2021 as well as that of November, 2020. They are hereby admitted in evidence in the absence of opposition from the prosecution as Exhibit D3, D4, D5, D6, D7 and D8 respectively. Defence Counsel has stated that the



Defendant is ill and diabetic but no medical report was tendered in proof of same. The prosecution also submitted that the Defendant was very cooperative during his investigation. As mandated by Section 335 (3), 513, 514 and 516 of the Delta State Administration of Criminal Justice Law, 2022. I have taken cognizance of the age of the defendant as well as the implication of Exhibit D1-D8 showing that he was demoted and has been making refunds of salaries he earned for the period in question. The Section prescribing punishment does not give this Court the discretion to impose an option of fine. However, the justice of the case demands that I also in the light of the prevailing facts and circumstances of this case. In the circumstance, I sentence the convict to a term of imprisonment of 2 years with an option of fine of ₦500,000.00. He shall continue to make the necessary refunds as shown in Exhibit D3-D8.

This shall be the judgment of this Court.

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HON. JUSTICE ONOME MARSHAL-UMUKORO
1ST JUNE, 2023

S. N. CHIBUZOR (MRS.) for the Complainant

M. A. IKOGHE-EGBE (MRS.) for the Defendant



Centre for... 3.13 PM

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MRS. CHIBUZOR
22/6/2023