

IN THE MAGISTRATE COURT; DELTA STATE OF NIGERIA
IN THE EFFURUN MAGISTERIAL DISTRICT
HOLDEN AT EFFURUN

BEFORE HIS WORSHIP E.A. ODJUGO ESQ., CHIEF MAGISTRATE
(SPECIAL GRADE)

ON WEDNESDAY THE 8TH DAY OF JUNE, 2022.

CHARGE NO: ME/18C/2020

BETWEEN:-

COMMISSIONER OF POLICE	COMPLAINANT
AND			
NGOZI NMAZUA AGBANOBI (F)	DEFENDANT

JUDGMENT

The Defendant was arraigned before this Court on a one Count charge of Stealing punishable under Section 390 (6) of the Criminal Code, Law, Cap. C 21, Vol. I, Laws of Delta State, 2006. The antecedence or chronology of this matter disclosed that on the 22nd of March, 2021, when this one-count charge was read to the defendant in English Language to the satisfaction of the Court, the Defendant elected summary trial, then pleaded NOT GUILTY.

Thereafter, PW1 began testifying. Then, midway in to the said testimony, and after some exhibits were tendered, the Defendant, through her counsel, S.O. Ukavwe, Esq. changed her plea, from NOT GUILTY to GUILTY. This Court posed directly to the Defendant this question: Is that the position? Is it true that you are changing your plea to GUILTY at this stage?

The Defendant responded thus "It is true. I hereby change my plea from NOT GUILTY to GUILTY".

Thereafter, the said Learned Counsel to the Defendant urged this court to look into the issue of plea bargain. Thereafter, the case was then adjourned to the 8th of April, 2021, for the process of plea bargain to commence., Then the JUSUN (Judiciary Staff Union of Nigeria) strike set in, and then on the 12th of July, 2021, another Counsel, J. O. Kpedi, Esq. appeared, in court on behalf of the defendant, and, the case, was further adjourned till the 14th of July, 2021, for the plea bargain process to commence.

Then on the 14th of July, 2021, J.O. Kpedi, Esq. the Defendant's Counsel applied for a discontinuation of the plea bargain process, and, then urged this court to adjourn for continuation of Hearing. The Prosecution did not object, and, so, the plea bargain process was discontinued, and then, the case was adjourned till the 5th and 10th days of August, 2021, for definite Continuation of Hearing.

Then on the 5th of August, 20-21, F.C. Okala, Esq., appeared for the Defendant, and, then the case was further adjourned till the 18th and 23rd days of

August, 2021, for Definite Continuation of Hearing on grounds of ill-health of Counsel. The earlier fixture of 10th of August, 2021 was then vacated.

It is important to point out that the Prosecution called two witnesses, PW1, Love Okeoghene Ojakovo, and then PW2, ASP Faith Eguaoaba.,

The defendant testified as DW1, and, called no witness. The exhibits tendered in this case are : (1) Letter of Employment of the Defendant – Exhibit A, (2) Letter dated 28th of September, 2019 – Exhibit B (3) Invoices of goods collected by the Defendant – Exhibits C1, C2, C3, C4, C5, C6 and C7 respectively, (4) Letter dated 23rd of October, 2019 – Exhibit D, (5) Letter dated 6th of October, 2016 – Exhibit E, (6) Defendant's Statement to the Police – Exhibit F and (7) Statement of Account of the Defendant at GTB Plc. – Exhibits G and G1 respectively.

So, what was the evidence of PW1, PW2, and the Defendant, that is, their testimony before this court? From PW1'S EVIDENCE, HE IS THE MD/CEO of Tivo Corporate Services International Limited, and he stated that the Defendant was employed by the said company as a sales Rep to be located at Igbudu Market, Warri. Exhibit A is the said letter of employment.

PW1 stated that the defendant's duties as a Sales Rep was to pick stock, that is, Nestle stock from Tivo's sales point at Igbudu Market, Warri. He stated that the said stock was to be released to her without any payment from her, up to a limit on approved by the management from time to time. PW1 stressed that the defendant was to sell the said stock collected by her in cash, and not credit and, then to remit the sales proceeds in cash to the company's cashier at the sales point or pay directly to any of the company's Banks Account.

PW1 also stated that, any unsold stock for each day was to be returned to the company's sales point to close the transaction for that day. PW1 stated that, as the CEO of the said company, he has the additional duty of being the chief Financial Officer of the company.

PW1 stated that in his additional duty as the Chief Financial Officer of the said company, sometime in the middle and third week of September, 2019, in his routine check of all the sales points of the company spread across Delta State, he discovered that there was a significant gap in the accounts of the Igbudu Market sales Point, and he emphasized that the gap was observed, when he looked at the stock of the sales vis a vis the cash collected at that sales point for the period of time. He stated that he noticed that the cash collected was lower than the stock collected by salesmen which was up to the tune of six million Naira.

PW1 stated that he immediately set up an Accounts Team to proceed to Igbudu Market Sales point to do a snap check or audit to confirm if everything was alright. He stated that this was done on the 27th of September, 2019. According

to PW1, the report of the Audit Team came back to him the same day, and, he observed that there was a gap of N5.5 Million.

According to PW1, the next day being a Saturday, he then directed that the Igbudu sales team, their supervisor with the computer system should relocate to the Main Warehouse where a full individual sales audit would be carried out to determine where the said gap was coming from. Then, according to PW1, with the completion of the sales Audit, with all the salesmen, which included what PW1 teamed as "Teminal" salesmen, it was discovered that the gap was coming from the Defendant which had a deficit of Five Million, Four Hundred and Eighty Thousand Naira, plus.

According to PW1, when the defendant was asked, she confirmed that it was true, and, that she collected goods worth that amount, and, also, that she had not remitted the proceeds to the said company. According to PW1, when the Defendant was further asked, where the proceeds were she the Defendant according to PW1 could not account for the sum of N4,500,000 (Four Million, Five Hundred Thousand Naira), buy, that the balance which made up the N5,400,000 plus, was in the market.

PW1 then stated that, at that point, the defendant was asked to reduce what she had stated into writing, and, a letter, which is Exhibit B, before this Court, is that said Letter.

PW1, stated that he then reported a case of stealing to the Police at Ugborikoko Police station, and, there, the defendant and himself, PW1 were invited to the Police Station, and, there they made statements to the police.

PW1 further stated that anytime goods are released to the Salesmen, an Invoice is released to the Sales person, and, a copy retained in the system. He stated further, that, at the end of every month, a statement of Account is printed and circulated to all salesmen for scrutiny and verification of transactions made by them in relation to cash paid by them.

PW1 stated that the Invoices and Statement of Account are generated by the Company's computer system. So, Exhibits C1 – C7 are the Invoices pertaining to goods collected by the Defendant according to PW1.

According to PW1, the defendant then came to his office, and, then made a repayment proposal with the payment of N500,000= in the first week of November, 2019, and, thereafter, a monthly payment of N150,000, until the said amount she took away would be liquidated. According to PW1, he then asked her to reduce same in writing, which is Exhibit D before this Court.

According to PW1, he then made an additional statement to the police, informing them of the Defendant's commitment to pay and, also gave to the Police the said Exhibit D. PW1 re-iterated that as at 28th of September, 2019, the gap in the

account relating to the defendant was the sum of N5.4 Million plus in her statement, but, she actually took the sum of N4.5 Million, claiming that the balance was in the market.

PW1 stated that she was collecting the balance in the market after the case had been reported to the police and, paying into the company's account. PW1 stated that the Defendant has receipts of payments which were made, and, also, that at the time the Defendant was charged to Court, the amount was now less than N5.4 Million, but now about N4.5 Million plus, which she said she took away.

According to PW1, he narrated how the defendant took away another sum of N400,000 not so long after she was employed, then made stories up of kidnap, and hypnosis to defend the loss, after acknowledging that she took the said sum of money. PW1 stated that the Defendant accepted taking that said sum of money in writing, promised to repay, but did not. The said letter which the Defendant wrote is Exhibit E before this court.

It was at this stage, that the Defendant as hereinbefore stated, changed her plea from NOT GUILTY to GUILTY, indicted her willingness for the Court to commence a Plea Bargain process. Then discontinued the said process, then, re-commenced the continuation of Hearing of this matter, which this Court obliged her.

It should be noted that on the 18th of August, 2021, this same one count charge was read again to the Defendant in English Language, and, she now entered a plea of NOT GUILTY formally, and, this Court drew the attention of the Learned Counsel to Defendant of the fact that PW1 had given her evidence in chief, and, if he, the Learned Counsel so wished to cross examine, and the said Learned counsel indicated so in the affirmative, and, thus PW1 was then cross examined by him.

Under cross examination. PW1 stated that this company's Human Resources Department deals with employment, and, also, that, there are terms and conditions of employment stated in Exhibit A. He stated further that all departments of the company are under him with the buck stopping at his table PW1 stated that there was no letter containing such company policies.

PW1 stated that Exhibits C1 – C7 are Invoices, and, that the invoices represent what goods have been given out, and, the total of the goods collected. PW1 stated that percentages which accrue to salesmen are not reflected in invoices. PW1 stated further that he was not there when the Team whom he sent for snap audit went to Igbudu Market, but he PW1 was given a verbal report and their findings. He said the snap audit was not the full audit.

PW1 stated that Exhibits C1 – C7 emanated from a full audit, which he, PW1, carried out personally on the 28th of September, 2019. He stated further that Exhibits C1 –C7 are recorded as goods which the defendant collected from the

Warehouse for the said period, which the Defendant signed for. PW1 stated that having signed for the goods, the Defendant then collected them, and, her account was thus debited with the value of those goods.

PW1 stated that the Defendant's statement of account for every month was presented to her for scrutiny and verification, which she did confirm, evidencing the fact that she collected the goods and, their values are so reflected in her said statement.

PW1 stated that the goods were not reported by the Warehouse staff as missing or stolen. PW1 stated that guarantors to staff are only summoned when the staff absconds. PW1 stated that Exhibit B was made in his office at the main Head Office Warehouse, and, that was before he went to the Police.

PW1 stated that the guarantors were not present when Exhibit B was made because, when investigations or reconciliations of accounts are made, guarantors are not called, and, that, it is a matter between the staff and the management. When shown Exhibit E, PW1 stated that the guarantors were not present, but, the Defendant could not account for the said missing funds, told stories about them, after converting same to her personal use. He said Exhibit E did not refer to this second incident of stealing.

PW1 stated that Exhibits C1 – C7 were generated from the Company's Computers, and, that apart from himself, it is also manned by others. PW1 stated that the defendant did not man the said computer and, then printed out the information as contained in Exhibit C1 – C7.

PW1 stated that Exhibit C1 – C7 show at all material times who took goods, when they took, what they took, the amount, the quantum of goods. He stated that there is no column to indicate goods stolen, because, that is not the elementary basic theory and practice of commerce.

PW1 stated that there was no need to send the snap audit to any professional, because, according to him (1) The report was a verbal report, which it was intended to beg (2) They were asked to go and see if there was a difference, and, if no difference, they should say so. (3) Then, having said that there was a difference, then as the Chief Financial Officer, he asked the Team Headed by their supervisor to transmit the information to the Office Warehouse where a thorough audit was done for each sales person to find out where the differences were coming from.

PW1 stated that he supervised the said process. He stated that he does not have to be a chartered auditor to reconcile the books of account of his company, because he was a banker for nineteen years rising up to the position of a General Manager where he reconciled more complex books for customers. Also, that he was the Delta State Commissioner of Finance where he reconciled the whole accounts of the State successfully.

PW1 stated that the name of the maker is the company, while the receiver of goods sign. He said Exh. C2 is retained in the software of the computer. He stated that he was not there when the Defendant made her statement to the police.

PW1 stated that he had heard of EDGA which is an acronym for Exchange of Goods Advice, but, that, in this case EDGA is not applicable to the defendant, since, she did not return goods otherwise if she did, it would have been reflected in her statement as credit advice in her favour.

There was no re-examination.

PW2, ASP Faith Eguoba is the IPO of this case. She stated to this Court how on the 28th of September, 2019, PW1 came to the police Station at Ugborikoko, and then laid a complaint of stealing against the Defendant. According to her, she recorded the statement of PW1 freely, and, then after that, the defendant who was also brought to the said Police Station recorded her statement freely in her own handwriting herself.

According to PW2, based on the fact that the Defendant admitted the allegations against her, she, PW2, visited the warehouse where the goods were collected by her, and, then recovered the Invoices which were signed by the Defendant. PW2 stated that she also recovered an Undertaking written by the Defendant.

PW2 then stated that the Defendant was employed as a sales Rep, and that her primary duty was to collect goods from Igbudu Sales Point, make sales and then return the money so collected in cash to the company through the company's cashier or pay to the company's bank account.

PW2, stated further that, at the end of every day's business, she was expected to return the unsold goods back to the sales point, and, not expected to sell on credit. PW2 further identified Exhibit B, the Undertaking and Exhibit F, the Statement of the Defendant to the Police was tendered through her.

According to PW2, the defendant stated that part of the money misappropriated by her was at Igbudu Market, and, that she should be given time to go and collect money from the customers. PW2 stated that while the Defendant was on bail, she collected some money, and, then paid same into the company's account. Furthermore, that, she has not been able to liquidate the total amount of money so misappropriated by her, which is as reflected in the charge.

Under cross examination, PW2, told this Court that the Defendant told her that part of the money was in the market. PW2 stated that in the Defendant's Statement to the Police, she stated that she sold on credit to customers, but did not specifically mention any customer's name or products sold to such customers.

PW2 stated that the defendant did not take her to customers at Igbudu Market. PW2 stated that the Defendant's lawyer was present when she made her statement, and, that her lawyer's name is Barrister S. O. Ukavwe.

PW2 stated that she did not recover purchase invoices, because the Defendant did not deny that she did not collect goods. She stated further that every payment is reflected in her statement of Account.

There was no re-examination of PW2, and, that was the case for the prosecution.

The Defendant testified as DW1, and, she stated that she is Ngozi Nmazua. She denied stealing any item as contained in the charge she stated further that she worked with the nominal complainant company for a period of three years and some months as a Sales Rep stationed at Igbudu Market. She stated that she collects goods from the Warehouse, and, then sell at Igbudu Market to customers assigned to them to sell.

DW1 stated that they have route plans. She stated that she collects goods every day, supply to customers and then go back, collect monies for goods sold and, then go to the offices to make payment to the cashier on a daily basis from Mondays to Saturdays.

DW1 stated that some customer either pay in cash or do transfers. Also, she stated that sometimes, they may not get to particular customers on time, they may not get to particular customers on time, since they are not the only company in the market. Who supply customers too, and, so, may be asked to return the next day. DW1 stated that sometimes they may not get balance on account on the same day, as a result of customers not giving them cash that day. DW1 says she usually goes to confirm from the customer as to when to pay for goods supplied to them. DW1 explained that sometimes retrieval of goods happens even after supplies to customers for goods not yet paid for. She, DW1, Reiterated the fact that it was company's policy that goods are not expected to be sold on credit. She stated that she did not sell goods on credit. She stated that at the end of every week, every Monday to be precise, they were expected to collect fresh stock, and, then balance their accounts between Saturdays and Mondays.

According to DW1, such goods collected are recorded on their customer's note which discloses quantity of goods and their values, and, after customers pay. It is then reflected in the said note. DW1 stated that those notes are their personal notes. DW1 stated that the company has it is own records. DW1 states that the cashier issues them their Statement of Accounts from time to time to reconcile with what is in the company's accounts.

DW1 stated that when they want to collect goods, then they have an Order Note which is in her personal note, then she goes to the Invoice Officers, who prints it out from the computer, showing that she gave Orders for goods. She stated that

she gives a copy to the Invoicing Officer, one Mr. Prince, and, then takes another copy to the Warehouse Manager at Igbudu Market, who in turn brings the goods down to her. She then confirmed that the goods brought are correct, and then signs. She says, Exhibits C1 – C7 are printed from her account with the company, but her signatures are not there.

DW1 stated that at the end of the day, monies collected from the customers are given to the cashier, which are paid into the company's account and then with her statements, which are printed out, uses same to cross check what is in her personal notes and, to know if the money left in the account is correct. Also, if she notices any error, she draws their attention and, it is corrected immediately.

She stated that she is no longer with her personal notes, because when her appointment was terminated, she tendered her personal note, debtor's list and her hand held terminal, which is a phone given to them by the company, where the names of customer are. DW1 stated that herself her supervisor and some other staff of the company were arrested by the Police. She also made reference to one Mr. Martins, and, how an audit was carried out at Igbudu Market, and, then they were all invited to the office, with the statement of account given to them. According to her, the amount as contained in the charge was reflected there. DW1 stated that while at the warehouse, they were called individually together with PW1, the manager and other staff, and, inquiries were made about the accounts as at that time. She stated that she explained to them why her account was like that, and, that the money for her goods had not been collected from customers. She stated that the audit was done before they went to the market to meet with customers for the said monies.

DW1 stated that PW1, the Manager, Mr. Martins and the Supervisor were there, and that it was when she was asked to put what she had said in writing, that she did, and, the Manager, Mr., Martin rejected it, and asked her to write another one dictated by him to write, which according to her is Exhibit B, which she further identified in Court.

According to her, they were then taken to the Police Station. She said she wrote Exhibit F, but, that, it is not complete. She said she was alone. She stated that where she listed customers names and the amount that they were owing are not there. She stated that she was released on bail, and, then went ahead to retrieve monies from customers, and, then made a cash payment of N1,950,000 to the cashier, one Mr. Mabor, and, then made a transfer of N200,000 to the Company's account. She said that she was still surprised at the amount as reflected on the charge being four Million Naira plus. On Exhibit D, she stated that she was told by PW1 that in Order to retain her job, she should make a payment before the end of the month, which she agreed to, knowing fully well that the money was with customers, she said she made two transfers to the said

company, one before the case was charged to court, while the other after, which according to her are evidenced by Exhibits G and G1 respectively.

DW1 stated that she paid N200,000 to the company's account, and then N100,000 cash to her former lawyer during the plea bargain process. On the plea bargain process, she stated that it was suggested by her former Counsel as being a process to resolve issues, a process which she said she was uncomfortable with. She stated that she did not understand the process, and, that she came to Court in respect of the plea bargain, but since there was no headway, changes her counsel.

She said Exhibit D was made out the company's office, and, that she had proof that the monies were with the customers. She said PW1 the Manager and the IPO were there. She said Exhibit B was written in the presence of Mr. Martins, the Manager and PW1, and, that it was written in that manner, because, she wanted to retain her job, and as requested by then for her to so write. She said her employment was terminated, and every company document was seized by Mr. Martins in the presence of PW1.

DW1 stated that she told the IPO that she wanted her to accompany her to the market, but, the IPO refused, claiming that she had no time for that. She said the list of debtors is with the company, and, so she did not bother to collect monies from the customers again, because she was no longer a staff of the said company, and that would have emanated to stealing she said the monies are in the market.

Under cross-examination, she said she is Ngozi Nmazua, and, that Agbanobi is part of her names. She said that upon being granted bail, she made a cash payment of N1,950,000 in the company's office in the presence of the Manager. She then stated that she had no document to prove that she actually paid the sum of N1,950,000.

DW1 stated that three customers, Madam Betty, paid N500,000, one Alhaji paid N950,000 and Mike stores paid N500,000 who are customers paid the said sum of money. She stated that they all paid cash. She said she made the payment before her appointment was terminated. She said that the cashier who received payment was called Avweruoso, but, called Suo also. She stated that sometimes when payments are made, they are not issued receipts all the time, claiming that the cashier may not pay in immediately, but would ask them to go and that it would reflect later.

DW1 agreed that it is true that she collected goods worth the sum of N5,480,456.64k. She stated that she collected the said goods from the Warehouse, did not pay for them before collection, and, also was not expected to sell on credit.

On Exhibit D DW1 stated that she wrote same in the presence of PW1 and the Manager after a meeting with them. She said she was advised by the Manager to write Exhibit D, and as dictated by him.

DW1 said she made a cash payment of N1,950,000 to the said company and that she had not finished liquidating payment of the said sum of money in the way and manner as shown in Exhibit D.

On Exhibit E, she said she did not write it, and, that she told PW1 and the Manager that she was robbed. She later said she wrote Exhibit E under duress. On Exhibit B, she also said that she wrote it under duress, and written under similar conditions as Exhibit E, under the instructions of Mr. Martins.

She said that by her calculations, she is owing between N1.9 Million or N2.1 Million. She stated that she is an SSCE holder, but when shown her statement, Exh. F, she now stated that she graduated from Ambrose Alli University, Ekpoma in the year 2008.

She stated that anytime she collects goods, an invoice is signed by her, and, at the end of every month, a statement is given to her to show the cash she paid for, and the =goods collected. She stated that customers names are in her personal record book, which she has returned to the company as well as her appointment was terminated.

DW1 stated that for every sales she made, she was expected to return the cash at the end of the day. She stated that customers pay into their private accounts so long as such monies are paid into the company's account, and, for which some customers paid into her personal account, and, for which she pays out to the company's account she stated that the amount of money with the customers is between N1.9 Million and N2.1 Million, and that she did not go back to the customers. She said the names of the customers are in the HHT that is, the Hand held Terminal. She said one Madam CA is owing N50,000=.

She stated that apart from herself, her supervisor, the field sales manager, Field accompaniments, they all go to customers for appraisal and evaluate once or twice in a month.

Under reexamination, DW1 stated that HHT has been handed over to her. That was the case for the Defence. In the Written Address filed by the Learned Counsel to the Defendant, a sole issue was raised viz, Whether the prosecution has succeeded in proving the charge of stealing against the Defendant beyond reasonable doubt?

Reference was made to the case of Ebeinwe V. State (2011) All FWLR (Pt. 566) ratio 3 at PP 415-416 for the constitutional ingredients for the offence of stealing. Reference was made to the evidence, and it was emphasized that the Defendant stated that the goods were in the market, and, that she did not have possession

of them. Also, that the IPO, PW2 refused to go and cross-check this fact. Reference was made to delay in network transfers, late payment of goods by customers, and that such delays were always reconciled among the retailers, sales person and the accountant, one Oforimeh O. Ebenga who made a statement to the police, but was not called, since he, Gbenga interacted daily with the Defendant.

Reference was made to the fact that PW1 did not sign any documents as he was not the maker, and, that, the defendant signed invoices with the accountant, who also stated that they were signed.

It was thus submitted that PW1 was not present during the transactions, and, that this rule contrary to SS 37 and 38 of the Evidence act, and the case of *Idahosa V. Idahosa* (2011) All FWLR (Pt. 568) pg 983 at 1003 para 4, Ratio 3 was cited and relied upon.

On the investigation report, it was contended that no person who was engaged in the investigative audit was called to give evidence, and, that this runs contrary to S. 38 of the Evidence Act, 2011 as amended, and so amounts to documentary hearsay as envisaged by S. 38 of the Evidence Act, *supra*.

On Exhibit B, it was contended that the Defendant was misled, because of undue pressure and threat, while she was alone in the office at Tivo, to enable her go and recover the monies.

On legal representation, it was submitted that there was no lawyer present when she wrote her statement, which runs counter to the provisions of S. 17 (2) of the Administration of Criminal Justice Law, Delta State, 2017.

This court was urged to reject Exhibits C1 – C7 as they were not the very ones signed by the Defendant.

The Court was urged to note that the IPO, PW2, did not tell the court about the whereabouts of the book which the defendant stated contained names of customers, and, also the court was urged to note that the Defendants made efforts to pay money back to the said company. Reference was made to Exhibits G and G1. This court was urged to note that the Prosecution was withholding evidence of the notebook and witnesses and, so offends S. 163 (d) of the Evidence Act, *supra*.

This court was urged to note that it has not been proved that the Defendant parted with monies, and then used the money in a way and manner inconsistent. This court was urged to also know that the prosecution has not proved with exactitude that the said sum of N4,626,456.64K was stolen by the defendant because of the admission of payment as reflected in Exhibits G and G1. The case of *Shekete V. Nigerian Airforce* (2000) 15 NWLR (Pt. 692) P. 868 was cited and relied upon.

On standard and of proof, and proof of all the ingredients in the charge, the case of Nwaobasi V. State (2008) All FWLR (Pt. 446) 1977 ratio 4 was cited. This court was urged to note that doubts have been raised personally, and, so, the defendant should be discharged and acquitted.

In Criminal Proceedings, it is true that it is incumbent upon the prosecution to prove its case beyond reasonable doubt. See S., 135 of the Evidence Act, 2011 as amended. See the case of State V. John Ogbunjo & Anor. (2001) 2 ACLR 527 at 558. The Prosecution is also duty bound to prove the essential elements of the offence as reflected in the charge. The case of Nwaobasi V. State, supra at 1977 ratio 4 refers.

This court accepts the prosecution is duty bound to prove the essential elements of stealing as stated in the case of Ebeinwe V. State, supra at 415 – 416. See further the case of Adejobi Vs. state (2011) All FWLR (Pt. 588) 850, ratio 6.

It is clear and obvious that the Defendant was employed as Sales Representative by Tivo Corporate Services International Ltd, and, her job included among others, to collect Nestle products from Tivo and, then sell to the customers on a cash and carry basis, or to pay monies collected from the customers, and then pay to the said Tivo Company's account. Exhibit A refers. Evidence of PW1 refers, PW2's evidence refers. The evidence of the Defendant concurring through her cross examination by the Prosecutor that it was the company's policy not to sell on credit refers on the point. Also, unsold products could be retrieved and returned to the company's warehouse.

The defendant, from the facts was expected to remit sums realized from the sales of the said product to the company in a daily basis. From the evidence, it is clear from PW1's evidence and it shows that he is the Chief Executive Officer, Managing Director, as well as Chief Financial Officer of the said company. Also, from his evidence, it was out of a routine check sometime in the month of September, 2019 that he discovered significant gaps at the Igbudu Market sales point. Thereafter, from his evidence, he then set up an Accounts Team to do a snap check or audit to confirm if everything was alright, and, that this was done on the 27th of September, 2019. The report of that snap check or audit was reported back to him, PW1, in respect of the said Igbudu Market sales point, where the Defendant works, and, it was observed that a gap of N5.5 Million existed.

A further detailed inquiry, where a full individual sales audit was carried out to determine where the said gap was coming from in the presence all the salesmen, the "famine" salesmen, the Defendant and with PW1 participating, narrowed that gap or loss to the Defendant, which had a deficit of five million, four hundred and eighty thousand naira, plus, according to PW1. The unchallenged evidence of PW1. The unchallenged evidence of pw1 shows that the defendant indeed collected goods worth that amount, and, also, she had not yet remitted the

proceeds to the company. When the Defendant was confronted, she claimed that the money was with customers at the market. PW1 informed the Defendant to put what she had said, and, that was what necessitated the Defendant to write Exhibit B. The Defendant in her defence, tried to wriggle out of this self imposed commitment made by her, suggesting that Exhibit B was made under duress, especially with the manager, Mr. Martins prodding her to do so, and, also with PW1 being present and according to her claiming that if she did so, her job would not be terminated.

In one breath, the Defendant claimed that both pw1 and Mr. Martins were present, but, through the written Address submitted to court, shifts the issue of duress on Mr. Martins. This court rejects that testimony and fanciful defence of the Defendant. She had a fair opportunity of informing the police at the slightly opportunity that she was so coerced to write Exhibit B. Rather, she reinforced Exhibit B by writing Exhibits D and F, her statement to the police, which is in all areas and ramifications, confessional in nature. This court states that in Exhibit B, she, the Defendant agreed that she stole the said company's money, which is N4,500,000. It is in Exhibit B, as clear as crystal. Also, in Exhibit D, she, the Defendant agreed on the modality on how to refund the said sum of money which said sum. Then, in Exhibit F, which is the Defendant's statement to the police, she voluntarily confessed that she had misappropriated the said company's funds in her possession as she stated it "due to shortages and bad debts". She stated in P.1 of Exhibit F, that "...but, along the line I started having issues with my account company's funds in my possession due to shortages and bad debts and in order for me to be able to continue selling I resorted to borrowing money with interest to depress my account which rather than solve the issue led me into more debts and presently I am indebted to Tivo Corporate Services to the tune of about N4.5 Million. I have debts in the market with customers which is close to a million naira.... I intend to pay up the money gradually as I work from my salary and any other means possible... by law this offence is called stealing (converting) someone else cash....".

Exhibits F was made on the 29th of September, 2019, by the defendant herself, freely and voluntarily. It is in her own handwriting. PW2 says, and this court accepts that her Counsel, S.O. Ukavwe, Esq., was present with her when the said statement, Exhibit F was being made. These are the findings of this Court, and I so hold.

This court has been urged to reject Exhibits C1 – C7 which are electronically generated documents, but they clearly indicate the nature of goods, and, their values which were given to the Defendant from March, 2019 – September, 2019, the relevant period when the Defendant worked with the said Company. The Defendant has lamely claimed that the said monies which ought to have been paid to the said Company's accounts by her as a sales Rep to the company are with customers outside, having been sold on credit, contrary to the said company's policy of No Credit Sales.

However, from the evidence, she claims she had paid the said sum of N1,950,000 back to the said company to one cashier called Avwerusuo or Suo for short. She also tendered Exhibits G and G1 to crystallize that point. When being cross-examined by the Prosecutor, she could not produce any document to show that she had paid the said sum of N1,950,000 back to the company and for which Exhibits G and G1 were tendered to buttress that fact.

This Court has carefully looked at Exhibits G and G1 respectively, scrutinized same carefully. Exhibit G does not represent or disclose such payment. What it discloses is a transfer of N100,000 to the said company, Tivo (for short), and, the balance thereon on that date is N25,051.08. This Court has taken a look at it's file, and observes that the Defendant was charged to this Court on the 23rd of January, 2020. That is, the payment was made after she had been charged to Court.

This Court as presently constituted shows that this matter commenced de novo on the 22nd of March, 2021 before me. So, no such payment of N1,950,000 is reflected in Exhibit G.

Now, to Exhibit G1, it shows a transfer of N50,000 to the said company by the Defendant on the 20th of March, 2021, when this matter was already in Court. The defendant has intended to be clever by half by trying to pay monies into the said company's account after she has been charged to Court. Exhibits G and G1 respectively do not disclose the transfer of N1,950,000. In point of fact, without any support document, this court holds that she has not transferred such sum of N1,950,000 to the Defendant company. She lied barefacedly to this court when she said she did. She even produced Exhibits G and G1 to support her building castles in the air in respect of that contertim.

The law is clear in confessional. In *Ajayi V. State* (2014) All FWLR (Pt. 756) 406 at 418, para E, (Ratio 4), the Supreme Court stated:

"It is the law that there cannot be evidence that is stronger than an accused own direct, positive and unequivocal confessional statement, which alone is on the authorities, sufficient to ground conviction".

See also the cases of (1) *Akeem V. The State* (2018) 277 LRCN 199 (Ratio 5). (2) *Ako V. The State* (2020) 304 LRCN P188 (Ratio 7) and (3) *Oyem V. F.R.N.* (2020) 307 LRCN Pg. 211 (Ratios 6 & 7).

The defendant from her defence tried or attempted to retract her confessional statement, Exhibit F and also by extension, Exhibits B and D respectively. The law on retraction of confessional statements as enunciated by the Supreme Court is this – In *Eyop V. State* (2018) All FWLR (Pt. 962) 1698 at 1720 – Ratio 8. The Supreme Court stated:

"It is trite law that mere retractions of a voluntary confessional statement by an accused does not render it inadmissible, worthless or useless in determining the guilt of the Accused.

This court is so guided. This Court finds that Exhibits B, D and F, her confessional statement especially are admissible, relevant, useful and of course, of high probative value.

There are three modes of establishing the guilt of a Defendant. They are (a) Direct evidence, Eye witness account (b) circumstantial evidence and (c) Confessional statement. See the case of Abirifon V. State (2013) 224 LRCN 1 at 5. This instant case falls on the third mode of establishing guilt equally.

Now, even this court has taken the pain to subject Exhibit F, the confessional statement of further scrutiny as adumbrated in the case of Abdullahi Sabi V. The State (2011) 14 NWLR (Pt. 1268) 421 at 437 – 438. See further the case of Semon Afolabi V. The State (2013) 13 NWLR (PT. 1371) 272 at 324, and of the locus classians on the subject, Dawa V. The State (1980) 8 – 11 SC 236.

The Court has been enjoined to apply the six tests as annunciated in cases, which is the six-test guide. They are (1) Whether there is anything outside the confession to show that it is true (2) Whether the statement is corroborated no matter how slight (3) Whether the tests contained therein, so far as can be tested are true (4) Whether the Defendant had the opportunity of committing the offence (5) Whether the confession of the Defendant was possible and (6) Whether the confession was consistent with other facts which have been ascertained and proved.

Now, this Court applies these six tests to Exhibit F, the document. Outside Exhibit F, there are Exhibits B and D which show that she has also admitted, and undertaken on how to pay for the money which she ought to have paid. Also, it is true by reason of Exhibits B and D, and by virtue of the fact that she admitted that she was given goods and she sold same, and, has failed to remit back the money for goods supposedly sold. The statement, Exhibit F, is corroborated by Exhibits B and D respectively, and, also, the fact that she, the defendant has made vain attempts to pay something, although minimal vide Exhibits G and G1.

The confession, Exhibit F is very possible, because it was freely made by the defendant herself and, in her own handwriting. Her lawyer, S.O. Ukavwe, Esq., was present when it was made, thus complying with S. 17 of the Administration of Criminal Justice Law, Delta State, 2017, and Exhibit F is consistent with other facts such as the Invoices which evidenced that she received goods from her company entrusted in her care and possession, and, then from her evidence before the Court, misappropriated monies which she ought to have paid back to her employer. She is also the employee of the said company.

Proof beyond reasonable doubt as envisaged by the Supreme Court in the case of *Ebeinwe V. State* (2011) All FWLR (Pt. 566) 413 at 425 was stated thus:

“Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice...”

The evidence of the prosecution before this Court is unchallenged. The Defendant herself confessed to the admission of the offence by the combined effect of Exhibits B, D and F respectively. The defendant can even be convicted solely on Exhibit F. See the case of *Ajaji V. State* (2014) All FWLR (Pt. 756) 406 at 418.

The Defendant on the 22nd of November, 2021 while testifying in her evidence in Chief stated “...It is the company’s policy that the goods are not to be sold on credit.... No, I did not sell on credit”. Then, in another breath, she said, some of her customers collected goods from her on credit, and, so, could not retrieve the money from them, because her appointment had been terminated.

Then, while being cross examined on 10th of January, 2022, she said her academic qualification is SSCE, but when confronted with Exhibit F, she then admitted that she is a B.Sc holder.

The Defendant continued to give inconsistent and contradictory statements during these proceedings, all in a bit to wriggle out of herself imposed “wahala” which are Exhibits B, D and F respectively written in her own handwriting. So, her evidence cannot be given any probative value.

In *Ezemba V. Ibeneme* (2004) All FWLR (Pt. 223) 1781 at 1816 para F, the Supreme Court stated”

“No witness who has given an oath two materially inconsistent evidence is entitled to the honour of credibility, such a witness does not deserve to be treated as a truthful witness.”

The Defendant said she had refunded the sum of N1,950,000. That was a bare faced lie. She even stated that she was still owing the company about N1.9 – 2.1 Million. Her evidence refers. Yet, this Court has been urged to disregard Exhibit C1 – C7 and, to hold that she is owning nothing, because doubts exist in the case of the prosecution. That is hardly the case.

In the case of *Ogogovie V., The State* (2017) 263 LRCN 144 at 178, (Ratio 5), the Supreme Court stated:

“It is trite that where a witness (here the accused person) makes a statement which is inconsistent with his earlier statement, such should be treated as unreliable.”

Thus, the Defendant is not a witness of truth. She is an unreliable witness. That is the finding of this Court, and, I so hold. This Court further holds that Exhibits B, C1 – C7, D and F are true, and represents the position of this case. That is my findings, and, I so hold. This Court disregards Exhibit E as it does not pertain to this case.

The Defendant cannot account for goods she collected. She did not pay to the said company the value for the goods so collected. That, is my findings, and, I so hold.

This Court holds that the Prosecution did not withhold evidence, either documentary or otherwise. It also holds that the failure of one Gbenga to testify does not the case of the Prosecution, PW1 is the Chief Executive Officer, the Managing Director and the Chief Financial Officer. He participated in the thorough audit which fished out the Defendant, was present when Exhibits B and D were made. So, he, PW1 cannot be regarded as giving hearsay evidence. He, PW1 is a vital witness to the case of the prosecution and, so gave evidence of his participation in this case as it relates to the Defendant.

PW1 did not have to make any of the Exhibits or sign any of them. Exhibit A could be signed by any of his staff. Exhibits B, D, E and F relate to the Defendant herself. Exhibit C relates to the Defendant, and not PW1. Then Exhibits G and G1 are Defendant's statement of Account. All the exhibits did not concern PW1 or PW2's signatures or endorsement. There is nothing like documentary hearsay in this case. That is my finding, and, I so hold.

This Court further holds from the evidence before it that the Defendant converted the money being the value for the goods she collected. Her personal note which she referred to ought to be personal to her. It is not company's property. She did not sell to customers as she ought to have done. That is the finding of this Court, and, I so hold. She converted monies meant for the company to her own personal use. That is my finding, and, I so hold.

In sum, the prosecution has succeeded in proving it's case beyond reasonable doubt. This court finds that the Defendant GUILTY as charged.

That is the finding of this Court, and I so hold. This Court now understands the ambivalence and prevarication of the Defendant at the inception of this case.

FINDINGS:- This Court finds you, Ngozi Nmazua Agbanobi (f), you are hereby found GUILTY in respect of the One-Count charge of Stealing proffered against you.

Record of Previous Conviction – Nil

ALLOCUTUS – Learned Counsel to the Convict, F.C. Okala, Esq. plead with the Court that the convict is a first time offender, and, that she is a single

mother of three children. And, so refers this Court to temper justice with mercy because of her children.

SENTENCE: - This court has listened very carefully to the plea of allocutus made by the Learned Counsel for the Convict, and, this court reiterates the fact that incidence of stealing is on the rise these days. And, in respect of an employee stealing from the employer, the law places a higher premise, and, frowns at it. Therefore, this court hereby sentence the Defendant to a term of One year six months imprisonment without option of fine.

Prosecutor- I apply for the restitution of the money as contained in the charge.

Okala, Esq. - I urge the court to still look sympathetically at this issue.

Consequential Order - This court hereby Orders that the Convict shall pay the sum of N4,476,456.64K, which is N150,000= less than the sum of money as reflected in the charge which is N4,626,456.64k. In the event of the Convict paying the sum of N2,600,000 being the first transfer of money to be paid, the Nigeria Correctional Centre, the Custodial Centre shall effect the release of the Convict, thereafter, the Convict shall pay to the nominal complainant company the sum of N150,000= monthly, until final liquidation of the whole sum of money.

Dated at Effurun this.... ^{8th}..... day of June...2022.



E.A. ODJUGO, ESQ.
CHIEF MAGISTRATE
(SPECIAL GRADE)