

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
ON MONDAY 7TH DECEMBER 2020
BEFORE HIS LORDSHIP:HON. JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 13 APO – ABUJA

CHARGE NO: FCT/CR/184/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

1. FRANK IGBINEDION	}	DEFENDANTS
2. SAFRAMIC HOMES LTD.		
3. PERCY NDAM		
4. UCHE NWEDI		
5. NCR & ASSOCIATES		

RULING

The Defendants were originally arraigned before this Court on 19/09/2017 and are standing trial upon an Amended eight (8) Count Charge filed on 09/03/2020, bordering on criminal breach of trust

punishable under the provision of s. 312 of the **Penal Code Act**.

At the plenary trial, the prosecution fielded **ten (10)** out of the **seventeen (17)** witnesses listed in the proof of evidence, namely:

- **PW1 – Caleb YarkwanTema**– Financial Secretary, Nigerian Union of Teachers (NUT), FCT Chapter and staff of FCT Universal Basic Education Board (UBEB) at the material time.
- **PW2 – RemijusUgwu**– Compliance Officer, Zenith Bank Plc, Abuja.
- **PW3 – Innocent Aka** – Zonal Compliance Officer, First City Monument Bank (FCMB).
- **PW4 – FadeyiNwanyo** – Resident Control Officer, United Bank for Africa (UBA) Plc.
- **PW5 – OlubunmiBabalola** – Staff of Diamond Bank Plc.

- **PW6 – Maifuwa Aibangbee** – Business Development Manager, Wema Bank Plc, Central Business District, Abuja.
- **PW7 – Stephen Knabayi** – Chairman, NUT, FCT Chapter and teacher, Government Science & Technical College, Area 3, Abuja.
- **PW8 – Adama Jibrin Hussaini** – Director of Lands, Land Administration, Federal Capital Territory Administration (FCTA).
- **PW9 – Mohammed Bashir Mahmoud** – Director of Survey & Mapping, Federal Capital Development Authority (FCDA).
- **PW10 – Ogar Julius** – Investigator with the ICPC.

Now, the summary of the case of the prosecution against the Defendants, as gathered from the totality of the testimonies of the prosecution witnesses, is that

sometime in 2012, the National Union of Teachers (NUT), Abuja Chapter, upon the agreement of its members, obtained group loans totaling about **₦830,000,000.00** from Wema Bank Plc, for purposes of engaging in housing project for the benefit of its over 2,000 members. The NUT approached the 2nd Defendant, for purposes of procuring land for the Association. Through the 1st and 2nd Defendants, the NUT acquired 25 acres of land located at Lugbe East Extension at a total cost of about **₦225,000,000.00**.

The NUT also purchased another expanse of land at Lugbe 1 Extension, Abuja, through an outfit called *Contemporary Arch Vision Nigeria Limited*, for the sum of **₦280,000,000.00**.

With respect to the land at Sabo Lugbe East, the brief of the NUT is for the 2nd Defendant to purchase the land and also to undertake the process of

obtaining title for the land and also to assist in paying compensation to the original land settlers. It is alleged that the 1st and 2nd Defendants defrauded the Union by failing to obtain title documents for the land.

The case against the 3rd Defendant, who, at the material time, was the Treasurer of the Abuja Municipal Branch of the NUT was that he received the sum of **₦62,000,000.00**, money belonging to the NUT, for purpose of paying compensation to the original settlers of the land purchased by the NUT but that he failed to deliver the money for the purpose it was meant and that he failed to account for the said sum.

With respect to the 4th and 5th Defendants, they were allegedly paid a certain amount of money to undertake regularization of titles for the parcels of land purchased for the NUT but that they failed to

account for how the money was spent and that they also failed to undertake the process for which the monies were paid to them.

A former Financial Secretary/Loans Committee member of the NUT, Abuja Chapter, one **Comrade Caleb Yarkwan**, wrote a Petition (**Exhibit P1**), bothering on financial misconduct and mismanagement of the funds of the Union against certain key officials and trustees of the NUT Municipal Branch, Abuja, which apparently instigated the totality of the investigation that resulted in the instant Charge. I should state that as it turned out, however, of all the key officers mentioned in the Petition, only the 3rd Defendant is charged to Court, for reasons best known to the Complainant.

At the conclusion of the prosecution's case, the respective Defendants, through their respective learned counsel, applied to make no-case to answer

submissions, pursuant to the provision of **section 302** of the **Administration of Criminal Justice Act, 2015 (ACJA)**. To this end, parties, as agreed to by them, filed and exchanged written submissions which were adopted on 29/09/2020.

I had proceeded to consider the submissions canvassed on behalf of each of the Defendants by their respective learned counsel; as well as the submissions of learned counsel for the prosecution in opposition.

On the basis of the very trite principles of law that apply to the case at hand, as properly captured by learned counsel in their respective submissions, the only issue the Court is to consider here is whether, from a consideration of the totality of the evidence led by the prosecution before the Honourable Court, a *prima facie* case has been made out against the Defendants with respect to the Charge for which they

stood trial; in order to justify the continuation of their trial or to warrant the Court calling on them to enter their defence?

The provisions of s. 302 of **Administration of Criminal Justice Act, 2015**, (which is akin to the provisions of s. 191(3) and (5) of the now repealed **Criminal Procedure Code (CPC)**), empower the Court, after hearing evidence for the prosecution and where it considers that such evidence is not sufficient to justify the continuation of trial, to record a finding of “*not guilty*” in respect of such defendant without calling him to enter upon his defence and such defendant shall thereupon be discharged.

It should be underscored that this provision empowers the Court, with or without application by a defendant, to undertake the exercise of determining whether the totality of the evidence adduced by the prosecution is sufficient or not, to warrant the

defendant to enter into his defence. In other words, the Court is under a duty to discharge a defendant if it finds that no *prima facie* case has been established or made out against him at the close of the prosecution's case. See Ajidagba Vs. I. G. P [1958] 3 FSC 5 @ 6; Nwankwo Vs. ShittaBey [1999] 10 NWLR (Pt. 621) 75; State Vs. Duke [2003] 5 NWLR (Pt. 813) 394.

See also the provision of s. 135(3) of the **Evidence Act**.

The age long general principles that guide the Courts in determining whether or not a defendant should be discharged and a verdict of “*not guilty*” be entered in his favour at the close of the prosecution's case, are trite and have now been encapsulated in the provision of s. 303(3) of the **ACJA**, which enjoins the Court to take into account the following conditions, namely:

1. *Whether an essential element of the offence has been proved;*
2. *Whether there is evidence linking the defendant with the commission of the offence with which he is charged;*
3. *Whether the evidence so far led is such that no reasonable court or tribunal would convict on it; and*
4. *Any other ground which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer.*

These parameters were also comprehensively captured by the Supreme Court in the well known authority of Daboh & Anor. Vs. State [1977] 5 SC 197 @ 209, where it was held, per **Udo Odoma, JSC** (of blessed memory), as follows:

“Before, however, embarking upon such an exercise, it is perhaps expedient here to observe that it is a well known rule of criminal practice, that in a criminal trial at the close of the case for the prosecution, a submission of no prima facie case to answer made on behalf of an accused person postulates one of two things or both of them at once. Firstly, such a submission postulates that there has been throughout the trial no legally admissible evidence at all against the accused person on behalf of whom the submission has been made linking him in any way with the commission of the offence with which he has been charged, which would necessitate his being called upon for his defence. Secondly....that whatever evidence there was which might have linked the accused person with the offence has been so discredited that no reasonable court can be called upon to act on it as establishing criminal guilt in the accused person concerned....”

See also Ikuforiji Vs. FRN [2018] 6 NWLR (Pt. 1614) 142; Ajuluchukwu Vs. State [2014] 13 NWLR (Pt. 1425) 641.

Again, in Tongo Vs. C.O.P [2007] 12 NWLR (Pt. 1049) 525 [also reported in [2007] ALL FWLR (Pt. 376) 636; and [2007] 4 S.C. (Pt III) 1], **Oguntade, JSC** (now retired), also cautioned the Court on the approach it should adopt in the determination of a no case submission made before it, when His Lordship posited as follows:

“Therefore, when a submission of no prima facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charged. If the submission is based on

discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail.”

See also Aituma Vs. State [2007] 5 NWLR (Pt. 1028) 466; Ubanatu Vs. COP [2000] 2 NWLR (Pt. 643) 115.

In Queen Vs. Ogucha (1959) 4 FSC 64 [also reported in [1959] SCNLR 154], the Supreme Court again postulated that at the stage where a no case submission is made, what is to be considered by the Court is not whether the evidence produced by the prosecution against the defendant is sufficient to justify conviction; but whether the prosecution has made out a *prima facie* case requiring, at least, some explanation from the defendant as regards the evidence led by the prosecution in seeking to prove the charge. See also Duru Vs. Nwosu [1989] 4 NWLR (Pt. 113) 24 @ 31; Ajiboye Vs. State [1995] 8

NWLR (Pt. 414) 418; Fagoriola Vs. FRN [2014] All FWLR (Pt. 724) 74.

It is therefore imperative to underscore that at this stage of the proceedings, the Court is not to seek out whether the prosecution has proved the guilt of the Defendant beyond reasonable doubt as required by the provision of s. 135(1) of the **Evidence Act**, but merely, as the meaning of *prima facie* postulates, to see whether there is a ground for proceeding further with the case.

Having therefore properly set out and been appropriately guided by the essential parameters that must be considered in the determination of the issue under focus, I should thus state that I had proceeded to undertake the task required of the Court at this stage of the proceedings and in doing this, I had painstakingly examined and assessed the totality of the evidence adduced by the **ten**

(10) witnesses called by the prosecution as well as the exhibits on record, in the light of the essential legal ingredients required to prove the offence of criminal breach of trust for which the Defendants were charged.

Now, the provision of s. 311 of the **Penal Code Act** defines the offence of criminal breach of trust, for which the Defendants were charged as follows:

“311. Whoever, being in any manner entrusted with property or with a dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which that trust is to be discharged or of a legal contract express or implied, which he has made touching the discharge of the trust, or wilfully suffers any other person so to do, commits criminal breach of trust.”

Learned counsel for the prosecution and the respective Defendants were all in agreement as to the elements or ingredients of the offence of criminal breach of trust, which are:

- i. That the defendant was entrusted with property or dominion over it;
- ii. That the defendant dishonestly misappropriated the property; or converted the property to his own use; or dishonestly used the property;
- iii. That the defendant acted in violation of any direction of law prescribing the mode in which the trust is to be discharged or any legal contract express or implied which he has made concerning the trust or that he intentionally allowed some other persons to do so: and

iv. That the defendant acted dishonestly.

See Onuoha Vs. The State [1998] 3 NWLR (Pt. 83) 460(SC); UzoagbaVs. COP [2013] All FWLR (Pt. 685) 337; Tambuwal Vs. FRN [2018] LPELER-43971(CA).

The question now is whether any aspect of the evidence adduced by the ten (10) witnesses lined up by the prosecution has established the elements of criminal breach of trust against the respective defendants with respect to the specific charges laid against them, to enter that the Defendants enter into their defence.

1ST AND 2ND DEFENDANTS

The 1st and 2nd Defendants, to start with, stood trial for the offences in **Counts 1 – 4** of the Charge which I hereby reproduce for ease of appreciation, as follows:

COUNT 1

That you Frank Igbinedion (M) and Saframic Homes Ltd on or January 2012 at Abuja, FCT while being entrusted with certain property of the Nigerian Union of Teacher (NUT) Abuja Municipal as contractors engaged for the execution of the Union Housing Loan Scheme Project at Lubge Extension, Abuja did commit criminal breach of trust to wit: dishonestly converted to your use ₦6,000,000.00 (Six Million Naira) part of a larger sum you collected from the Union for re-processing of title documents with the AGIS and you thereby committed an offence punishable under section 312 of the Penal Code Cap 532 Volume 4 Laws of the FCT, 2007.

COUNT 2

That you Frank Igbinedion (M) and Saframic Homes Ltd on or January 2012 at Abuja, FCT while being entrusted with certain property of the Nigerian

Union of Teacher (NUT) Abuja Municipal as contractors engaged for the execution of the Union Housing Loan Scheme Project at Lubge Extension, Abuja did commit criminal breach of trust to wit: dishonestly converted to your use ₦8,805,000.00 (Eight Million, Eight Hundred and Five Thousand Naira part of a larger sum you collected from the Union for re-processing of title documents with the AGIS and you thereby committed an offence punishable under section 312 of the Penal Code Cap 532 Volume 4 Laws of the FCT, 2007.

COUNT 3

That you Frank Igbinedion (M) and Saframic Homes Ltd sometime in 2012 or thereabout at Abuja, FCT while being entrusted with certain property of the NUT Abuja Municipal as contractors engaged for the execution of the NUT Housing Loan Scheme Project at Lugbe Extension, Abuja did commit criminal breach of trust to wit: dishonestly converted to your use ₦23,000,000.00 (Twenty

Three Million Naira) part of a larger sum you collected from the Union for re-processing of title documents with the AGIS and you thereby committed an offence punishable under section 312 of the Penal Code Cap 532 Volume 4 Laws of the FCT, 2007.

COUNT 4

That you Frank Igbinedion (M) and Saframic Homes Ltd in January 2013 or thereabout at Abuja, FCT while being entrusted with certain property of the NUT Abuja Municipal as contractors engaged for the execution of the Union Housing Loan Scheme Project at Lugbe Extension, Abuja did commit criminal breach of trust when the Union instructed you to transfer ₦100,000,000 (Hundred Million Naira) to Kenia Integrated Services Ltd but transferred ₦51,002,000 only (Fifty One Million, Two Thousand Naira) and dishonestly misappropriated ₦48,988,000 (Forty Eight Million, Nine Hundred and Eighty-Eight Thousand Naira) and

you thereby committed an offence punishable under section 312 of the Penal Code Cap 532 Volume 4 Laws of the FCT, 2007.

In these Counts, the 1st and 2nd Defendants were simply accused of dishonestly misappropriating or converting to their personal use, the respective specific sums of **₦6,000,000.00; ₦8,805,000.00; ₦23,000,000.00;** and **₦48,988,000.00**, being part of larger sums of money they collected from the NUT for the re-processing of title documents with respect to the Union's housing scheme project with AGIS.

I have carefully and painstakingly examined the totality of the evidence adduced by all the prosecution witness. With respect to **Counts 1 – 3** of the Charge, I must state that not one of the witnesses mentioned the amounts alleged to have been dishonestly misappropriated in those Counts in their respective testimonies, let alone establishing how the

1st and 2nd Defendants carried out the alleged misappropriation.

The position of the law is that where the prosecution alleges that a defendant misappropriated or stole a specific amount of money, it must prove that the specific amount is indeed misappropriated, not a higher or a lesser amount. This is the position of the Court of Appeal in Dr. OluOnagoruwa Vs. The State[1993] LPELR-43436(CA), per **Tobi, JCA** (as he then was), where it was held as follows:

***“I am in very grave difficulty to go along with the submissions of learned counsel for the respondent that proof of a lesser amount is enough to sustain conviction in this case. While that may well be so in a case where the charge or count is divisible. I do not agree that it applies in this case where the charge is indivisible. I do not think that is the proper function of the criminal law in the instant case.*”**

If all the responsibility of the prosecution is simply to prove part of the money stolen in a single unbroken charge, as basis for conviction of an accused, I must say that the prosecution will have the best of two worlds if there are two worlds at all. In my humble view, the concept of criminal jurisprudence and criminality, in the context of apportionment of guilt, is stricter than the way learned counsel has put it. An offence committed is an exact human conduct and a'fortori, stealing a particular amount. Therefore, if an accused is charged with stealing a particular amount or named amount, the prosecution must stand or fall by proving the particular amount or by failing to prove same, respectively. The legal position is as exact as that. A contrary position will not only be oppressive to the accused but will certainly run against the provision of Section 33(5) of the Constitution of the Federal Republic of Nigeria 1979 where the accused is presumed innocent until he is proved guilty. How can an accused be

proved guilty if evidence is not led on the exact amount of money stolen in an indivisible charge such as the one the appellant faced? That will be tantamount to reversing justice and we, in this Court, cannot be a party to such reversion.”

In the present case therefore, the prosecution having failed to establish that the 1st and 2nd Defendants misappropriated the specific amounts mentioned in **Counts 1 – 3** of the Charge, cannot be said to have established a *prima facie* case against them. As such, the 1st and 2nd Defendants, in that circumstance, have no obligation to defend the charges. I so hold.

Consequently, I hereby uphold the submission of no case to answer in favour of the 1st and 2nd Defendants with respect to **Counts 1 – 3** of the Charge. I hereby enter a verdict of “**Not guilty**” in their favour in that respect and I accordingly discharge them of those Counts.

With respect to **Count 4**, it is alleged that the NUT transferred the sum of **₦100,000,000.00** to the 1st and 2nd Defendants with the instruction that the said amount be paid to one *Kenia Integrated Services Ltd.* but that they transferred only the sum of **₦51,000,002.00** to the said *Kenia Integrated Services Ltd.* and dishonestly misappropriated the balance of the sum of **₦48,988,000.00**.

Now, the only evidence that relate to Count 4 of the Charge is adduced by the **PW10, Ogar Julius**, Investigator with the ICPC. He testified in that regard as follows:

“Investigations further revealed that a purported company called Kenya Integrated Services sent a proposal to NUT requesting NUT to give them the go-ahead to process land documents for them and that the sum of ₦100,000,000.00 should be paid to them through the 2nd Defendant. We confirmed that NUT paid the said sum of ₦100,000,000.00 to

the 2ndDefendant to be remitted to Kenia. Our investigation revealed that the 2ndDefendant only transferred the sum of ₦51,002,000.00 to Kenia. The 2ndDefendant held on to the remaining amount of about ₦49,000,000.00. ... Overall, the NUT executives were complacent. They never questioned the 2nd Defendant for not transferring full money to Kenia as instructed. Our investigation revealed that the NUT conspired with the Defendants to defraud the Union”

The **PW10** tendered in evidence the said proposal from *Kenia Integrated Services Ltd.* as **Exhibit P15**.

By my understanding, the involvement of the 2ndDefendant with respect to the agreement between the said *Kenia Integrated Services Ltd.* and the NUT is as contained in **Exhibit P15** where *Kenia* stated that she authorized NUT to pay for her services through her “**friendly company,**” *Saframic Homes Ltd.*, who in turn will transfer the money to her designated

bank, as may be directed by the management of the company.

By my understanding of **Exhibit P15**, the 2ndDefendant is not a party to the agreement made between NUT and the said *Kenia Integrated Services Ltd.* by which the company was contracted to process NUT's land titles for the sum of **₱100,000,000.00**. The 2ndDefendant is merely a channel nominated by *Kenia* by which NUT is to remit the agreed contract sum of **₱100,000,000.00** to her. That is the purport of **Exhibit P15**.

As such, in order for the prosecution to establish criminal breach of trust against the 1st and 2ndDefendants for misappropriating the said sum of **₱48,988,000.00** as alleged, it must lead evidence – (i) that *Kenia* complained or alleged that the 2ndDefendant failed to deliver the sum to her; and (ii)

that the NUT complained that *Kenia* failed to perform the obligation as set out in **Exhibit P15**.

All that the prosecution did in the present case was to establish that the NUT indeed, as instructed by **Exhibit P15**, transferred the sum of **₦100,000,000.00** to the account of the 2nd Defendant on 28/01/2013 *vide* **Exhibit P6**; and that the 1st Defendant, after receiving the **₦100,000,000.00** in her account on the same 28/01/2013, *vide* **Exhibit P7**, in turn transferred the sum of **₦51,002,000.00** to *Kenia's* account.

The **PW10** merely testified that the 1st Defendant held on to the remaining sum of almost **₦49,000,000.00** but failed to show that *Kenia* did not receive the balance.

Again, the **PW10** alleged that investigations revealed that the executives of NUT conspired with the Defendants to defraud the Union, yet failed to

charge any of the principal officers of the Union or any of the Defendants for conspiracy, in spite of the investigative revelation.

Under cross-examination by learned counsel for the 1st and 2nd Defendants, the **PW10**, further testified as follows:

“I cannot confirm that Kenia is a registered company. ₦100 million was paid to Saframic to pay to Kenia. It is true that NUT agreed to pay Kenia ₦100 million. ... Investigation in respect of Kenia is still ongoing. We did not receive any petition from Kenia against the 1st and 2nd Defendants.”

From the evidence of the **PW10** under cross-examination to the extent that *Kenia* did not make any allegation of misappropriation against the 1st and 2nd Defendants, of funds meant to be paid to her from the NUT, there can be no legal basis to charge the 1st and 2nd Defendants for

misappropriating the said sum of ~~N48,988,000.00~~. The testimony of the **PW10** in this respect, is at best spurious and speculative. I so hold.

More apparent on the record is that the evidence of misappropriation of the sum stated in **Count 4** adduced by the **PW10** was discredited under cross-examination by the 1st and 2nd Defendants' learned counsel. In that circumstance, I must hold that the prosecution has failed to establish a *prima facie* case of criminal breach of trust against 1st and 2nd Defendants with respect to **Count 4** of the Charge.

In the circumstances, I hereby again uphold the submission that the 1st and 2nd Defendants have no case to answer with respect to **Count 4** of the Charge. As such, I hereby enter a verdict of "**Not guilty**" in their favour in that respect and I accordingly discharge them of the Count.

3RD DEFENDANT

I proceed to the 3rd Defendant who stood trial for **Counts 5** and **6** of the Charge. The Counts states as follows:

COUNT 5

That Percy Ndam between October 2012 and April 2013 at Abuja, FCT while being a Treasurer of the NUT Abuja Municipal entrusted with the property of the Union and one Extension, Abuja did commit criminal breach of trust when you collected the sum of ~~N~~57,000,000 (Fifty Seven Million Naira) belonging to the Union from Contemporary Archvision Ltd purportedly to pay compensation to landowners at Wupa Village Lugbe Extension but dishonestly converted same to your use and you thereby committed an offence punishable under section 312 of the Penal Code Cap 532 Volume 4 Laws of the FCT, 2007.

COUNT 6

That Percy Ndam between October 2012 and April 2013 at Abuja, FCT while being a Treasurer of the NUT Abuja Municipal entrusted with the property of the Union and as a trustee of the Union Housing Loan Scheme Project at Lugbe Extension, Abuja did commit criminal breach of trust when you collected through one NdumereChinyere the sum of ₦5,000,000 (Five Million Naira) belonging to the Union from Contemporary Archvision Ltd purportedly to settle some community plots owners but dishonestly converted same to your use and you thereby committed an offence punishable under section 312 of the Penal Code Cap 532 Volume 4 Laws of the FCT, 2007.

By the said Counts, the 3rd Defendant is accused of committing criminal breach of trust in that he collected the sums of **₦57,000,000.00** and **₦5,000,000.00** respectively belonging to the NUT from a company called *Contemporary Archvision Ltd.* for purposes of paying compensation to landowners

at Wupa Village, Lugbe and other community plot owners but that he dishonestly converted the money to his personal use.

Only the **PW1** (the author of the Petition, **Exhibit P1**), the **PW7** (Chairman of the NUT Municipal Branch, Abuja); and **PW10** gave evidence relating to the 3rd Defendant.

According to the **PW1**, the 3rd Defendant was the Treasurer of the NUT Municipal Branch at the material time. He claimed that it was the Chairman, Secretary and the Treasurer (3rd Defendant) who were solely in charge of the Union's land purchase and housing project and that they were also the signatories of the Union's Bank Account domiciled with Wema Bank Plc.

Under cross-examination by the 3rd Defendant's learned counsel, the **PW1** had this to say concerning the 3rd Defendant:

“Ideally, the 3rd Defendant could not have issued a cheque to himself and signed it....”

The **PW7** also gave evidence touching on the 3rd Defendant. He stated as follows:

“Percy Ndam, my Treasurer at that time, is the 3rd Defendant in this case. ... As at the time I was Chairman of the Branch, myself, Emmanuel Awwal (Secretary) and Percy Ndam (Treasurer) were signatories to the account of the Union. It is provided that the Chairman and any of the other two officers I mentioned can sign a cheque to authorize withdrawals from the Union’s Bank Account.”

Under cross-examination by the 3rd Defendant’s learned counsel, the **PW7** testified further:

“It is correct that I am a compulsory signatory to the NUT account. It was not possible for the 3rd Defendant to solely sign and cash cheque of the Union. There was never a case in which the

3rdDefendant was alleged to have forged my signature. I am not aware that the 3rd Defendant made any unauthorized withdrawal from the Union's Account. ... It is also correct that we also engaged Contemporary Arch Vision Ltd. to handle compensation on Batch 3 land, apart from buying the land through her. Arch Vision did not complete the compensation because the villagers were no longer comfortable on how Arch Vision was paying them...

It is correct that the Union set up a Committee to handle the compensation... The 3rd Defendant was the head of the Committee. The Committee had to obtain a refund from Contemporary Arch Vision Ltd. in order to pay the villagers directly. I cannot remember exactly how much the Committee collected back from Arch Vision Ltd. ... The 3rd Defendant was acting as the head of the Committee in receiving money from Arch Vision and in disbursing to the villagers. I am not aware that

the 3rd Defendant spent money meant for compensation payment for any other purpose.”

The evidence of the **PW10** on record on the same issue is reproduced as follows:

“With respect to Batch C, land over which about ~~N~~265 Million was paid to Contemporary Arch Vision, out of which the sum of ~~N~~62 Million was paid to the 3rd Defendant, Percy Ndam, Treasurer of NUT, purportedly for payment of compensation. The land in question is located at Lupa Village at Lugbe Extension. ... Our investigation further revealed that the 3rd Defendant was never authorized to collect any money for payment of compensation and he never paid the compensation.”

Apart from the fact that the **PW10** failed to give any evidence to establish how and in what manner *Contemporary Arch Vision Ltd.* paid the said total sum of **~~N~~62 Million** to the 3rd Defendant; the said

Contemporary Arch Vision Ltd. was not called as a witness to corroborate or establish this allegation.

In the same token, the prosecution failed to call as witness, the said **NdumereChinyere**, through who the 3rd Defendant was alleged to have received the said sum of **₦5,000,000.00** referred to in **Count 6**. As such, no evidence was given whatsoever as to how the allegation in **Count 6** came about.

Going further, the prosecution equally failed to call any of the said landowners at Wupa Village or community plot owners at Lugbe Extension Layout to testify that the 3rd Defendant failed to pay compensation to them in line with the directive of the NUT.

Again, the **PW10's** testimony was badly discredited under cross-examination by the 3rd Defendant's learned counsel.

The evidence of the **PW10** also contradicted that of the **PW7**, the Chairman of the Union, whose testimony, under cross-examination, as reproduced in the foregoing, is to the extent that he was not aware that the 3rd Defendant spent money meant for compensation for any other purpose.

As such, it is apparent from the evidence led at the trial and the lack of it, that the prosecution has failed woefully to establish any of the ingredients of the offence of criminal breach of trust for which the 3rd Defendant stood trial for **Counts 5** and **6** of the **Charge**. In the circumstances, it will be proper to and I hereby uphold the no case submission of the 3rd Defendant and I hereby enter a verdict of “**Not guilty**” in his favour and he is accordingly discharged from defending the two Counts.

4TH AND 5TH DEFENDANTS

I now turn to the 4th and 5th Defendants. They stood trial for the offences in **Counts 7** and **8** of the Charge which I reproduce as follows:

COUNT 7

That you, UcheUwendi 'M' and NCR & Associates Ltd between January 2012 and October, 2013 at Abuja, FCT while being entrusted with certain property of the NUT Abuja Municipal as contractors engaged for the execution of the NUT Housing Loan Scheme Project at Lugbe Extension, Abuja did commit criminal breach of trust to wit: dishonestly converted to your use the sum of ₦38,181,000 (Thirty-Eight Million, One Hundred and Eighty One Naira) collected from the Union for regularization of title documents with the AGIS and you thereby committed an offence punishable under section 312 of the Penal Code Cap 532 Volume 4 Laws of the FCT, 2007.

COUNT 8

That you, UcheUwendi 'M' and NCR & Associates Ltd between January 2012 and October, 2013 at Abuja, FCT while being entrusted with certain property of the NUT Abuja Municipal as contractors engaged for the execution of the NUT Housing Loan Scheme Project at Lugbe Extension, Abuja did commit criminal breach of trust when you collected from the Union the sum of ₦18,450,000 (Eighteen Million, Four Hundred Thousand Naira) but dishonestly converted same to your use and you thereby committed an offence punishable under section 312 of the Penal Code Cap 532 Volume 4 Laws of the FCT, 2007.

The purport of **Counts 7** and **8** is that the 4th and 5th Defendants committed criminal breach of trust by converting to their personal use the sums of **₦38,181,000.00** and **₦18,450,000.00** being monies paid to them by the NUT for the regularization of title documents with respect to the Union's landed

property for its Housing Scheme project at Lugbe Extension, Abuja.

Only the **PW7** and the **PW10** gave evidence in relation to the 4th and 5th Defendants. I have carefully scrutinized their testimonies. Nowhere did either of the **PW7** or **PW10** give evidence that the 4th and 5th Defendants misappropriated the specific sums mentioned in **Counts 7** and **8** of the Charge.

Again, on the authority of *Dr. OluOnagoruwa Vs. The State(supra)*, I hold that the prosecution has failed to give any shred of evidence to establish a *prima facie* case against the 4th and 5th Defendants with respect to **Counts 7** and **8** of the Charge. In the circumstance I hereby return a verdict of **“Not guilty”** in favour of the 4th and 5th Defendants and they are accordingly discharged.

In wrapping up this ruling, it is instructive to remark that, apart from the 3rd Defendant who, at the

material time, was a member and official of the NUT, the other Defendants merely had contractual relationships with the NUT. I examined the Petition, **Exhibit P1**, which catalyzed investigations resulting in the instant Charge. Nowhere in the Petition is any allegation of criminal breach of trust alleged by the Petitioner against the 1st, 2nd, 4th and 5th Defendants; and the reason is not farfetched; because they were mere contractor to the NUT, employed to render services at one time or the other. The focus of the Petition is on the officers of the NUT, who the Petitioner (**PW1**) believed mismanaged the finances of the Union. It is therefore strange to note that the prosecution neglected to prosecute the prime targets of the Petition and went after persons who were contracted to render service to the Union. I fail to see how the 1st, 2nd, 4th and 5th Defendants, who stood in no position of trust to the NUT, could be accused of criminal breach of trust.

In the very recent decision of Kure Vs. COP [2020] LPELR(SC), the Supreme Court considered the nature of the allegation of criminal breach of trust as defined in s. 311 of the Penal Code and held, per **Galinje, JSC**, as follows:

“All the prosecution witnesses testified that the transactions between the Ministry of Culture & Tourism, Rivers State and the Appellant were based on contract between the parties and that the contract had wholly failed because of the Appellant's non-performance. The second comment under Section 312 of the Notes on the Penal Code law by S. S Richardson, states as follows:-

”(2) Breach of trust is not the same thing as breach of contract. In all the cases given in the illustration to Section 311, in which a person is said to have committed criminal breach of trust, the property misappropriated is the property of another person or property of

which the offender was not the beneficial owner.”

For a criminal breach of trust to occur, there must be evidence of trust. A trust arises as a result of a manifestation to create it. It is a fiduciary relationship regarding property and charging the person with title to the property with equitable duties to deal with it for another's benefit. It is a property interest held by one person, called the trustee at the request of another person called the settlor for the benefit of a third party called the beneficiary. For the trust to be valid, it must involve specific property, reflect the settlor's intent and be created for a lawful purpose. A trust exists when property is to be administered by one person on behalf of another for some purpose other than the trustee's benefit. Where the property is administered for the benefit of the person holding it, it ceases to bear the meaning of trust.

In the instant case, the ₦3.5 million Naira paid to the Appellant include cost for logistics and procurement of the giraffe and the Appellant's profit since the giraffe was not a commodity that was on display and could be bought for the ₦3.5 million.

The Appellant testified that the animal was not available in Nigeria and that its procurement was possible only in Niger Republic or Chad. Was he expected to trek to these countries to procure the calf giraffe with the money advanced to him? Clearly the intention of the Ministry of Culture & Tourism, Rivers State was for the Appellant to manage the money in such a way as to procure the calf giraffe. It was not its business to dictate how the giraffe was to be procured. There is no evidence that shows the beneficiary of the money that was given to the Appellant to buy the giraffe was a person other than the Appellant. A trust involves three elements: -

- 1. A trustee, who holds the trust property and is subject to deal with it for the benefit of one or more others.**
- 2. One or more beneficiaries to whom and for whose benefit the trustee owes duties with respect to the trust property.**
- 3. Trust property, which is held by the trustee for the beneficiaries.**

In the instant case there are no beneficiaries other than the Appellant, as the money was deposited in the Appellant's account to be administered by him.

One worrisome procedure adopted at the Chief Magistrate's Court was the charge against the Appellant for criminal breach of trust and cheating the Ministry of Culture & Tourism in the sum of ₦3.5 million, inspite of the fact that the nominal complainant clearly stated in evidence that they had recovered the sum of ₦995,000.00 from the ₦3.5 Million which was paid into the Appellant's account. The only outstanding balance against the

Appellant was in the region of ₦2,505,000.00. The Appellant was therefore convicted on a defective charge, which stipulated that he committed criminal breach of trust and cheating his victim in the sum of ₦3.5 million. Although the error is not so material as to vitiate the proceedings in this case, it shows how desperate the trial Court had become in finding reasons to convict the Appellant.

Having considered the evidence at the trial Court, I am of the firm view that the transactions involved in this case were based on contractual agreement, as there is no evidence of criminal breach of trust. In OnagoruwaVs State [1993] LPELR - 43456(CA) at pages 67- 68 Paras, F- B, Niki Tobi, JCA (as he then was) said:-


“There is no law known to me where a breach of agreement between two parties, which has no element of criminality, can result in a criminal charge and subsequent conviction. At best, it can be a breach of a contractual

relationship which the criminal law lacks legal capacity or competence to enforce and punish.’”

On the basis of the exposition in the above cited authority, it becomes even clearer that there was never a relationship of trust between the NUT and the Defendants which they could be alleged to have breached. At worst, the Defendants, except the 3rd, could be alleged to have committed breach of contract; but certainly not criminal breach of trust.

In my view, the conduct of the Complainant and indeed the prosecution in this case can be likened to the proverbial “*ignoring the leprosy and treating the ringworm.*” Rather than pursue the officers of NUT who were alleged in **Exhibit P1** to have mismanaged the Union’s funds entrusted to them for the benefit of her members, the Complainant chose to embark on a wild goose chase to hound persons who merely had civil contracts with the NUT.

It is therefore apparent, on the face of the record before the Court, that the prosecution has failed to establish a *prima facie* case of criminal breach of trust, in fact or in law, against any of the Defendants. The Defendants have no obligation in law to defend the charges alleged against them. They are all accordingly discharged.


OLUKAYODE A. ADENIYI
(Presiding Judge)
07/12/2020

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