**IN THE FEDERAL HIGH COURT OF NIGERIA**
**IN THE SOKOTO JUDICIAL DIVISION**
**HOLDEN AT SOKOTO**
**ON THE 22ND DAY OF JULY, 2022**
**BEFORE HIS LORDSHIP THE HONOURABLE**
**JUSTICE AHMAD G. MAHMUD**
**(JUDGE)**

**SUIT NO: FHC/S/23C/2022**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA ............................ COMPLAINANT**
**AND**
**1. UMAR MOHAMMED**
**2. DARAJA MOTORS .............................,,,..... DEFENDANT**

**JUDGMENT**

1st and 2nd Defendants were arraigned before this court on one count amended charge dated 27/6/2022 for the offence contrary to section 5(1-5) of the Money Laundering (Prohibition) Act 2011 as amended in 2012. The Defendants were allegedly failed to submit a declaration of customer identification and returns on transactions to the Special Control Unit against Money Laundering (SCUML) in contravention of section 5(1) –(5) of the Money Laundering (Prohibition) Act 2011 as amended in 2012 and punishable under section 5(6)a of the same Act.

Initially, Defendants were arraigned on 24/06/2022 before this court on five count charge and pleaded guilty. After review of facts, the matter was adjourned for adoption of final written Addresses. On the returned date, Prosecution amended the charge to a single count. The Defendants retook their plea. 1st Defendant pleaded guilty on his behalf and on behalf of the 2nd Defendant. Prosecution called one witness to review the fact of the case and tendered the following exhibits, thus:

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1. Exhibit A –a Letter of Tilted Re-Inspection Visit to your Organisation dated 15/11/2017
2. Exhibit B –a C.T.C of Notification for Registration dated 6/12/2016
3. Exhibit C –a C.T.C. of Minutes of meeting on Examination of Daraja Motors citified on 9/12/2021
4. Exhibit D-D1-two statements of the Defendant dated 10/11/21 and that of 24/11/2021
5. Exhibit E-E1 –Two Invoices Booklets

PW One, Aminu Ahmad, an officer of the EFCC gave evidence on oath that sometimes in October, 2017, EFCC officials visited the Defendant for the purpose of inspection and examination. The inspection revealed that the Defendant is not registered with the Special Control Unit against Money Laundering, even though he was served with notification for registration in 2016. On 29/10/2021, a team of EFCC Officials visited the Defendant, and it was still found that the Defendant was not registered with Special Control Unit against Money Laundering SCUML and he was not rendering cash based transactions report. On further investigation, the 1st Defendant's statement was recorded and two invoice booklets were recovered from the Defendant. It was found out that some transactions that were above reportable threshold have been traced which were not reported to the SCUML within the required 7 days. PW1 mentioned transactions of Nine million naira(N9,000,000); seven million naira(Seven million naira), five million and fifty thousand naira (5,050,000), and six million five hundred thousand naira(N6,500,000) as transactions above threshold which were not reported.

The Defence did not present any witness. They relied on the Prosecution case.

The Prosecution Counsel filed his Final Written Address dated 24/06/2022 but filed on 27/6/2022. The Prosecution Counsel, S.H. Sa'ad Esq., formulated one issue for determination, thus:

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**Whether the Prosecution has proved its case beyond reasonable doubt pursuant to section 135 of the Evidence Act**

The learned counsel contended that the guilty of the Defendants may be proved by a confessional Statement; circumstantial evidence or by a testimony of an eye witness relying on the authority of **Emeka Vs. The State (2001) 14 NWR (PT. 734) 666 AT 683 F-G**

He submitted that Exhibits E-E1 shown that the Defendant had clearly transacted in an amount exceeding USD 1,000. **He referred to the Evidence of PW1 and Exhibits E-E1**. He also submitted that the Defendants qualified as non-financial institution as defined by section 25 of the Money Laundering (Prohibition) Act, 2011 as amended in 2012; that the Defendants' plea of guilty upon reading and explaining the charge, signified that the Defendants committed the offence as charged; and that the defendant confessed the commission of the offence in exhibit A. He cited case of **Lekan Olaoye v. The State (2018)1 S.C.N.J 307@314; Akibu Hassan v. The State (2001) 7SCNJ p.120; and Section 28 of the Evidence Act, 2011**

He humbly urged the court to convict the Defendant having pleaded guilty to the charge as there is no any gab in the evidence of the prosecution.

Counsel to the Defendants, Ibrahim Hussaini Esq., filed a Final Written Address dated 27/6/2022 and filed same date. He formulated one issue for determination thus:

**Whether having pleaded guilty, the Defendant must be convicted with offence charged, even where the facts and evidence presented by the prosecution did not support the ingredients of the offence.**

Counsel submitted that although the Defendant has pleaded guilty to the offence charged, the facts and evidence presented by the prosecution created doubts in the court as they have no connected the Defendant with the offence. The counsel further submitted that going by the provisions of Administration of Criminal Justice, Act, 2015, where a defendant pleads guilty and the prosecution presents facts or

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evidence in support of the charge, the fact and evidence must all fours support the case of the prosecution. He cited the cases of **Nkie v. FRN (2014) 13NWLR PT. 1424 .305; Abele v. TIV N.A. (1965) NMLR 425**. He further argued that in determining whether to convict the Defendant who pleads guilty to an offence, the court is expected to have regard to facts and evidence presented by prosecution in support. He submitted that the facts and evidence in the instant case did not support the offence in which the Defendant was charged. In order to successfully secure the conviction under section 5(1-5) of the Money Laundering (Prohibition) Act 2011 as amended, the ingredients of the offence must be established altogether and cumulatively. He argued that the prosecution failed to prove the ingredients of the offence. He concluded that the Prosecution has failed to discharge his duty of proving all the ingredients of the offence beyond reasonable doubt. He urged the court to discharge and acquit the Defendants.

Resolution

I have read the respective Final Written Addresses of both counsel, and the court settle for a lone issue for determination thus:

**Whether the Prosecution has discharge its duty in proving the ingredients of the offence charged against the Defendants**

Before deep into the issue raised by the court, let me indulge in one vital issue raised by the Defendant's counsel in respect of discrepancy in the name of 2nd Defendant, Daraja Motors and Daraja Motors Investment as reflected on Exhibit E-E1. This drew my attention to the charge itself, and I found that the 2nd Defendant was not included in the charge. The Amended charge reads thus:

> **That you UMAR MOHAMMED of DARAJA MOTORS located at Gusau Road, Sokoto and operating the business of sales of Vehicles, sometime between 2019 and 2021 at Sokoto within the Sokoto judicial division of the federal High Court did in contravention of Section 5(1,2,3,4&4) of the Money**

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**Laundering (Prohibition) Act, 2011 as amended in 2012 fails to submit a declaration of your activities to wit: requirements of customer identification and the submissions of returns on transaction to the Special Control Unit against Money Laundering and thereby committed an offence contrary to Section 5(1) to (5) of the Money Laundering (Prohibition) Act, 2011 as amended in 2012 and punishable under section 5(6)a&b of the same Act.**

I do not see where the 2nd Defendant was charged in the amended charge, and this violates section 196(1) of the Administration Criminal Justice Act, 2015. I also discover that 2nd Defendant is not registered with Corporate Affairs Commission (CAC) as stated in Exhibit D, therefore it is not corporate body that can sue or be sued. Consequently the name of 2nd Defendant, Daraja Motors as reflected on the charge sheet is hereby struck out. The plea of guilty taken by the 1st defendant on behalf of the 2nd Defendant is hereby set aside. The charge is now remained against the 1st Defendant only.

Coming to issue formulated earlier on, it is settled that the burden of proof in criminal cases is rested on the Prosecution to prove beyond reasonable doubt. It does not shift and remains on the prosecution until satisfactorily discharge. **See State v. Azeez (2008) 14 NWLR Pt. 1108 p.439 @469 A-B**

Where the Defendant has pleaded guilty as in the instant case, the law still requires the prosecution to state the facts against the Defendant and the court must satisfy that the Defendant intends to admit all the facts alleged by the prosecution against him before his conviction. **See Uche v. FRN (2021)4 NWLR Pt. 1765 p. 64 at pp95-96 G-A**

Now, what ingredients required to be proved by the Prosecution to establish the offence against the Defendants? The elements of the offence can be drawn from Section 5 of the Money Laundering

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(Prohibition) Act 2011, as amended in 2012 which is the provisions that established the offence. The section provides thus:

Section 5 (1) A Designated Non-Financial Institution whose business involves the one of cash transaction shall –

(a) In the case of –

(i) a new business, before commencement of the business,

(ii) existing business, within 3 months from the commencement of this Act, submit to the Ministry a declaration of its activities.

(b) prior to any transaction involving a sum exceeding US$1,000 or its equivalent, identify the customer by requiring him to fill a standard data form and present his international passport, driving license, national identity card or such other document bearing his photograph as may be prescribed by the Ministry;

(c) record all transaction under this section in chronological order, indicating each customers surname, forenames and address in a register numbered and forwarded to the Ministry.

(2) The Ministry shall forward the information received pursuant to subsection (1) of this section to the Commission within 7 days of its receipt.

(3) A register kept under subsection (1) of this section shall be preserved for at least 5 years after the last transaction recorded in the register.

(4) The Minister may make regulations for guiding the operations of Designated Non-Financial Institutions under this section.

(5) Notwithstanding the provisions of subsection (2) of this section, the Commission shall have powers to demand and receive reports directly from Designated Non-Financial Institutions.

A close reading of the above provisions, following ingredients can be discerned namely:

1. The Defendant must be a designated non-Financial Institution
2. The business of the Defendant must involve cash
3. The Defendant must have failed to register his business with the Ministry of Trade and Investment
4. The Defendant must have been involved in transaction exceeding USD1,000 or its equivalent without customer identification

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5. The Defendant must have failed to record transaction and the details of customer in accordance with the law

In any criminal case, like the one at hand, the onerous burden of proving the ingredients of offence beyond reasonable doubt lies on the prosecution. How this is discharged depends largely on the nature of or type of the offence involved, and given set of facts and circumstance of each case. **see Ugwanyi v. State (2010) 14 NMWLR Pt.1213 p.397@ 409 A-B.**

Generally, Prosecution can discharge this burden in any of the three ways:

1. Confessional statement of the Defendant;
2. Circumstantial evidence
3. Evidence of eye witness

The evidence led by the prosecution on the first ingredient is that the Defendant is a designated non-financial institution. Section 2 of the amended Act, 2012 defines non-financial Institution thus:

> **Dealers in jewellery, cars and luxury goods chartered accountants, audit firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets and other business as the Federal Ministry of Industry, Trade and Investment or appropriate regulatory authority may time to time designate**

It is clear from evidence adduced particularly Exhibit D-D1, the Defendant is a cars dealer who trade under the name Daraja Motors.

The Defendants' Counsel raised an issue as to whether the defendant an individual natural person can be considered as 'a designated non-financial institution within the meaning of Section 25 of the Money Laundering (Prohibition) Act, 2011 as amended'? In other words, as the Defendants' counsel submitted, whether the Defendant who carried out business as individual (not as a corporate body) can be regarded as an institution? He submitted that Institution is defined by Black Law Dictionary, 9th Edition at p. 869 to means established organisation. In his own conclusion, Institution simply means organisation dealing with non-financial matter.

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In my opinion, the intention of the lawmakers is to include corporate and non corporate bodies and individuals, and what the prosecution need to prove is the Defendant is a dealer in cars trading, the evidence of which clearly established. Where a word or expression in provisions of a status have been legally or judicially defined or determined, their ordinary meanings will definitely give way to their legal and judicial meanings. **See the case of Dapianlong V. Dariye II (2007) 8NWLR Pt.1036. p. 332@447 F.** Therefore, the definition given by the Defence Counsel citing Black Law Dictionary could not help matters.

On the second to the last ingredients of the offence, the evidence of PW1 established that the Defendant involved in cash transactions, the fact of which is admitted even by the counsel to the Defendant in his address. The Defendant stated in exhibit D thus:

> **All the transactions mentioned in this paper are paid cash to the owners of the Vehicles. I did not report the transactions to the Economic and Financial Crime Commission.**

It is also clear that the Defendant was found not registered with Special Control Unit against Money Laundering (SCUML) though a notice of registration has been served on the defendant sometimes in 2016. On further investigation, some invoice booklets, i.e Exhibits E-E1, were recovered and transactions above reportable threshold were traced which were supposed to be reported to SCUML within 7 days had never being reported. In Exhibits E-E1, transaction of Nine million naira (N9,000,000), seven million naira(N7,000,000), five million and fifty thousand naira(5,050,000), and six million and five hundred thousand naira(6,500,000) which were all above threshold have been established. All established cash transactions were not reported as required by law.

However, the Defendant's counsel raised another issue as to the name and style operated by the Defendant, i.e. Daraja motors while exhibit E-E1captured name and style of Daraja Motors Investment. He also raised the issue of discrepancy in address of the Defendant as

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captured in E-E1. This argument of counsel will not fly because the purpose of exhibit E-E1 is to establish transactions made by the Defendant in cash which are beyond a threshold. This has been taken care of by Exhibit D-D1, statements of the Defendant which clearly stated some of the transactions made in cash.

Exhibits D and D1 are statements of the Defendant. The Prosecution counsel submitted that the Defendant has categorically confessed the commission of the offence charge and urged the court to hold so.

Confession is defined by Section 28 of the Evidence Act, 2011 as: **"an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime"**

Section 29 (1) and(2) of the Act provide inter-alia that a confession is relevant and admissible in evidence so long as it is voluntarily made and not as a result of threat or inducement. Where a court is satisfied that a confession was freely and voluntarily made and that it is direct, positive and unequivocal as to prove commission of the crime by the Defendant, is sufficient to warrant conviction.

In the case of **Solola v. State (2005) 11NWLR Pt. 937 p460 @498 parsB-D, Supreme Court held thus:**

> **A confessional Statement must be unequivocal in the sense that it leads to the guilt of the maker before it can result in the conviction of the accused. Where a so-called confessional statement is capable of two interpretations in the realm of guilt and non-guilt, a trial court will not convict the accused but give him the benefit of doubt. But where a confessional statement is unequivocal, as in the instance case, a trial court can convict on it. Therefore, if the accused says that he committed the offence and comes to conclusion that he made in a stable mind and not under duress, the accused must be convicted**

The Defendant mentioned in exhibits D and D1 that he did not register with the Special Control Unit against Money Laundering. The

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statement also has established the Defendant failure to comply with section 5 of the Money Laundering (Prohibition) Act regarding his transaction in cash.

The argument of the Defendant's counsel that the evidence presented by Prosecution did not show that the Defendant has not made the necessary declaration to the Federal Ministry of Trade and Investment as required by law; and no request was made to the Defendant as to that fact cannot be sustain. This is because a careful look at the provision of section 5 of the Money Laundering (Prohibition) Act 2011 as amended in 2012, particularly Subsection (5) points to the contrary

**Section 5 (5) provides:**

> **Notwithstanding the provisions of subsection (2) of this section, the Commission shall have powers to demand and receive reports directly from Designated Non-Financial Institutions.**

The above provision is clear that the Commission can dispense with the proof of reporting to the ministry as it equally has powers to demand and receive such report directly from the Defendant.

In conclusion, the statement of the Defendant alongside the testimony of PW1 has established the offence against the Defendant beyond reasonable doubt, and consequently, the defendant is herby convicted as charged.

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**Ahmad G. Mahmud**
**Judge**
**22/07/2022**

**Appearance**

| | |
|---|---|
| **S. H. Sa'ad Esq** | **for the Prosecution** |
| **Ibrahim Hussaini** | **for the Defendants** |