

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 24TH DAY OF JUNE, 2022
BEFORE THEIR LORDSHIPS:

- | | |
|--|------------------|
| 1. Hon. Justice M.U. Dogon Daji | President |
| 2. Hon. Justice Mohammed Mohammed | Member |
| 3. Hon. Justice Raliya Uthman | Member |

SUIT NO: SS/MC/17^C/2021

BETWEEN:

THE STATE-----APPELLANT

AND

MOH'D KABIRU ZAKARIYA-----RESPONDENT

Appearances:

Chief J.E. Ochidi, SAN with N.N. Anaka Esq and H.A. Bamaiyi Esq
for the Appellant.

Ja'afar Abubakar Esq with H.U. Muhammed Esq for the respondent.

J U D G M E N T

Mohammed Mohammed J {*Delivering the leading judgment*}: By the First Information Report No: SK/215^C/2019, the respondent was taken to Chief Magistrate Court 1, Sokoto presided over by His Worship Shuaibu Ahmad Esq on the 18/6/2019 in connection with the offences of Criminal breach of trust, Criminal misappropriation and cheating punishable under sections 312, 309 and 322 of the penal code respectively. After he pleaded not guilty, the

prosecution called 6 witnesses tendered and closed its case.

In a reserved and considered ruling delivered on the 17/8/2020, the learned trial Chief Magistrate discharged the respondent for the offence of cheating contrary to section 322 of the penal code and framed 2 charges against the respondent for the offences of Criminal breach of trust and Criminal misappropriation because the trial Chief Magistrate was satisfied that a prima facie case for the 2 offences have been established against the respondent.

The ruling and the 2 counts charges framed against the respondent, are at pages 33-34 of the record of proceedings of the trial court. After the respondent pleaded not guilty to the 2 counts charges, he thereafter entered his defence and called 6 witnesses. In its reserved and considered judgment which was delivered on the 31/3/2021, the trial court discharged and acquitted the respondent of all the 2 counts charges. It is against that decision that the appellant has brought this appeal.

The appellant under the hand of the Hon. Attorney General of Sokoto State {Sulaiman Usman SAN} issued a fiat to Chief J.E Ochidi SAN to prosecute this appeal for and on behalf of the appellant.

However as at the time fiat was issued, the statutory period for the appellant to appeal against the judgment, had already elapsed. As such the appellant by a Motion No. SS/M.237/2021 which was heard by this court presided over by Hon. Justice Bello Duwale delivered it's ruling on 1/7/2021 extending time within which the appellant may file it's notice of appeal to challenge the decision of the trial court.

Consequently, on 2/7/2021, the appellant filed its notice of appeal as well as grounds of appeal to challenge the judgment of the trial court. From the three {3} grounds of appeal filed by the appellant, the appellant submitted two {2} issues for determination in this appeal and are hereby reproduced below as follow:-

- 1. Whether the appellant {the prosecution at the trial court} called evidence against the respondent in proof of the offences charged to warrant the trial court to have convicted the respondent as charged instead of entering an order of discharge and acquittal as effected by the trial court in its judgment delivered on the 31st day March, 2021*
- 2. Whether the trial court properly evaluated the evidence led before it by both the appellant and the respondent before the trial court discharged and acquitted the respondent of the offences.”*

The learned silk submitted that the 1st issue is distilled from ground 2 of the appellant's grounds of appeal, while the 2nd issue is distilled from ground 3 of the appellant's grounds of appeal. No issue was formulated in respect of ground 1 of the appellant's grounds of appeal as some has been abandoned.

Like the appellant's counsel, the respondent's

Like the appellant's counsel, the respondent's counsel also formulated 2 issues for determination in this appeal and are hereby reproduced below as follows:-

The defence counsel in his adopted written address, formulated only one (1) issue for determination at paragraph 3.1.1 of his adopted written address and is hereby reproduces as follows:-

“1. Whether the trial court has rightly discharged the respondent in view of the failure of the prosecution to prove each and every ingredient of the offences of criminal misappropriation and criminal breach of trust beyond reasonable doubt.”

“2. Whether the trial court has properly evaluated the evidence placed before it in arriving at its decision to discharge and acquit the respondent?”

The facts of the case that gave rise to this appeal are straight forward and simple. Sometimes in 2016, the nominal complainant who testified

before the trial court as PW1 in person of Saratu Ladan gave the sum of N8,000,000:00 to the respondent to be utilized by the respondent in the purchase of ginger on the understanding that the ginger when purchased, will be kept until when the price of ginger appreciates at its peak sale season when it will be sold to interested buyers as directed by the said Saratu Ladan.

The respondent claimed that he utilized the money for the said purpose and that he bought a total number of 345 bags of ginger for the PW1 which he stored at a particular store awaiting directives of PW1 to sell same to interested buyers. Thereafter, the selling price of ginger in open market allegedly fell drastically N5,000 per bag and PW1 said she is not selling her ginger at that price and directed that the goods be kept in the store because the respondent has advised her to exercise some patience as the price would appreciate. As time goes, PW1 becomes suspicious and involved her younger brother in person of Mohammed Aliyu to intervene in the matter about the money she gave to the respondent. Then on 6/5/2019 PW1 called her younger brother {Mohammed Aliyu} and told him to inform the respondent that she needed her money or the respondent should show him the ginger he bought for her. At that time the respondent then informed PW1 that he had sold some part of the ginger and had sent some to Malabi in Benin Republic. On hearing this, PW1 asked the respondent of the person that instructed him to sell part of the ginger and the whereabouts of the money realized from the sale of the ginger, but the respondent did not gave her any answer. Thereafter the respondent started avoiding her, and after being fed up with his attitude, PW1 decided to report the

matter to the Nigeria Security and Civil Defence Cops, Sokoto State Command Headquarters who eventually preferred a First Information Report against the respondent and took him to Chief Magistrate Court 1 sokoto for the offences of Criminal Breach of Trust, Criminal Misappropriation and Cheating punishable under sections 312, 309 and 222 of the penal code.

For the purpose of determining this appeal this court has decided to adopt issue No.2 as formulated by the appellant's counsel because the issue apart from being substantially the same with issue NO.2 formulated by the respondent's counsel, is also all encompassing to address all the issues raised by counsel in this appeal, and is hereby reproduced below as follows:-

“Whether the trial court properly evaluated the evidence led before it by both parties before the trial court discharged and acquitted the respondent of the offences with which he was charged?”

The two {2} counts charges for the offences of criminal breach of trust and criminal misappropriation punishable under sections 302 and 298 of the penal code law 2019 of Sokoto state under which the respondent was tried, discharged and acquitted by the trial court, are hereby reproduced below as follows:-

“Charge No.1

I, Shuaibu Ahmad Chief Magistrate, sitting at Sokoto in the Sokoto Magisterial District hereby charge you Muhammad Kabir Zakariyya as follows:-

That you on or about sometimes in the year 2016 at Sokoto collected the sum of eight million naira {N8,000,000:00} from Saratu Ladan Tamiya of Sama Road Area Sokoto to buy ginger and keep it for her with the intention to sale the said ginger when the price appreciates. The ginger which you bought and keep it in your custody. But later sold it without her consent and converted the money to your own use. And thereby committed criminal breach of trust punishable under S. 302 of the Sokoto state penal code 2019, triable by this court.

Charge No.2

That you on or about sometimes in the year 2016 at Sokoto was entrusted with Ginger worth eight million naira {N8,000,000:00} for safe keeping by Hajiya Saratu Ladan Tsamiya of Sama Road Sokoto. But sold the ginger without her knowledge, dishonestly misappropriated the money bought landed properties in your name and other things and thereby committed an offence punishable under S.298 of the penal code

of Sokoto state 2019. Triable by this court.

In arguing this appeal, the learned silk submitted that the trial court in its efforts to ascertain whether or not the prosecution has proffered the required evidence to prove the two {2} offences framed against the respondent, did not make any distinction between the ingredients required for the proof of the offences of criminal breach of trust and criminal misappropriation and referred to page 2 and 3 of the judgment of the trial court in which the trial court lumped the ingredients together as being identical in nature.

He argued that on the authority of the Supreme Court case of **Edun V. State {2019} 13 NWLR pt 1689 p 326 at 356** Paragraph A, entrustment is not an element of the offence of criminal misappropriation, and so the trial court was wrong in law when at page 2 of its judgment held entrustment of a movable property as number 1 element of the offence as entrustment is only applicable to the offence of criminal breach of trust.

It was his further submission that going by the evidence on the record as led by the prosecution, the prosecution has proved all the elements of the offences of criminal breach of trust and criminal misappropriation beyond reasonable doubt against the respondent.

He submitted that as to the 1st ingredient of the offence of criminal breach of trust that the defendant was entrusted with movable property, he argued that the testimonies of PW1, PW2, PW3 and even the respondent as DW1, all established that N8,000,000:00 was

entrusted to the respondent by PW1 for the purchase of ginger and referred to pages 5, 7, 14, 36, 37 and 38 of the record of proceedings of the trial court.

As to the 2nd element of the offence of criminal breach of trust that the defendant disposed up the entrusted property or misappropriated it to his own use, learned silk submitted that a careful perusal of the entire evidence led the prosecution and the defence, shows that both the sum of N8,000,000:00 which PW1 gave to the respondent and or the 345 bags of ginger and the 10 bags of Sopo which the respondent claimed he bought for PW1 using the said sum of N8,000,000:00 given to him by PW1, were misappropriated by the respondent or converted to his own use as there is no evidence that the money realized from the sales has ever been released to PW1.

As to the 3rd element of the offence of criminal breach of trust, that the defendant did so dishonestly and in violation of any direction of law prescribing the mode in which such trust was to be discharged at any legal contract expressed or implied which the defendant made concerning the trust, learned silk submitted that the respondent disposed of the property dishonestly and in violation of the directives of PW1 who directed that the ginger be kept in a store after purchase, but the respondent disposed of the ginger without the consent of PW1 and referred to page 5 of the record of proceedings where PW1 testified to that effect.

On the whole learned silk urge the court to set aside the judgment of the trial court which discharged and acquitted the respondent and hold that the said decision is perverse and constitute a miscarriage of justice.

As to the offence of criminal misappropriation punishable under section 298 of the Sokoto state penal code 2019, learned silk submitted that the elements which the prosecution must prove are as follows:-

- (i) *That the property in question is movable;*
- (ii) *That the defendant misappropriated or converted it to his own use and*
- (iii) *That he did so dishonestly.*

- Edun V. State {supra}

Learned silk thereafter adopted all the arguments preferred for the offence of criminal breach of trust for this offence of criminal misappropriation and urge the court to hold that the prosecution has prove all the elements of the offence of criminal misappropriation, reverse the order of discharge and acquittal made by the trial court and allow the appeal.

Responding to the submission of the appellant's counsel, the respondent's counsel submitted that the failure of the trial court to make a distinction between the elements of criminal misappropriation and criminal breach of trust is inconsequential because even the case of **Edun V. FRN {supra}** cited by the appellant's counsel, shows that the only differentiating element in the elements of the 2 offences, is

“entrustment” and by the decision of the Supreme Court according to him, the elements of the offences of criminal breach of trust and criminal misappropriation are the same except that the proof of “trust” is required for criminal breach of trust and that the trial court did not in any way identified “trust” as one of the elements of the offence criminal misappropriation and that even if it has done so, same has not occasioned a miscarriage of justice that can affect the validity of decision of the lower court and urge the court to so hold.

As to the discharge and acquittal order in the decision of the lower court, respondent counsel submitted that by the combine effects of sections 300 and 297 of the Sokoto state penal code law 2019 which defined the offences of criminal breach of trust and criminal misappropriation respectively, the prosecution has not proved the elements of the 2 offences against the respondent as required by law.

- **Nwoti VS. Mbonu {1991} 7NWLR pt 206 p 737 at 745**
- **Regbesola V. Oyinlola {2011} 9 NWLR pt 1253 p 458**

As to the offence of criminal breach of trust, the respondent’s counsel at paragraph 4.12:2 of their adopted written address, conceded to the fact that there is no doubt that the complainant has given N8,000,000 to the respondent to purchase ginger for her. He further submitted that there is also no doubt that 345 bags of ginger and 10 bags of Zobo were purchased by the respondent as proved by exhibit A and A1 and the evidence of DW1, DW2, DW3 and DW4.

At paragraph 4:12:5 respondent's counsel submitted that the ginger were bought with the intention of same to be stored and sold at a future time when the market price appreciated.

Respondent's counsel then concluded at paragraph 4:12:6 of their adopted written address that the respondent was in fact entrusted with 345 bags of ginger and 10 bags of Zobo belonging to the complainant PW1.

As to the 2nd element that the respondent misappropriated/converted or dispose of the property entrusted to him in breach of contract or violation of law, respondent's counsel submitted that the prosecution has not proved this second element as no evidence was led to that effect, instead the goods were sold with the complainant's instruction through the involvement of PW2 one Muhammed Bashir Aliyu and his statement exhibit AA as well as instructed the respondent to invest the proceeds of sale in another business.

As to the element that the respondent acted dishonestly, respondent counsel submitted that the prosecution has failed to show from the circumstances of the case that the respondent acted dishonestly.

- **Bakare V. State {1968} ALLN.R 364**

- **Section 2 of the Sokoto state penal code law 2019**

As to the offence of criminal misappropriation, respondent's counsel submitted that from the evidence led by the prosecution the prosecution has only proved one {1} element out of the 3 major ingredient.

He argued that as to the element that the respondent misappropriated the moveable property to his personal use, he submitted that the evidence led by the prosecution before the trial court did not show that the respondent has personally benefited from the money collected from PW1.

As to the element that the respondent acted dishonestly respondent's counsel submitted that in order to avoid repetition of submission decided to adopt their submission in paragraph 5,4,12,24_4,12,31 of their adopted written address and concluded by saying the respondent did not acted dishonestly as the prosecution did not lead evidence to the contrary.

He argued that the trial court properly evaluated the evidence led before it in compliance with the laid criteria set out in decided cases before arriving at its decision.

- **Adebayo v. Ausei {2004} 4 NWLR pt. 862 p 44**
- **Scoa M. Aregbesolo v. Oyinlola {2011} 9NWLR pt 1253 P 458**

The respondent's counsel finally submitted that since the applicant has failed to convincingly substantiate their appeal with legal argument, he urge the court to resolve the issues in favour of the respondent.

Let me start by saying that in our adversarial system of criminal justice, it is trite law that in criminal trial it is the duty of the prosecution to prove its case beyond reasonable doubt against the defendant charged with the allegation of committing a crime because

of the constitutional presumption of innocence in favour of the defendant.

- **Ajibade V. State {2013} 8 NCC 221**
- **Smart V. State {2016} LPELR 40827**
- **Akinlolu V. State {2015} LPELR 25986**
- **Section 36 (5) CFRN 1999 as amended**
- **Section 135 of the Evidence Act, 2011**

It is also trite law that whenever the prosecution has proved all the elements of an offence with which a defendant is accused before a trial court, the prosecution is said to have proved its case beyond any reasonable doubt and the trial court is bound to convict the defendant as charged.

- **Ajayi V. State {2013} 53 SCQR pt II p 631**
- **Ikaria V. State {2013} 8 NCC 248**
- **Alabi V. State {1993} 7 NWLR pt 307 p 511**

Before arriving at a decision as to whether or not the prosecution has proved its case beyond reasonable doubt, to warrant a conviction or acquittal, the trial court is duty bound to consider the totality of the evidence led by each of the parties and then place it on an imaginary scale of justice to see which of the two {2} sides weighs more credibility than the other through the process of evaluation. It therefore follows that evaluation of evidence entails the assessment of evidence

adduced before a trial court with a view to give it a probative value or quality.

- **Haruna V. AGF {2012} 9 NWLR 419**
- **Ubochi V. State {1993} 8 NWLR pt 314 p 697**
- **Effia V. State {1998} 2 NWLR pt 537 p 275**
- **Mogaji V. Odojin {1978} 4 SC 91**
- **Eyiboh V. Abia {2012} 16 NWLR p 51**
- **White V. Jack {1996} 2 NWLR pt 431 p 407**

Evaluation of evidence and ascription of relevant probative value thereto, is the primary duty of the trial court which had the opportunity of seeing and hearing the witnesses. It is only when the issue at stake is narrowed down to the inference to be drawn from proved facts without going into the rigour of determining credibility of witnesses that the appellate court could rightly intervene to re-evaluate the evidence especially where the findings are parse.

- **Haruna V. AGF {supra}**
- **Martins V. State {1997} 1 NWLR pt 418 p 355**
- **Onuoha V. State {1989} 2 NWLR pt 101 p 23**
- **Borishade V. FRN {2012} 18 NWLR pt 1332 p 347**
- **State V. Ajie {2000} 11 NWLR pt 678 p 434**

Thus it follows therefore that where a trial court failed to evaluate the evidence properly, an appellate court can intervene and itself evaluate such evidence.

- **Akinyemi V. Odwa Inv. Co. ltd {2012} 17 NWLR p 209**
- **University of Lagos V. Aigoro {1985} 1 NWLR pt 1 p 143**
- **Brown V. Nzirim {1995} 1 SC 291**
- **Adebayo V. adusei {2004} 4 NWLR pt 862 p 44**

It is the contention of the appellant in this appeal that going by the evidence on the record as led by the prosecution, the prosecution has proved all the elements of the offence of criminal breach of trust and criminal misappropriation beyond reasonable doubt against the respondent, but nevertheless, the trial court discharged and acquitted the respondent and submitted that the decision of the lower court is perverse and constitute a miscarriage of justice and urge this court to set aside the judgment of the lower court.

A judgment of a court is said to be perverse when it ruins counter to the evidence adduced before it; or shuts its eyes to some evidence; or takes into account matters which it ought not to take into consideration or has occasioned a miscarriage of justice.

- **Uniilorin Teaching Hosp. V. Abegunde {2015} 3 NWLR pt 1447 p 421**

- **Nnorodim V. Ezeani {1995} 2 NWLR pt 378 p 448**
- **Lagga V. Sarhunu {2008} 16 NWLR pt 1114 p 427**
- **Onyekwelu V. Elf Pet. Nig. Ltd {2009} 5 NWLR**
- **Momoh V. Umoru {2011} 15 NWLR pt 1270 p 217**

The question one will ask is whether from the evidence led visa vis the elements of the offences of criminal breach of trust and criminal misappropriation with which the respondent was charged and subsequently discharged and acquitted, the trial court did not properly evaluated the evidence as presented before it. For the purpose of this question it has become necessary to look at the elements of the offences.

Consequently, for the offence of criminal breach of trust punishable under section 301 of the penal code and as rightly submitted by the respondent's counsel, the offence of criminal breach of trust under section 300 of the Sokoto state penal code law 2019, is in pari materia with the provisions of section 311 of the penal code of Northern Nigeria the ingredients of which are identified as follows:-

- (a) That the defendant was entrusted with property or dominion over it,
- (b) That he:
 - (i) Misappropriated it; or
 - (ii) Converted it; or

- (iii) Use or dispose it to his own personal use;
- (c) That he did so in violation of:
 - (i) Any direction of law prescribing the mode in which such trust was to be discharged; or
 - (ii) Any legal contract expressed or implied which he had made concerning the trust; or
 - (iii) That he intentionally allowed same other person(s) to do as above;
- (d) That he acted as in (c) above dishonestly.

- **SS. Richardson, Notes on the Penal Code of Northern Nigeria, P. 243**
- **Section 300 of the Sokoto State Penal Code Law, 2019**

As to the 1st element respondent's counsel has conceded to the fact that there is no doubt the respondent was given ₦8,000,000 by the complainant {PW1} to purchase ginger and which the respondent bought 345 bags of ginger and bags of Zobo which has been proved by the evidence of PW1, DW1 as well as exhibit A and A1 which is the Hausa and English translated versions of the respondent's extra-judicial statement. In view of the foregoing it has therefore becomes apparent that the appellant has proved the 1st element of the offence as required by law.

As to the 2nd element that the respondent misappropriated the property entrusted to him, in law, “misappropriation” has been defined as the unauthorized use of another’s property without that person’s permission.

-Black’s Law Dictionary, 11th Ed. Pg 1194 from the evidence of the respondent as DW1 both in chief and under cross examination as well as the evidence of PW1 and the substance of the contents of exhibit A and A1 which is the Hausa and English translated versions of the respondent’s extra-judicial statement and as submitted by the respondent’s counsel in their adopted written address particularly paragraph 4:12:5, the ginger were bought by PW1 through the respondent with the intention of same to be stored and sold in the future when the market price of the ginger appreciated so that PW1 can get same profit therefrom.

But instead of the respondent to wait until the price of the ginger appreciated before selling the ginger, the respondent disposed of the ginger at a price lower than the price at which a bag of the ginger was purchased without the authority of PW1 as claimed by the appellant.

But the respondent through his counsel submitted that the sale of the ginger was authorized by PW1 through her brother one Muh’d Bashir Aliyu who testified as PW2 relying on the evidence of PW2 and his extra-judicial statement admitted as exhibit AA.

The question now is, is there any piece of evidence in the evidence of PW2 or his extra-judicial statement which shows that he did actually

related the authorization of PW1 to the respondent to dispose of the ginger?

PW2 in his evidence before the trial court testified as follows:-

*“I can remember sometime in October, 2018, Hajiya Saratu called me on phone. Informing me about the business she had with the accused person. That Kabiru introduced a business of Ginger to her that they would buy from Kaduna state of which she gave Kabiru N8,000,000:00 ----
- When I contacted Kabiru, Kabiru told he bought the goods from Kaduna but now the market price is very low. I then ask him to call her and told her if she serious she is need of money if she agree to sale at that price, then the goods would be sold--- I later contact Kabiru and ask whether he contacted Hajiya. And he told me no but he has intention to contact her.”*

In his extra-judicial statement admitted as exhibit AA, PW2 stated as follows:-

“--- that in 2016 Kabiru met her {PW1} that they should make a business of buying ginger from Kaduna in order to store it for some period of time that I should tell him she need some money those goods should be sold. When I contact Mr. Kabiru ‘m’ Zakariya about what Hajiya Saratu Ladan Tsamiya said, Kabir ‘m’

Zakariya told me each bag was bought at the rate of N23,000 but now is N13,000 at market price. I tell Mr. Kamiru 'm' Zakariya to call hajiya Saratu Ladan Tsamiya and inform her about the recent price if she order him to sell those goods, he should sell. I don't know whether he call Hajiya or not."

PW1 in her evidence testified to the fact that when the respondent opened up that he sold part of the ginger and sent part of it to Malabil in Benin Republic, she asked the respondent in surprise as to with whose consent he sold the ginger as well as the whereabouts of the money realized from the sale, but that the respondent did not answer her 2 questions.

In exposing how he used part of the PW1's money to buy Zobo without her authorization, the respondent in his extra-judicial statement admitted as exhibit A and A1, sated as follows:-

"--- I bought Roselle {Zobo} and stored it. But honestly I did not inform Hajiya before I purchased the Zobo even Moh'd was not informed."

Form the foregoing pieces of evidence before the trial court it has become apparent that there is no evidence before the trial court that the respondent was in fact authorized to dispose up the ginger at that lower price when he sold the ginger, and there is also no evidence before the trial court that the respondent was authorized by PW1 to use part of her ~~N~~8,000,000:00k to by Sobo as did by the respondent.

It appears from the judgment of the lower court that the trial court glossed over all the foregoing evidence before it when it was evaluating the evidence before it which thereby renders the evaluation of the trial court defective and improper.

It is trite law that when the complainant of the appellant is against non-evaluation or improper evaluation of evidence by the trial court, the appellate court is in a good position as the trial court to do its own evaluation, and to do so is not an usurpation of the province of the trial court as failing to do so is an abdication of responsibility.

- **Mathew V. State {2019} NWLR pt 1675 p 461 at 477**
- **Adesina V. Ojo {2012} 10 NWLR p 552**
- **Basil V. Fajebe {2001} 11 NWLR pt 725 p 529**
- **Bashaya V. State {1998} 5 NWLR pt 550 p 351**

In view of the re-evaluated evidence above, it is the humble view of this court that the prosecution has proved the second element that the disposal of the ginger at a lower price as well as using part of the complainant's money to buy Sobo was not authorized by PW1.

As to the 3rd element that the respondent did as above in violation of the expressed contract he made concerning the trust, from the available evidence before the lower court as substantiated by the evidence of PW1, respondent as DW1 and the substance of the extra-judicial statement of the respondent admitted as exhibits A and A1, the ginger

was purchased by the respondent on behalf of PW1 on the understanding that it will be kept and sold in future when the market price of the ginger appreciated so that PW1 can get some profit therefrom. But available evidence before the trial court has shown that the respondent in violation of the expressed contract he made concerning the trust, dispose up the ginger as well as used part of the money to by Sobo without any substandard authorization. I therefore agreed with the appellant's counsel that the 3rd element has also been proved by the appellant at the trial court.

As to the 4th and last element that the respondent acted dishonestly section 2 of the Sokoto state Penal Code Law 2019, provided that on person is said to do a thing dishonestly who does that thing which caused wrongful gain to himself, to another person, or caused wrongful loss to any other person.

It is also trite law that a man intends the natural consequences of his act.

The respondent having known that he was selling the ginger at a lower price than it was bought per bag and without any substantiated authority to do so, has reason to know that he by that act, had succeeded in causing wrongful loss to PW1. I therefore agree with the appellant's counsel that the 4th element was in fact proved by the prosecution at the lower court. I am also in complete agreement with the appellant's counsel that the prosecution has proved all elements of the offence of criminal breach of trust against the respondent beyond reasonable doubt as required by law and found the respondent guilty as

charged by the trial court in respect of the offence of criminal breach of trust punishable under section 301 of the Sokoto state Penal Code Law, 2019.

Accordingly, since the Supreme Court in the case of *Edun V. FRN* {2019} 13 NWLR pt 1689 p 326 at 352 has held that in both the offences of criminal breach of trust and criminal misappropriation dishonest misappropriation of property is involved, and person convicted of criminal breach of trust can be convicted of criminal misappropriation because of similarities of elements except entrusted in criminal breach of trust, this court on the basis of the foregoing evidence establishing the elements of the offence of criminal breach of trust against the respondent guilty as charged before the trial court in respect of the offence of criminal misappropriation punishable under section 298 of the Sokoto state Penal Code.

On the whole therefore, I find merit in this appeal and it is hereby allowed. The decision of the learned trial Chief Magistrate, Chief Magistrate Court 1, Sokoto in suit No. SK/215^C/2019 delivered on the 31/3/2021 in which the respondent was discharged and acquitted for the offences of criminal breach of trust and criminal misappropriation, is hereby set aside, and pursuant to the provisions of section 320 (a) and (b) (ii) of the Sokoto State ACJL 2019, the convict in lieu of the penalty authorized by the Sokoto State Penal Code Law 2019 for the offences of criminal breach of trust and criminal misappropriation with which the convict was convicted by this court, is hereby ordered to make restitution of the ₦8,000,000:00 to Hajiya Saratu Ladan Tsamiya who is the victim of the crimes.

Appeal allowed

Signed

**Hon. Justice Mohammed Mohammed
(Judge)
24/6/2022**

I agree

Signed

**Hon. Justice M.U. Dogon Daji
(Judge)**

I agree

Signed

**Hon. Justice Raliya Uthman
(Judge)**

CERTIFIED TRUE COPY:

**FATIMA SAIDU MOH'D
Ag. DIRECTOR LITIGATION
HIGH COURT OF JUSTICE,
SOKOTO.**