

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 TUESDAY THE 16TH DAY OF AUGUST, 2022.

CHARGE NO: ME/32C/2020

BETWEEN:-

**COMMISSIONER OF POLICE
AND**

OHWOVIRORO OKEOGHENE ANITA (F) ...

...

...

COMPLAINANT

DEFENDANT

JUDGMENT

The Defendant was arraigned before this Court on the 9th of February, 2021, on a two-count charge of stealing various brands and models of phone as itemized in count I of the charge amounting to the sum of N2,560,000 (Two Million, Five hundred and sixty Thousand Naira only) properties of one Oshilim Ishioma Rosemary, between 17th day of May, 2019 to 30th of September, 2019 an offences punishable under Section 390(6) of the Criminal Code Law, Cap C21, Vol. 1 Laws of Delta State of Nigeria, 2006. Then, in Count II of the charge, that the Defendant at the same time, date and place did convert to her personal use the proceeds from the sales of MTN, GLO, AIRTEL and 9 MOBILE recharge cards of about the sum of N1,575,645= (One Million, five hundred and seventy five thousand, six hundred and forty five Naira only), and thereby committed an offence punishable under Section 390(6) of the criminal code law, supra.

The Defendant pleaded NOT GUILTY to this two count charge. PW1 is Oshilim Ishioma Rosemary, while PW2 is W/Inspector Onah Edith. The Defendant testified as DW1, while one Mr. Godwin Ohwoviroro, testified as DW2.

PW1's testimony discloses that her shop is located at G21, Robinson Gbaji Shopping Mall, PTI Junction, Effurun, and, also that she works with MTN Nigeria, a Commercial firm. She stated that she does business at the said shopping mall. She stated that the Defendant is her sales Representative. She stated that she employed the Defendant on the 11th of April, 2019, but she resumed on the 17th of May, 2019 to the 30th September, 2019.

PW1 stated that on the 30th of August, 2019, the Defendant informed her that she would be going back to school. PW1 also stated that she informed the Defendant of the need for an account reconciliation of what was in her possession, and, also obliged the defendant of her request to go back to school.

PW1 stated that the said shop is divided into four sections namely (i) Registration centre where customers register their Sim cards (ii) Customer relationship section, where issues are resolved, and, lost lines recovered (iii) The card section, which comprises of recharge cards of service providers namely MTN, GLO, AIRTEL, ETISALAT and 9 MOBILE recharge cards and (iv) Phones and accessories where the Defendant manages.

PW1 also stated that the defendant manages the proceeds that comes from the sales of recharge cards, and, thereafter, they remit the said monies realized to her PW1's account. PW1 stated that she requested the Defendant for the account reconciliation within two weeks, but, the defendant informed her that she was going to school for clearance, and, that the defendant requested for two weeks, which she PW1 obliged her. According to PW1, The Defendant came after two weeks following calls, and, when requested for the said account reconciliation, she claimed that she was ill. PW1 state that she, PW1, then gave to her an additional weed, and, also gave to her the sum of N3,000 for test, and, for her health. PW1 stated that she called her again after one week when she did not come, and, the defendant claimed she was still ill, and, so, she, PW1 gave her an additional two days. PW1 informed this court that, thereafter she got a test massage from the Defendant informing her that she could no longer work with her PW1, because, she, the Defendant was tired. PW1 stated that she informed the defendant that the account reconciliation must be done before she opted out of work.

According to PW1, the next day, PW1 came with two people whom she introduced as her Uncle and her Pastor, and, this made her, PW1 to be confused and bothered about the issue. pw1 then stated that the pastor then narrated to her, how the Defendant's father had sent them to her to plead with her since the Defendant was ill, and, also, how she, PW1, had informed them of the account reconciliation which she requires.

PW1 stated that she told them that if there was the need for any plea, then they would come to that. She then stated that she gave all her record books to the Defendant to enable her carry same home, and, at her own convenience, carry out her own personal reconciliation of accounts. PW1 stated that she gave the Defendant one week to do that.

PW1 informed this court that after one week when she called the defendant, the Defendant told her that she had gone back to school, and, so according to PW1, she was then compelled to report the matter to the Nigeria Police, Ebrumede Police Station to avoid taking laws into her hands.

According to PW1, the Police Officers invited Defendant's father, who claimed that she was not around, but, promised to bring her to the police station, which we eventually did. PW1 states that it was at the police station that the Accounts reconciliation was inevitably done.

PW1 stated that before the said reconciliation, she had written out several phones which were missing in the shop, and, then referred to her statement to the police, which she said carefully itemized the said missing phones, with the value stated to be the sum of N2,560,000=.

PW1 then stated that on the card section, she discovered that the sum of N1,575,645= was missing from the money remitted to her from the sales rep in charge of that section. PW1 stated that she beckoned on the sales rep of that particular department to give a detailed account, which she did, and, this was documented at the police station.

According to PW1, the sum total from the general and phone accessories amounted to over the sum of four million naira. PW1 stated that before the second reconciliation could be concluded, the Defendant asked for more time, and, eventually the second reconciliation were concluded after two weeks.

PW1 stated that her own reconciliation is what she had given to this court, while, the Defendant, from her own reconciliation could not account for over the sum of N1,553,000.

According to PW1, when the DPO, Ebrumede requested that the defendant should produce the missing money which she had accepted the Defendant who was accompanied by her father, two uncles and their landlord started to plead with her for time to look for the said sum of monies for which she had accepted.

PW1 told this court that she then told them that that was not the exact sum of money involved. PW1 then stated that the Defendant then agreed to pay the sum of N400,000 out of the money which she had agreed to pay. PW1 then stated that she then accepted the sum of N400,000= and then requested for her balance. According to PW1, they pleaded for another two weeks to look for the balance, to which she, PW1 agreed.

After two weeks, they requested for an extension according to PW1, and, for which she gave, until, she eventually reviewed court processes from the High Court, Effurun, touching in infringement of the Defendant's fundamental rights.

PW1 stated that she had been insisting that this matter be charged to court. She stated that she made a statement to the police. She also referred to receipts and account reconciliation book tendered in earlier proceedings before this court Exhibits A1 – A27 are receipts of the phones bought. Exhibit B is the reconciliation Book.

Then under cross examination, she, PW1 referred to the four sections which have Sales representatives. She stated that one Tekevwe, a Sales Rep who heads the Recharge card section. She also stated that one Confidence took over from the defendant.

PW1 stated that the daily sales were remitted to the Defendant who in turn was to remit such sales monies realized into her PW1's account. PW1 stated that there was shortage from the recharge card section. PW1 stated that she reconciled the stock available, and, the money remitted by Tekevwe, the sales Rep in charge of cards.

PW1 stated that she knows how much was remitted to the Defendant, and, that the information is written in her statement. PW1 stated that she knows how much the Defendant paid into her account which said information is contained in her statement.

PW1 stated that she knows the opening stock available as well as the closing stock, and, that, these facts are contained in her statement to the police. PW1 stated that the Defendant was an OND Holder when she took up appointment with her, but, then expressed her desire to pursue her HND programme. PW1 mentioned that the total shortage mentioned include shortage on recharge cards.

PW1 stated that when the Defendant was going back to school, the defendant took stock with Tekevwe, and, there, it was discovered that monies were missing from June, 2019 to September, 30th, 2019. PW1 stated that they all did the stock together at the police station. PW1 stated that the Defendant refused to come to the office for reconciliation.

PW1 stated that the Defendant worked for her from April 11th 2019, but resumed in May, 2019, a period of less than six months. She stated that the Defendant. PW1 stated that the Defendant told her that she was going to school for clearance in school.

PW1 stated that the Defendant was in charge of phone accessory section, and remittance of money from the other three sections in her shop, and then pay to the Bank. PW1 stated that the Defendant was also in charge of sale of recharge cards. PW1 stated that the Defendant does not manage the other three Sections.

PW1 stated that a pastor accompanied the Defendant to her shop, and, then pleaded with her to oblige the defendant with two weeks to carry out the account reconciliation, and, for which the Defendant did not come, and, so, ultimately, a report was made to the police.

PW1 stated that she had been communicating with the Defendant on phone several times, but, she claimed that she was ill. PW1 stated that she even gave the Defendant N3,000 to do a test and take care of herself. PW1 stated that when she called again, the Defendant informed her that she had gone back to school, and, that she, the Defendant ought to have reported back to her before going back to school for the said reconciliation of the accounts.

PW1 stated that the father of the Defendant brought the Defendant to the police station, and, there the reconciliation was done, and, two weeks extension was given to the defendant to reconcile her own part of it, which she, PW1, obliged.

PW1 explained to this Court that during the reconciliation, the Defendant and herself were present. She, PW1 stated that the IPO was not present. PW1 stated that it was not at the police station that she said that the sum of N2,560,000 was missing.

PW1 stated that the sum of N400,000.00 was handed to her by the DPO, Ebrumede, after the reconciliation, and, that from the defendant's reconciliation, she agreed that the sum of N1,500,000 plus was missing, she stated that the reconciliation papers show the exact amount missing, and, which is contained in exhibit B, and, in the Defendant's own handwriting. PW1 stated that she, PW1, also has her own reconciliation in Exhibit B. PW1 stated that the father of the Defendant did not insist for an internal auditor. She, PW1 stated that the DPO, Ebrumede was the person who stated that he would bring in an external auditor into the case on neutral grounds if that was the case.

PW1 stated that in relation to what the Defendant admitted to, the Defendant's father, her two uncles and her landlord pleaded with her, PW1, for time to pay the money and she agreed. She further stated that it was not after the

refusal of an external auditor to be brought in, that an application for enforcement of fundamental rights was instituted in court.

PW1 stated that the defendant carried out her own reconciliation process at the Ebrumede police station, since her (PW1's) own reconciliation was brighter than hers (the Defendant).

PW1 stated that that sum of N400,000 was paid pursuant to the defendant's own reconciliation. PW1 stated further that before she went to the police station, she took an inventory which is as contained in Exhibit B. PW1 stated further that it was from the Defendant's book, her records at the shop, that, she PW1 took inventory. Furthermore, that she has an app in the system with which she used in recording every stock that comes in and goes, and also sales that come in and go out. PW1 further stated that it was the Defendant herself who printed them, and from there, the reconciliation was done.

PW1 stated that the Defendant was present when the reconciliation took place. Furthermore, that, they took stock. She stated that she gave to the police a copy of the print out with Bank Statement, and, then they did plus and minus, and, then they did plus and minus at the police station using the Bank statement and the print out for stock and sales.

PW1 stated further that it is not true to say that the defendant carried out her reconciliation at the Ebrumede Police Station, because, after, she that is, PW1 reported the case to the police, then, she the Defendant requested for two more weeks, because, she had told the DPO, Ebrumede, that she was ill, and so was given extra two weeks to do her own reconciliation from her house and, for which the DPO, Ebrumede, obliged, and, she, PW1 obliged.

PW1 stated that the Defendant's own reconciliation is contained in Exhibit B. She, PW1 reiterated that the Defendant did not carry out her reconciliation at the Ebrumede Police Station.

She states that the name of her company is Agowin Communication which is an MTN Data shop, and, that it is franchised. There was no re-examination.

PW2 is W/Insp. Onah Edith with AP No. 238904 attached to Ebrumede Police Station Divisional Headquarters, Effurun. She is the Investigating Police Officer of this case, and, knows both parties.

PW2 narrated to this Court how on the 10th of October, 2019 how this case was reported at the said police station by PW1, and, how she was detailed to investigate the allegations against the Defendant. PW2 stated that she recorded

statement from PW1 and then the Defendant made a statement, after she was arrested. PW2 stated that, after the defendant was arrested, she, the Defendant was then given time to report back to the police station, but, surprisingly, instead of coming back to the police station, after been given two weeks to reconcile the account, she went ahead to institute an action against PW1. PW2 also stated that the Defendant claimed that she was ill, and, thereafter, after her re-arrest, she, the defendant, was then charged to Court.

PW2 stated that when the Defendant was given the extra two weeks for accounts reconciliation, she, the Defendant came back with her notebook, with which she, the Defendant did her own account.

PW2 stated that the Defendant was employed, and, was in charge of daily sales, phones and accessories; and, then to remit to the account of PPW1. According to PW2, before the month of September, 2019, she the Defendant told PW1 that she was going to school for her clearance, and, then refused to turn up for account reconciliation as requested by PW1. PW1 stated that during the reconciliation of accounts, the sum of N2,450,000= (Two Million, Four Hundred and Fifty Thousand Naira was found missing in the account of the Defendant for daily sales, phones and other accessories, and, that the details are as contained in the charge sheet before the Court.

According to PW2, during the investigation, the parties were given time, and later on, according to PW2, PW1 then informed her that the Defendant had given to her, PW1 the sum of N400,000, and, for which she recorded the said sum of money as exhibit, which was later released on Bond to PW1.

The statement of the Defendant is Exhibit C before this Court. Thereafter, according to PW2, one Ogououmu Onyeka, who was an employee of PW1 made a statement to the police. The Statement of the said Onyeka is Exhibit D before this Court.

PW2 stated further that the sum of N2,560,000 (Two Million, Five Hundred and Sixty Thousand Naira only) which appears on the charge sheet has not been paid.

Under cross examination, PW2 stated that she investigated this case, and, then put up an Investigation Report at the end of the investigation. P[W2 stated that the properties as mentioned in the charge are properties of PW1.

PW2 stated that PW1 gave to her receipts which are exhibits A1 – A27. She stated further that Exhibits A12, A13, A18 and A24 bear the name Agowin,

which is the name of PW1's husband, as told to her by PW1. PW2 stated that the scale of crime is the particular shop where the said items got stolen, and, it is at Gbagi shopping Mall, PTI Junction, Effurun. Furthermore, that the particular shop is Agowin Data Shop, operated by PW1, the same shop that the Defendant was working. Furthermore, PW2 stated that the defendant was employed by PW1 to work for her.

PW2 stated that it was in that same shop that the accessories were stolen. PW2 then gave details of the content of Exhibits A1, A2 and A5 respectively. PW2 stated that the sum of N400,000 was not paid to the DPO, Ebrumede. PW2 reiterated that the Accounts reconciliation was not done at the Ebrumede Police Station, since they were given two weeks extra to do that. In respect of Exhibit C, PW2 stated that though the maker, Onyeka stated that a reconciliation took place at the police station, that, that was not the correct position of things.

There was no re-examination of PW2 that was the case for the Prosecution. The Defendant then testified in this court as DW1, and thereafter, her father, one Owhoviroro Godwin testified as DW2.

The Defendant, DW1 stated that PW1 is her former boss, and, that PW2 is the IPO. She denied stealing phones and accessories or converting properties to proceeds for her personal use. She stated that PW1 was her boss at MTN Data shop at Agowin Communication Nig. Ltd., and, then she worked there from 11th of April, 2019 to 30th of September, 2019, before she left for school. She stated that she did not work for Oshirim Isioma Rosemary's Shop, but, worked at MTN Data shop, Agowin Communication Nig. Ltd, which is located at Robinson Gbagi's Mall, PTI Junction, Effurun.

DW1 stated that she was the Sales Rep in charge of phones and accessories as well as remittance of recharge cards sales. She stated that there was no stock or inventory taken by PW1 she stated further that before she took over, there was no inventory taken by PW1. She also denied refusing to render account as requested by PW1, before going to school.

She stated further that she prepared the account herself, then presented it to PW1, who rejected it. She stated, that, she then suggested to PW1 that an external auditor be brought to audit the account, but, PW1, still refused.

DW1 stated that she finally rendered an account at the Ebrumede Police Station on the 11th of October, 2019. She said PW1 and PW2 were there when she was rendering the account. She said her father was also there, but, did not witness the account reconciliation.

DW1 stated that she was not arrested, because, PW1 and PW2 went to her father's place of work, and, then requested for her presence, which, she then honoured.

DW1 stated that she did not admit stealing the sum of N1,553,000= or any other sum of money. DW1 stated it was PW1 and PW2 who asked her to write that that was the amount she had stolen or misappropriated in the notebook, Exhibit B.

She stated that she refused to write the amount in her statement. DW1 stated that she showed the account which she did to PW2, the IPO, but, she rejected it. She stated that she made a statement. Also, she stated that she was not granted bail immediately.

DW1 stated that she was requested to pay the sum of N400,000= as part payment of the sum of money allegedly stolen. She said that her father then went round looking for the money, and, then her father gave the said sum of money to the said DPO, Ebrumede.

According to her, the DPO, Ebrumede, then instructed PW2 to count the said sum of money, which she did, and, then the said sum of money was handed over to PW1, before she was then granted bail. She stated that it was the same day that she wrote her statement that she was granted bail.

DW1 stated that she filed an application for enforcement of fundamental rights against PW1 and the police, and, that, it was in the course of hearing the matter, that, she was then re-arrested, and, then charged to Court.

Under cross-examination, she stated that she started working with PW1 on the 20th of April, 2019 up till the 30th of September, 2019. DW1 stated that in her statement, she stated that PW1 is her boss, and that she worked at MTN Data shop – Agowin Communication Ltd., where PW1 was her boss. She further stated that PW1 is her boss, and, that she was employed by Mrs. Rosemary Oshilim, PW1.

DW1 stated that she went into negotiation with PW1, and, then paid the sum of N400,000= as part-payment of the alleged stolen amount of N1,553,000=, and, some fraction. She stated that the said sum of N400,000= was meant to defray from the amount missing, and, furthermore, that, it was a condition for her bail.

DW1 stated that she was in charge of sales of phones and accessories as well as remittance of recharge card sales. She stated that when she assumed

duties, she did not take inventory of the whole items in the shop. DW1 stated that she did not know the goods that were in her possession but, just carried out sales. She was not in charge of phones and accessories, but, only in Sim registration, and, when another person was employed to do so, she was then moved to phones and accessories.

DW1 stated that whenever PW1 bought goods, she DW1, would then write down what PW1 had bought, then after sales, remit when she had sold, back to PW1. So, according to DW1, she knows the items in her possession, which she then sells, and then remit back to PW1.

Dw1 stated that PW1 brought an accountant to give her some training using a software programme called "Busy". She denied the suggestion that it was when items were missing in her possession that she then said she was going back to school. DW1 stated that she told PW1 that she would be resigning her position, and, then go to school. She stated that she told PW1 that she would go and do her clearance at Oghara where she did her ND Programme.

DW1 stated that it was after she come back from Oghara that PW1 noticed the theft. PW1 stated that she was invited for audit reconciliation before she left for school. She stated that she presented her report to PW1, who rejected it.

DW1 stated that the account reconciliation which she did correlated with the items in her possession. She said that she was forced to pay the sum of N400,000= by PW1 and the DPO, Ebrumede, as part payment of the alleged sum of money missing.

DW1 stated that she did not plan with PW1 to allow her pay the sum of N700,000= to enable this matter to be sorted out. She stated that it took her about one week to do the reconciliation, and, that, she fell ill within the said period.

She stated that she did her account reconciliation at the Ebrumede Police Station after she was invited by the police. She stated that PW1 and herself then did their reconciliation at the Ebrumede Police station, and, after that, she paid the sum of N400,000=.

DW1 stated that she told the court that PW1 has been so good to her, and, had never treated her wrongly before, until, she discovered that her money was missing. She stated that no inventory was taken.

There was no re-examination. DW2. Ohwoviroro Godwin is the father of DW1, the Defendant. He told this Court that he knows PW1, PW2 and the

Defendant, DW1. He also stated that his daughter, DW1 worked with MTN Date shop, Agowin Communication Ltd. From 11th April, 2019 to 30th of September, 2019, before leaving for school. According to him, DW2 told his daughter to render an account, but the defendant requested for time to enable her settle down in school, but, then, fell ill. He then narrated to this Court how, himself, DW2, then went in the company of his pastor to request from PW1 of the need to engage an external auditor to audit the account, but, she, PW1 refused. He then narrated to Court how he brought his daughter, DW1, to honour the invitation by the Police.

DW2 then stated that PW2 in the presence of PW1 then requested that his daughter, renders the account in an office, and, he, DW2 was not allowed in . Neither was he there when DW1 made her statement. DW2 then narrated to Court how PW2 informed him that he, DW2 must make a deposit of N400,000= before his daughter would be released on bail. He stated that PW2 then took his daughter and himself to the DPO , and, thereafter, the DPO gave the money to PW1.

DW2 stated that he was not happy with the way his daughter and himself were treated at the police station. He said that his daughter, DW1, then filed for enforcement of fundamental rights at High Court No. 2, Effurun, and, then during the pendency of same, the Defendant was then charged to Court.

Under cross examination, he said that it was his daughter who worked with PW1, and, would not know what transpired.

DW2 stated that initially, his daughter told him that it was the sum of N2.5 Million that she was alleged to have stolen, but, upon reaching the Court, the money was over N4 Million.

DW2 stated that he was compelled to pay the said sum of money, that is, the sum of N400,000=. He denied making any plea of N700,000= to resolve this matter. He stated that he did not visit his daughter when she was working with PW1, and, that he does not know where the shop is, or what the stock or the shop is. He said his daughter was released to him on the same day that he came to the police station with her. He stated that he was not aware of any maltreatment of his daughter by the Police Officers.

DW2 stated that PW2 refused to take his statement. He said that the suit at the High Court, Effurun is still pending. He stated that the issue of external auditor was not raised before the DPO any longer.

There was no re-examination, and, that was the case of the Defence.

In the written Address, the Learned Counsel to the Defendant submitted two issues for determination, viz:

- (1) Whether the Prosecution has been able to prove the counts of stealing and conversion against the Defendant beyond reasonable doubt to warrant a conviction in this charge, and, if not
- (2) Whether the defendant is entitled to an acquittal in the circumstances.

On issue one, this Court was referred to the case of *Ademu V. The State* (2016) All FWLR (Pt. 826) 517 on the meaning of proof beyond reasonable doubt. Also, the case of *Okashetu V. The State* (2016) All FWLR (Pt. 861) 1262 at 1287 para F-H, was cited to show that the prosecution must prove the ingredients of the offence as charged.

The case of *Okoroji V. The State* (2001) FWLR (Pt. 77) 871 was cited on what the prosecution must establish in relation to an offence of stealing. It was further submitted that the evidence led by the prosecution with reference to the charge are at variance with one another, with particular regards to ownership of the goods stolen, and exhibits A1 –A27. The case of *Oyesonmi J. Akinlemibola V. C. O. P* (1976) 1 NLR 349 was cited and relied upon in support. Furthermore, it was buttressed that PW1 was unable to list the actual items allegedly stolen as contained in Count I of the charge, as well as the fact that the prosecution failed to tender PW1's statement to the Police.

On the recharge cards, it was stressed that PW1 did not give a breakdown as to how monies from MTN, Airtel, GLO and 9 Mobile recharge cards were found missing. Furthermore that Bank Statements, stock book or Account books or printout of recharge card sales were not tendered in court.

So, according to the Learned Counsel to the Defendant, this Court should not speculate. The case of *Archibong V. Ita* (2004) All FWLR (Pt. 97) 930 was cited in this regard. Therefore, according to the Learned Counsel to the Defendant, it is submitted that the failure of the prosecution to tender the aforementioned documents amounts to withholding evidence within the contemplation of Section 167 (d) of the Evidence Act, 2011 as amended. The case of *CBN V. Archibong* (2001) FWLR (Pt. 58) 1032 was cited in this regard.

Then on Exhibit B, the Reconciliation Account Book, it was submitted that the Defendant in her testimony as DW1 stated that she was compelled by PW2,

the IPO in the presence of PW1 to write same. Exhibit D was also referred to, in order to show that Exhibit B was written or done at the police station.

Reference was made to the testimony of PW1 where she, PW1 stated that the reconciliation process took place at the police station, and, then, the defendant was given two weeks extra, to do the reconciliation, and, that, the IPO, PW2 was not present.

It is submitted that there are inconsistencies in the case of the prosecution. The case of *Dogo V. The State* (2001) FWLR (Pt. 39) 1388, *Musa V. The State* (2021) 12 NWLR (Pt. 1790) 268 at 288 and others cited in this regard.

Then, on Exhibit D again, it was submitted that DW1 vehemently denied Exhibit B. This court was also urged not to pick and choose evidence. The case of *Musa V. The State* (2021) 12 NWLR (Pt. 1790) 268 at 288 was cited and relied upon.

It was further submitted that the defendant was compelled to make the Account reconciliation in Exhibit B, and, that she was also subsequently forced in parting with the sum of N400,000= as a condition for her bail.

It is submitted that the police are not debt collectors, and, that Exhibit B was an undertaking to that effect.

The case of *Nwadingwu V. IGP & Ors* (2015) LPELR – 26027 (CA) and *Onagoruwa V. IGP* (1991) 5 NWLR (Pt. 195) 593 (CA) were cited and relied upon on the issue of Police not being debt collectors.

It was further submitted that the evidence before the court contains inconsistencies. Then, on the software programme called "Busy", it was submitted that this court should involve the provision of Section 167 (d) of the Evidence Act, 2011 as amended, since no bank statements were tendered. The case of *I.B.N. Ltd. V. Attorney General, Rivers State* (2008) All FWLR (Pt. 417) 10 was cited in respect of speculation. It was also submitted that count II was unnecessarily brought. Then on issue two, this Court was to discharge and acquit the Defendant in the basis of glaring inconsistencies, material contradiction and a fabrication against the Defendant. A frame up. This Court was finally urged to discharge and acquit the Defendant.

It is incumbent upon the prosecution to prove it's case beyond reasonable doubt. The case of *John Ogbunbujo & Anor.* (2001) 2 ACLR 522 at 528 refers. See further Section 135(1) of the Evidence Act, 2011, as amended. See *Obilum Anekwe V. The state* (1998) 1 ACLR 426 at 434.

There are three modes of establishing the guilt of a Defendant. These are (a) Direct evidence (b) circumstantial evidence (c) confessional statement. See the case of Abirifom V. The state (2013) 224 LRCN 1 at 5. See also Samson Emeka V. The state (2012) 9 ACLR 401 at 421.

The burden of proof in this instant case rests with the prosecution, and, the prosecution must prove every ingredient of the offences as contained in the charge beyond reasonable doubt. The case of Obriki Kingsley. V. The State (2010) 6 NWLR (Pt. 1191) 593 at 601 – 610 refers. See further the case of Yongo & Anor. V. C.O.P. (1992) 8 NWLR (Pt. 257) 36 at 50.

This Court also agrees and accepts that the prosecution has to prove the ingredients of encapsulated or stated in the case of Okoroji V. The State, supra, as cited by the Learned Counsel to the Defendant. This Court also refers to the case of Dr. Olu Onagoruwa V. The State (1993) 7 FWLR (Pt. 303) 62.

Counts I and II of the charge deal with the offence of stealing. Furthermore, issues numbers I and II, can be conveniently compressed into a one flowing issue and resolved accordingly. This Court also observes that the arguments of the Learned Counsel to the Defendant touched on Counts I and II together.

From the evidence before this /court, the Defendant worked with PW1 for a period of six months plus from 11th of April, 2019 to the 30th of September, 2019, before she, the Defendant opted for going back to pursue her education in school. Also, from the evidence, the Defendant was a sale Representative in charge of phones and accessories, as well as managing the proceeds that comes from sale of recharge cards, and, then remit the monies so realized to PW1's account. The evidence of PW1, PW2, and DW1, the Defendant herself concur on this. Thereafter, from the evidence, PW1, then requested the Defendant to do an account reconciliation within two weeks. Before going back to school.

The evidence of PW1 shows that the Defendant did not do this account reconciliation despite being given enough time to do so. PW1 stated that the Defendant claimed she was ill, and, so did not do it, and, after an inordinate period of time, was forced to go to the police to report.

The Defendant, DW1 in her defence, and, in her testimony before the court told this Court that she prepared that account herself, presented same to PW1, who rejected same. Her statement to the police, exhibit C, which was voluntarily made states at page 2 thereof.

“...she made this complaint because she thought I was just making excuses but whereas I am really sick and still recovering and that’s why I have not been able to give the reconciliation of account”.

As can clearly be seen, there was no mention of the Defendant stating that she prepared an audit reconciliation which was rejected by PW1. So, this Court is satisfied that there was no audit reconciliation made by the Defendant before this case was reported to the police by PW1. Furthermore, the request which DW2, the father of DW1 said he made for an external auditor was rejected according to DW2 by PW1 also falls flat on the face. It should be recognized that DW2 did not make a statement to the police. And, from his evidence, he knows absolutely nothing about the working relationship between PW1 and DW1, the Defendant. So, this Court shall not accept that testimony from DW2 on that score.

Also, the Defendant claimed that she was ill, hence, she could not do the said reconciliation. She also mentioned that in her statement. However, there has been no documentary evidence or a medical report proffered before this Court to convince or persuade this Court that, indeed, that was the case.

It is the failure of the Defendant at that material part in time to render that audit reconciliation which necessitated the report to the police by PW1, and, which triggered this matter.

Then, flowing from the evidence, unchallenged, is the fact that PW1 stated that she gave all her record books to the Defendant to enable her carry same home, and, at her own convenience, carry out her own personal reconciliation of accounts which she, the Defendant never did, despite, being given time. That fact has not been controverted by the Learned Counsel to the Defendant.

Also, unchallenged is the fact that PW1 stated that she itemized the missing phones and accessories valued at N2,560,000=, and, on the card section discovered the sum of N1,575,645 missing in her statement. Now, more importantly from the evidence before this Court, still unchallenged in the fact that there was a second reconciliation. PW1 stated that her reconciliation is that there was a second reconciliation. This second reconciliation comes, flowing from the evidence or PW1 which she mentioned. PW1’s reconciliation of over four million plus has been alluded to, and, referred to the learned counsel in this Court. It is this second reconciliation that is now being attacked, for which the Defendant paid the sum of N400,000= pursuant to.

From the evidence, it is agreed that Exhibit B is the reconciliation Account book. The defendant, DW1, stated that she was compelled to write same, simply

because part of the reconciliation of the accounts took place at the police station, Ebrumede which constituted part of the investigation by the police. From the evidence, PW1 stated quite equivocally that it was herself and the Defendant who carried out the audit reconciliation, albeit in an office at the said Ebrumede Police Station. PW2, the IPO stated that it is the Defendant who fed entries is exhibit B.

A critical look at Exhibit B shows monies collected from the months of June, 2019, July, 2019, August 2019, and even September, 2019. The total money collected for recharge card is stated there. The recharge card money not recorded by the Defendant is stated. Then, the total amount of money from June, 2019 to August, 2019 which is the total sum of N1,575.645 is stated therein. The remittances are there which consist of deposits, transfers, Rewjido POS transactions, total stock are all there.

There was heavy weather made about the fact Bank statements, stock book, Account Book or any printout of stock were not tendered before this Court. Exhibit B quietly answers that query Entries in Exhibit B were written or made by the Defendant. The Defendant has not demonstrated to this Court how she was compelled by the IPO, PW2 or PW1 to write so many figures spanning up to fifteen pages of transactions and updates in Exhibit B in a few hours in one day at the police Station.

It should be recalled from the evidence of PW1 in particular that she gave all the records to the Defendant to do her own personal reconciliation, but, she failed to do so. Then, even after the report to the Police, she, the Defendant was given an extra two weeks to do her own reconciliation. She came back, did her own reconciliation, and, she could not account for N1,575,645k, which she wrote in her own handwriting, and, in the convenience of her home or place, and, then claim, lamely that she was compelled to do so.

That cannot be in light of the glaring evidence before this Court. There was no involuntariness on her part when she wrote that figure or amount of money not recorded and or missing. Even, at this point of second reconciliation. PW1 also accepted, and, for which the sum of N400,000= was paid out to PW1, albeit at the Police Station, Ebrumede.

What is left is that the Defendant claim that the said sum of money was a condition for her bail.

PW2 told this Court that that sum of money was recorded as an exhibit at the Police Station, for which a Bond was entered into. PW1 collected that said

sum of money via the bond. This Court has searched very hard for compelling evidence that this said sum of money was forcibly paid by the Defendant to PW1. Regrettably, none. This is strengthened by the fact that neither the Defendant nor her father, DW2 complained that an extra kobo was paid to any of the police officers. From the evidence before Court, it was the Defendant who with deliberateness refused to carry out the said audit reconciliation account when requested to do so by PW1. Then, after admitting in Exhibit B of her inadequacies and the fact that she cannot account for the said sum of money missing, then, turns around, to say that she was compelled to pay N400,000= out of the said sum of money which the said defendant admitted that she could not give an account of, and, that it was indeed missing.

Even Exhibit D which the Learned Counsel to the defendant alluded shows clearly and unequivocally that Onyeka, the maker, stated that he was aware that the reconciliation was done at the Police Station. Also, beyond doubt, that, he too acknowledged the fact at P. 2 of Exhibit D thereof that the Defendant after the reconciliation had a deficit of N1,553,154 from her own record unaccounted for, which she, the Defendant accepted.

So, why the hullabaloo? Yes, part of the account reconciliation took place at the Police Station, Ebrumede. But, there was no form of involuntariness in making same, Exhibit B. It must be pointed out that Exhibit B is the Defendant's own records, and, in her own handwriting.

PW1 has magnanimous in accepting the Defendant's own figure arising out of the Defendant's own personal account reconciliation. The defendant has started by making a payment of N400,000= out of it. That is the finding of this Court, and I so hold.

This Court must point out that the Police Officers, namely the DPO, Ebrumede and the IPO, did not act as debt collectors. From the evidence, the Defendant herein was not indebted to PW1. Founded on criminality vide Exhibit B.

Then on Exhibit A1 – A27, they are all referable to PW1. The Defendant herself stated that PW1 is her boss and employed by her. Besides, PW1 explained to this Court that she has a franchise with MTN.

DW1, the Defendant even told this Court under cross examination that the account reconciliation which she did correlated with the items in her possession. She also stated under cross examination, that she was employed by Mrs.

Rosemary Oshilim, the PW1. The receipts Exhibits A1 – A27 are referable to PW1.

From the evidence before the Court, the prosecution has succeeded in proving its case against the Defendant in respect of Count II only. That is the finding of this Court, and, I so hold.

In respect of Count I of the charge, by reason of the fact that PW1's statement to the police was not tendered, though she made allusion to it in her testimony, this Court is of the view that that Count cannot stand. More so, in view of Exhibit B, which points irresistibly to Count II of the charge. So, in respect of Count I of the charge, she is discharged and acquitted. But, in respect of Count II of the charge, she is find GUILTY as charged.

FINDINGS OF COURT – This court finds that the defendant is find NOT GUILTY in respect of Count I of the charge, and, she is therefore discharged and acquitted of same. But, in respect of Count II of the charge, she is find GUILTY in respect of same.

RECORD OF PREVIOUS CONVICTION – Nil.

ALLOCUTUS – The Convict says she is a spinster, a student at the Delta State Polytechnic Ogwashi-Uku, HND, and she pleads for leniency.

SENTENCE – This Court is of the view that an employee should concentrate and manage the work that she was given to do conservatively and competently . This Court is of the view that the Convict is a first offender, a student and therefore this Court shall temper justice with mercy. In respect of Count II of the charge, the Defendant is hereby sentenced to a term of imprisonment of one year or to pay a fine of N30,000= in lieu thereof. Sentence to run from today.

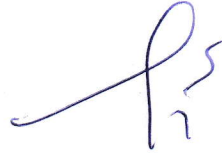
Prosecutor – I apply to Court for restitution, that is for payment of N1,575,645 less N400,000=, a balance of N1,175,645=.

Ikimi, Esq. – The father of the Convict is a pump attendant, and, so I prefer N100,000 monthly payment.

CONSEQUENTIAL ORDER – This Court hereby Order the Convict to pay the said sum of N1,175,645= outstanding and due to PW1, Mrs. Rosemary Ishioma Oshilim in the following manner. The Convict shall pay a sum of N350,000 as down payment, and, thereafter monthly, the sum of N100,000= until

the whole sum is liquidated. The said monthly payment shall take effect from every 30th of each every month beginning from the Month of September, 2022.

Dated at Effurun, this 16th day of Aug 2022.



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

