IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON THE, 25TH DAY OF NOVEMBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CR/101/16

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:…….COMPLAINANT

AND

SYLVESTER ONOJA:.....DEFENDANT

OlarenwajuAdeola for the Prosecution.
Prince Anthony Ameh for the Defendant.

JUDGMENT.

The Defendant was charged with the offence of criminal breach of trust, thus;

> ***"That you, Sylvester Onoja, a former staff of Finbank now FCMB, sometime in 2010 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital territory entrusted with the sum of $150,000 USD (One hundred and fifty thousand US dollars) belonging to one Air Vice Marshal Steve Onuh to open a fixed deposit account for him at Finbank now FCMB dishonestly converted to your own use in violation of legal contract which you made in regard to the said sum and thereby committed an offence contrary to Section 311 of the penal code and punishable under Section 312 of the same penal code."***

Upon arraignment on 28th September, 2016, the Defendant pleaded not guilty to the charge and the matter proceeded to

trial after bail had been granted to the Defendant. In the course of trial, three prosecution witnesses gave evidence for the prosecution. One Abdulfatai Ibrahim, the Regional control Head of First City Monument Bank (FCMB) in Abuja testified as PW1 on the 28th day of November, 2016. He told the Court that the Bank got a complaint from one Air Vice Marshal Steve Onuh demanding for the liquidation of $150,000 investment with the bank which he made through the Defendant. He stated that in the course of their investigation, the bank realised that there was no $150,000 investment in favour of Air Vice Marshal Onuh and that the said Air Vice Marshal Onuh had no USD account with the bank. That upon this discovery, the bank sent a petition to the Economic and Financial Crimes Commission (EFCC), annexing the letter of complaint from Air Vice Marshal Steve Onuh. The said petition to the Economic and Financial Crimes Commission (EFCC), with the annexures thereto were tendered in evidence by the PW1 and same admitted and marked Exhibit PW1A-A6.

The PW1 was duly cross examined by the defence counsel during which he maintained that Air Vice Marshal Steve Onuh has no fixed deposit of USD with the bank (FCMB).

On the 8th day of May, 2017, one Mohammed Marafa, an officer of the Economic and Financial Crimes Commission (EFCC) gave evidence as PW2. He told the Court in his evidence in chief that on the 8th day of September, 2013, the office of the Executive Chairman of the Economic and Financial Crimes Commission (EFCC), received a petition from First City Monument Bank that the Defendant collected the sum of $150,000 belonging to a customer, Air Vice Marshal Steve Onuh, to open a fixed deposit account and that the account was not opened as requested by the customer. That the

Defendant who was the Regional Head of Finbank, now FCMB collected the $150,000 and diverted same.

He stated that the case was referred to his team of the Bank Fraud Unit for investigation and reporting. The PW2 told the Court their investigation revealed that no $150,000 was deposited in any fixed deposit account, rather, that the Defendant diverted same to his own use. The statements made by the Defendant to the investigators were tendered and admitted in evidence as Exhibit PW2A.

The PW2 was duly cross examined by the defence counsel during which he maintained the substance of his evidence in chief.

Air Vice Marshal Steven Onuh testified for the prosecution as PW3 on the 25th day of January, 2018. He told the Court that he met the Defendant around 2008 at the officer's mess of the National Defence College and the Defendant introduced himself to him as a Senior Officer of Finbank and an honorary member of the Officers Mess. He stated that the Defendant marketed the banks products to him and pressured him to do business with the bank by opening an account with the bank. That based on the fact that the Defendant was an honorary member of the officers mess, a position reserved for only honourable members of the society, and also on realization that the Defendant is from the same ethnic group as him, he succumbed to the Defendant's pressure and decided to take the money he had at home to the Defendant at the bank.

He stated that he first took $80,000 to the Defendant's office at Zone 4, Abuja which sum the Defendant collected from him in the bank premises and went into the banking hall and later came out and gave him a teller for $80,000.

Testifying further, the PW3 stated that about a month later, he took another $20,000 to the Defendant and the Defendant gave him a letter on the bank's letter head in the form of promissory letter showing that he has investment with the bank with 4% interest. Six months later, he went to the bank again and gave $50,000 (Exh PW3G) to the Defendant to deposit in his account as he was saving the money for his son's tuition at a flying school abroad. That the Defendant went into the banking hall and returned with a deposit slip of $150,000 (Exh PW3H) which he took and left, having no reason to doubt the Defendant.

He stated that upon his return from the Defence College after a year, he went to the bank and demanded for his money from the Defendant but that the Defendant told him to hold on; that the bank was in a merger process, and that his money was safe in the bank.

The PW3 further stated that when the merger process was concluded, he became uncomfortable as the Defendant started dodging him and avoiding his calls. That he then wrote to the bank requesting to have his money back but that the response of the bank was that there was no such account in their records, but that they have established an inquiry and reported the case to the Economic and Financial Crimes Commission (EFCC). He stated that he subsequently instituted a civil suit against the bank before the Economic and Financial Crimes Commission (EFCC) later invited him to make statement over the report made to them by the bank.

The following exhibits were received in evidence from the PW3;

1. Exhibit PW3A – CTC of Complementary Card.
2. Exhibit PW3B – "Investigation Position" dated 27/4/10.
3. Exhibit PW3C – Re-Request to Redeem Fixed Deposit dated 9/7/14.

4. Exhibit PW3D – Re-Request to Redeem Fixed deposit dated 30/10/14.
5. Exhibit PW3E – Re-Request to Redeem Fixed deposit dated 30/6/14.
6. Exhibit PW3F – Re-Request to Redeem Fixed deposit dated 20/10/14.
7. Exhibit PW3G – Deposit slip dated 17/3/10 for $50,000.
8. Exhibit PW3H – Deposit slip dated 26/9/10 for $150,000.

The PW3 told the Court under cross examination that the monies he gave to the Defendant were for fixed deposit in the bank as represented to him by the Defendant, and not for investment in property. He further stated that although he had no domiciliary account with the bank prior to giving the monies to the Defendant, that he relied on the professional expertise of the Defendant, having no reason to doubt him as a responsible banker.

At the close of prosecution's case, the defence filed a no case submission which was later dismissed by the Court in a considered ruling, and the Defendant was ordered to enter his defence.

On the 27th day of January, 2020, the Defendantopened his defence. Testifying as DW1, he told the Court that he was the Regional Manager, Private Banking of FinBank, now FCMB, by which position he was registered as a member of the National War College Officers' Mess to enable him market the Bank's products to officers of the rank of Colonel and above.

He stated that in the course of introductions, he got to know that he and the nominal complainant, the PW3, are from the same state and the same tribe. That after the introduction, they became very close, and subsequently, they had a discussion on the need for the PW3 to have his own personal house in Abuja.That he was able to secure a 3 bedroom flat for the PW3

in Abuja, following which the PW3 was so impressed that he bought the accommodation for him, and consequently, the PW3 never took any final decision without consulting him.

The Dw1 stated that the PW3 later confided in him about his finances. That he came to the bank and they discussed the importance of fixed deposit, both domiciliary and naira accounts.A month after, the PW3 came to the bank and gave him $80,000 and he gave the PW3 evidential letter, which has the name of PW3 as the owner of the money and his (DW1's) own name as the depositor.

He explained that the purpose of evidential teller is to show that someone who does not have account with the bank has left a sum of money pending when he will regularise all the required documentations for account opening. He stated in such situation, if the person does not have all the required particulars, the person could box the money in the bank; meaning that the money is awaiting decision. That the money will not be in the bank account but in safe keeping in the bank with the person that deposited it, while the owner will come some other time to regularise.

He stated that the PW3 entrusted the money to him and that he has evidence to back it up.

The DW1told the Court that it was agreed that the PW3 would come to the bank later to regularise the process of account opening but that he could not come as planned. That after two months, the PW3 came to the bank with the sum of $20,000 and he told the PW3 that if he fixed his money in domiciliary account, he cannot withdraw more than $10,000 across the counter, and that domiciliary account is known by the CBN and other organisations. He stated that after these explanations, the PW3 became very sceptical because the EFCC will have opportunity of seizing it any time.

That after that discussion, he because very careful and has thus not opened any domiciliary account with the bank until now. He stated that 5 months later, the PW3 came and gave him $50,000, bringing the total money to $150,000.

The DW1 further told that Court that if money is boxed in the bank, it does not last for more than 24 hours because the EFCC and the Police frown at putting money in a pool in any bank, and that is why the bank does not allow the money to be with them for more than 24 hours.

That after hehad kept the money for a long time, and FinBank was about to be acquired by FCMB, the PW3 gave him a directive. That he then pulled all the money to a Bureau De Change to avoid attracting the EFCC. That he gave the money to a Bureau De Change where it became like fixed deposit and the Bureau De Change was using the money and paying him interest in return.

He stated that he later counselled the PW3 that putting the money in Bureau De Change was risky; and advised him instead, to invest the money in buying property that the bank was selling.

That the PW3 agreed and consented that he should change the Dollars to Naira at the rate of N152.00 per Dollar, but when the money was changed to Naira, it was not sufficient to buy the property.

He statedthat the PW3 then gave him N13m cash to add to the changed Dollars, and on the second day, the PW3 gave him N3.5m and gave him a word of caution that he must do due diligence before any payment for the house. That they decided to have changeof ownership, and the PW3 made a deposit of N250,000, being 50% of the legal fee.

Testifying further, the DW1 stated that he was the Secretary of the Asset Recovery Committee after the merger of FinBank and FCMB, and because the FinBank did not submit a comprehensive list of their assets and liabilities, FCMB was angry, and the Finbank said that his committee was not transparent, in consequence of which the committee was dissolved and all the members suspended from the Bank.

He stated that the cost of the property he was trying to buy for PW3 was N80m but that they were only able to pay N47m, which was the equity contribution. That immediately he was suspended from the Bank, the PW3 called him and asked him to refund his money, and they wrote an agreement to the effect that he would return the whole money, both Dollar and Naira.

The said Agreement was tendered and admitted in evidence as Exhibit DW1A.

Distinguishing between a deposit slip and a withdrawal slip under cross examination, the DW1 told theCourt that a deposit slip is a slip of acknowledgement of payment made into an account, while withdrawal slip is meant for account holders, used in withdrawing money from their existing account.

He told the Court that he did not have any evidence that he deposited$100,000 with a Bureau De Change.

Further, under cross examination, he admitted that Exhibits PW3G-H contain the name of the PW3 as the name of the account, and that by Exhibit PW3G, the sum of $150,000 was deposited.

When asked whether the PW3 has recovered his fixed deposit with either Finbank or FCMB, the DW1 stated that the PW3 did not have fixed deposit with FinBank and consequently, did not have any with FCMB. He stated however, that although the PW3 gave him $150,000 for fixed deposit, that the money has

been utilised by the PW3, when he gave counter-directive on the money.

He told the Court that the counter directive was given to him on 18th April, 2011 while the $80,000 was given to him on 10th March, 2010 and the $20,000 given to him on 27th April, 2010.

At the close of evidence, the parties filed and exchanged final written addresses.

The learned defence counsel, A.P. Ameh Esq, in his final written address, raised three issues for determination, namely;

1. Whether having regards to the evidence adduced before this honourable court and the exhibits tendered, the prosecution has proved the case of criminal breach of trust against the Defendant beyond reasonable doubt, in accordance with Section 311 of the Penal Code?
2. Whether or not the PW3 authorized the Defendant to open any domiciliary/Dollar account with the then FinBank for the purpose of fixing the said sum?
3. Whether from the totality of all evidences (sic) before this Court, it can be inferred that there was a purely private understanding between the PW3 and the Defendant to go into real estate at the instance and for the benefit of the PW3, i.e. whether it was a purely civil transaction between the Defendant and the PW3?

In arguing issue 1, learned counsel relied on Section 135 of the Evidence Act, 2011 to submit that the standard of proof required in a criminal case is proof beyond reasonable doubt. He argued that the prosecution in this case, is required to satisfy the conditions laid down in the said Section 135 of the Evidence Act, 2011, and that any standard of proof lower than that specified in the said Section, entitles the Defendant to a discharge and acquittal.

He referred to **Onuoha v. The State (1988)3 NWLR (Pt.83)460, Ajiboye v. FRN (2014) LPELR-24325(CA)** and **Musa v. The State (2013) 14 NWLR (Pt.1320) 287 at 318,** on the ingredients of the offence of criminal breach of trust, and contended that the prosecution has totally failed to prove any of the ingredients of the alleged crime against the Defendant.

Relying on **Aiyejena v. The State (1969) NWLR Pg 73,** he posited that before there can be a conviction on a charge of breach of Trust, the prosecution must adduce evidence of entrustment and of dishonest misappropriation of what was entrusted, and that the prosecution must establish that the Defendant did so in violation of:

i. Any direction of law or directive prescribing the mode in which such trust is to be discharged; or;
ii. Any legal contract touching the discharge of such Trust; or,
iii. He intentionally allowed some other person(s) to do so or commit the above stated.

He argued that it is not enough to establish that the money has not been accounted for, or that it was mismanaged. That it has to be established that the Defendant had dishonestly put the property to his own use or to some unauthorised use.

He referred to **Y.O. Bakare&Ors v. The State 338/67; LC Vol. 1, 2004 at page 173.**

He contended that the prosecution in this case, failed to show that the Defendant had the dishonest intention of converting the PW3's money to his own use.

He posited that it is the mental act of fraudulent misappropriation that distinguishes embezzlement, amounting to a civil wrong or tort, from that of criminal breach of trust, andthat it is only when there is evidence of the mental act of

fraudulent misappropriation of any sum of money, that it becomes a penal offence punishable as criminal breach of trust. He referred to **I.G. Tirah v. C.O.P. (1973) NWLR page 143.**

Learned counsel further contended that the prosecution failed to show what law or directive was breached by the Defendant. He argued that there is a laid down banking procedure that must be followed before any account can be opened and money fixed therein, but that the prosecution has not shown this Court that the PW3 actually followed the banking guidelines, and what rules, laws or directives the Defendant broke or violated.

He contended further, that the prosecution failed to show the written mandate from PW3 to the Defendant authorizing the opening of a fixed deposit account, and that they also failed to show that the PW3 had not given a counter directive to the Defendant to purchase a real estate property with the money. He argued that the prosecution mainly relied on speculation.

Learned counsel also argued that the prosecution has failed to show from the totality of the evidence of PW1 and PW2, how the Defendant dishonestly converted the said sum of $150,000 for his own use. That no evidence was led by the investigators to show that the said money was traced to the Defendant's account, nor have they been able to convince the Court on what the Defendant did with the money.

Arguing that in a criminal trial such as this, the Court is bound to examine and consider all possible defences from the evidence in favour of the Defendant, learned counsel referred the Court to Exhibit DW1A, which according to him is a statement of understanding between the Defendant and PW3 and shows that the PW3 was in the know, and that by his

consent the $80,000, $20,000 and $50,000 were converted into Naira value and invested in the real estate on his behalf.

He posited that the prosecution has failed to lead any credible evidence to show that the sum of $150,000 was used or converted to the Defendant's own use.

Proffering arguments on issue two, learned counsel contended that from the banking rules and guidelines, before a customer of any bank can claim to have an account, he or she must have filled the necessary forms required in account opening, whether local or foreign currency accounts.

That when it comes to fixing of an amount, the customer must give a written instruction to the bank for such an amount to be fixed for a specific period of time on an agreed interest into an existing bank account.

He argued that in all the evidence led by the prosecution, the above guidelines were absent, and that the evidence before the Court shows clearly that the PW3 had no Dollar account with the bank.

He further argued that it was puzzling that after signing Exhibit DW1A which shows that the $150,000 was converted and given for investment in real estate in 2013, the PW3 still went ahead and wrote a request letter to the Manager of FCMB on 30th June, 2014, to redeem the same purported fixed deposit of the same amount he had on 28thJanuary, 2013 converted into Naira value as contained in Exhibit DW1A.

Heurged the Court to hold in favour of the Defendant that the PW3 had not mandated the opening of an account for him, and as such, did not have an account number that would have enabled the Defendant fix the said sum.

On issue three, he posited that in every case of criminal breach of trust, a breach of contract is implicit. That it is the mental element of dishonesty that clearly demarcates a breach of trust that is a civil wrong or tort, from the offence of criminal breach of trust. He contended that the absence of the requisite mensrea cannot legally justify a criminal prosecution. He posited that dishonest intention to misappropriate is the required mensreaand a crucial fact to be proved to bring home the charge of criminal breach of trust.

He argued to the effect that the transaction between the Defendant and PW3 was a simple civil transaction without any criminal element.

Relying on **Nnolim v. The State (1993) 3 NWLR (Pt. 283) 569 at 586** he urged the Court to resolve any possible doubt in this case in favour of the Defendant.

He urged that if it is established that the prosecution has not proved the guilt of the Defendant that he dishonestly converted to his own use PW3's money in violation of Section 311 of the Penal Code, that the Court should resolve this case in favour of the Defendant by discharging and acquitting him.

The learned Prosecution counsel, OlanrewajuAdeola, Esq, in his own final written address, raised a sole issue for determination, to wit;

> ***"Whether having regards to the evidence adduced by the prosecution and the evidence of the Defendant before this Honourable Court and exhibits tendered, the prosecution has proved the case of criminal breach of trust against the Defendant beyond reasonable doubt in accordance to Section 311 of the Penal Code."***

Proffering arguments on the issue so raised, learned prosecution counsel posited to the effect that from the totality of the evidence led before the Court by both the Prosecution and the Defendant, the prosecution established the ingredients of the offence of criminal breach of trust by proving beyond reasonable doubt that the Defendant actually committed the offence charged. He referred to **Iortim v. The Satte (1997(2 NWLR (Pt.490) 711 at 732**and Section 135 of the Evidence Act, 2011.

Relying on **Michael v.The State (2008) 13 NWLR (Pt.1104) 361-386** and **Okeke v. The State (2001) 2 NWLR (Pt.697) 397 at 415-416,** he posited to the effect that proofbeyond reasonable doubt does not mean proof beyond all shadow of doubt or proof beyond all iota of doubt.

He submitted that it is trite law that where all the essential ingredients of the offence charged have been proved or established by the prosecution, the charge is proved beyond reasonable doubt. He contended that in the instant case, from the totality of evidence adduced by the prosecution, the ingredients of the offence of Criminal Breach of Trust as contained in the charge, were established and proved beyond reasonable doubt.

He argued that the Defendant could not controvert the credible evidence led by the prosecution. That instead, the evidence of the prosecution was supported by the Defendant's defence when he testified among other things that;

i) He was entrusted with, and/or had dominion over a total sum of $150,000 by the PW3 to be placed on fixed deposit with FinBank (now FCMB).
ii) He misappropriated and converted the property ($150,000) for his own use when he could not confirm

and establish to the Court the whereabout of the said sum of $150,000.

iii) He told the Court he invested and fixed the said sum of $150,000 with a Bureau De change from where he confirmed on cross examination that there was no evidence before the Court of such invested and fixed account with the Bureau De Change.

iv) The sum of $150,000 was never fixed with FinBank because the Nominal Complainant did not perfect documentation with the bank despite the facts that the said sum were collected in three tranches and each transaction was given a deposit teller which have all been exhibited before this Court.

The learned prosecution counsel further argued that contrary to the testimony of the Defendant in his evidence in chief that on the instruction of PW3, he changed the $150,000 to Naira to purchase a property for PW3, the Defendant, under cross examination admitted that there was no such evidence as to the purchase of the said property, either in partly or in whole.

He contended that Exhibits PW2A, PW3B, PW3G and PW3F as well as the oral testimony of the Defendant, all confirm that the purpose for which the money was entrusted to the Defendant was for fixed deposit, which purpose, the Defendantdishonesty violated, as he did not fix same or invest same in any manner, and could not even account for the money.

Relying on **Emeka v. State (2001) 14 NWLR (Pt.734)666 at 682,** he submitted that it is a trite law that a true and voluntary confession by an accused, if direct and positive, duly made and satisfactorily proved, is sufficient to ground conviction. He contended that the confessional statement of the Defendant in the instant case, (Exh. PW2A) as well as his testimony both in

his evidence in chief and under cross examination, all support the case of the prosecution, and are sufficient proof beyond reasonable doubt to ground the conviction of the Defendant.

He referred to **Akpan v. State (2008) 14 NWLR (Pt.1106) 72** on the point that confession in criminal proceedings is like admission in civil proceedings, and that it is the strongest evidence of guilt on the part of an accused person. He posited that there is no better evidence and that there is no need for further proof since what is admitted needs no further proof.

He relied on Section 135(3) of the Evidence Act, 2011 to submit that it is trite law that if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving the reasonable doubt is shifted on to the Defendant. He argued that in the instant case, the prosecution having established the essential ingredients of the offence of Criminal Breach of Trust, and also proving the commission of the said offence beyond reasonable doubt, the Defendant failed to rebut the presumption of guilt against him.He referred to **Takim v. State (2014) LPELR-22667(CA).**

On proof of criminal intent of the Defendant, learned counsel referred to Section 16 of the Penal Code on when an act is done dishonestly. He further referred to **Tirah v. C.O.P. (1975) NNLR 143** and **Ugbaka v. State (1994) 8 NWLR (Pt.364) 568.**

He further posited that from Exhibits PW2A, PW3A, PW3B, PW3G and PW3F, circumstantial evidence of dishonesty could be inferred against the Defendant, as he submitted that by the authority of **Tirah v. COP (supra)**, dishonesty, in a charge of criminal breach of trust, can be proved by circumstantial evidence rather than direct evidence.

Learned counsel further contended that the evidence in chief of the Defendant is at variance with his written statement to the

Police. He relied on **Gabriel v. State (1989) 5 NWLR (Pt.122) 457 and Mbenue v. The State (1988)7 SC (Pt.111)71 at 82** to urge the Court to treat the testimony of the Defendant as unreliable and thus ignore same.

In conclusion, the prosecution posited and relying on Section 135 of the Evidence Act, 2011 that he has proved his case beyond reasonable doubt and urged the Court to convict the Defendant accordingly.

The Defendant herein, has been charged with the offence of Criminal Breach of Trust contrary to Section 311 of the Penal Code and punishable under Section 312 of the Penal Code. Section 311 of the Penal Code provides thus:

> ***"311. Whoever, being in any manner entrusted with property or with any 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 such trust is to be discharged or of any legal contract express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust."***

The ingredients of the said offence which the prosecution must establish in order to secure a conviction on the charge have been laid down in a plethora of cases.

In **Ibrahim &Ors v. C.O.P. (2010) LPELR-8984(CA),** the Court of Appeal, per Peter Odili, JCA (as she then was), enumerating the ingredients of the said offence, held as follows;

> ***"The ingredients of the offence of criminal breach of trust contained in Section 311 of the Penal Code and***

which must be proved before a charge, for same can be sustained are:-

(a) that the accused was entrusted with property or with dominion over it.
(b) that he,
i) misappropriated the property;
ii) converted such property to his own use;
iii) disposed of it.

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) he intentionally allowed some other persons to do or commit the above stated.

d) that he acted dishonestly as in (b) above."

In proving the said elements of the offence of criminal breach of trust, the prosecution must discharge that burden beyond reasonable doubt before the defendant can be found guilty of the offence charged. See **Odu&Anor v. The State (2001) LPELR-2231(SC).**

The question for consideration in the determination of this case therefore, is,**whether the prosecution has established the essential ingredients of the offence charged and thereby proved the guilt of the Defendant beyond reasonable doubt?**

In its attempt to prove the charge against the Defendant, the prosecution called three witnesses; the Regional Control Head

of FCMB, (PW1) an investigating officer with the EFCC (PW2) and the nominal complainant (PW3) respectively.

Some pieces of documentary evidence were also tendered in the course of trial which will be considered alongside the evidence.The evidence of the PW3, the Nominal complainant, is to the effect that he entrusted a total sum of $150,000 USD to the Defendant for the purpose of fixed deposit in the then FinBank (now FCMB) where the Defendant worked at the material time.

The PW2 confirmed this piece of evidence to be true, and the Defendant in his defence, and his extra judicial statements confirmed same as a fact.Exhibits PW3H and DW1A, unequivocally confirm this same fact. Sequel to the evidence of PW2 and PW3 and exhibits PW3H and DW1A, it is obvious that the Defendant was entrusted with the property which is money by PW3.

The purpose of the trust is certain, clear and unambiguous; that is for the Defendant to apply the said sum for the opening of a fixed deposit account for the PW3 in the Defendant's Bank.

From the evidence adduced before this Court; after the Defendant marketed his Bank's products and services to the PW3, the PW3 accepted to open a fixed deposit account with the Defendant's Bank. Consequently, the PW3 visited the Defendant in the Bank and first gave him $80,000 USD for the fixed deposit account opening for which the Defendant gave the PW3, a duly stamped deposit slip, Exhibit PW3G.

In **Ishola v. SocieteGenerale Bank (Nigeria) Ltd (1997) LPELR-1547 (SC),** the Supreme Court, per Iguh, JSC, held that;

> ***"Payment of money into an account can be established either by the oral evidence of the person***

who actually paid the money to the Bank or by producing a teller from the Bank showing on the face of it that the Bank had received the payment."

Also in **Torno International Nigeria Ltd &Anor v. FSB Int'l Bank PLC (2013)LPELR-22616(CA),** the Court of Appeal per Abiru, JCA, held that;

"A teller duly stamped with the Bank's stamp and initialled constitutes prima facie proof of payment and a customer after producing such receipt need not go further to show what the Bank did with the payment."

In the course of evidence, the PW1 Regional Control Head of First Monument City Bank informed the Court that there was no $150,000 investment in the name of the complainant. It is safe therefore, to infer that the Defendant, being a seasoned banker, purposely and deliberately issued a stamped bank teller to the PW3 to create the impression that his money has been paid into the bank and for the purpose it was meant.

It is also in evidence before this Court that the Defendant first courted the friendship of the PW3 by enrolling in the PW3's officers' mess where they were introduced. Banking on that friendship and Defendant being his tribesman, the PW3 ostensibly trusted the Defendant and relied on Defendant's professional guidance.

The Defendant presented the stamped teller dated 17th March, 2010 for payment of $80,000. Believing that the bank received his $80,000 the PW3 brought forth another $20,000 to the Defendant in the Bank on 27th April, 2010, deposited same into the presumed fixed deposit account through the Defendant.The Defendant again received the $20,000 and issued a deposit slip marked Exhibit PW3Bto the PW3.

Still holding unto the illusion that a fixed deposit account had been opened for him by the Defendant, the PW3 on 26thSeptember, 2010, brought for further deposit, the sum of $50,000 which the Defendant received from him and issued another deposit slip for the commutative sum of $150,000. Remarkably, but curiously, in the section for account number, the Defendant entered "FIXED DEPOSIT" instead of any account number. Defendant in his extra judicial statement PW2A admitted the receipt of the $150,000. He stated "***The dollar amounted to $150,000 was entrusted to me to fix which I did in my name since he does not have domiciliary account in this bank. We also resolved to use the dollar to buy property. We changed the dollar on his permission at 154 naira per dollar. He also paid additional money for the property. He also gave me an instruction to buy shop which could not materialize since I paid for the property."***

The question then is, **whether the Defendantopened the fixed deposit for which the money was entrusted to him?**

The various pieces of evidence from PW1, PW2, PW3 and the evidence of the Defendant himself, were equivocal, that, no fixed deposit account was opened by the Defendant as envisaged in his agreement with the PW3. Statement of Defendant PW2A was that the fix deposit was opened in Defendant's name.

The Defendant in his oral evidence, claimed that the fixed deposit account could not be opened because the PW3 did not comply with the requirements for account opening and that there was no written directive by the PW3 to the Bankto have the monies fixed for him. This is in contrast to the Defendant's statement PW2A. Defendant said the money was fixed in his personal name in the absence of any domiciliary account opened by the complainant. If no domiciliary account was

opened in the nominal complainant's name why was the Defendant issuing deposit slip in nominal complainant's name?In another breath, Defendant said that the said money was used to buy property and a shop for the complainant. He concluded that the purchase of the shop did not materialise and no evidence was led as to the refund of the money meant for the shop. However PW3 rebutted the evidence of the Defendant and stated that he never instructed him to buy any property for him with the said money.

There is nothing in evidenceshowing that any request was made by the Defendant regarding account opening documentation which the PW3 failed to comply with. The Defendant by issuance of various deposit slips Exhibits PW3G, PW3H and PW3B – bearing "investment position" of $80,000 and $20,000 on letterhead of Fin Bank and signed by the Defendant as an admission that he received on behalf of the bank a deposit of the several amount of money totalling $150,000. The PW3 merely relied on the professional expertise of the Defendant and trusted him with the money, believing that Exhibits PW3G, PW3H and PW3B were genuine.

In another perspective of his defence, the Defendant alleged that there was a counter directive by the PW3 to invest the sum of $150,000 in a Bureau De Change. No evidence of such counter directive was placed before this Court, neither was there any evidence of investment of the said sum in property purchase as claimed by the Defendant.

Contrary to the contention of the learned defence counsel that Exhibit DW1A is a statement of "understanding" by which the PW3 and the Defendant reached an understanding that the said $150,000 be converted into Naira and invested into the purchase of landed property; the law is trite that documents speak for themselves.Exhibit DW1A, speaking for itself, is a

statement of “undertaking” whereby the Defendant undertook to return all the various sums of money “in US Dollars and Nigeria Naira Denominations” given to him by the PW3 on different occasions, all amounting to a total sum of N46,700,000 then. Nowhere in the said Exhibit DW1A was it stated that the $150,000 was converted to Naira and invested in property.

Evidence clearly established that the Defendant who did not open any account for the nominal complainant but was receiving monies from nominal complainant and giving him deposit slips without an account number had a fraudulent intension to convert the said money in his possession. It is my finding that the interest of the Defendant was to convert the money given to him in good faith. He is equally aware and in knowledge that the thing (money) converted was the property of another.

The conglomeration of evidence showed proof of taking and converting on the part of the Defendant and therefore any interest to repay the amount to the owner will not avail as a defence. Therefore, Exhibit DW1A cannot avail the Defendant as a defence – **Julius BayodeAyeni v. The State (2016) LPELR-40105(SC).**

More so, the fact that the representation of the Defendant was false without any regard for its truth is enough evidence from which to infer an intent to defraud the complainant.

The Defendant in the instantcase,caused the complainant to part with his money on the strength of the false representation and belief that an account was opened for him to deposit his money. The Defendant had power to open an account and made the complainant believe that an account was opened inhis favour,continued to collect money,endorsing the receipt and acceptance of such money through a deposit slip of the bank with a non-existent account.

Prosecutor proved that the Defendant misappropriated the money received on behalf of the nominal complainant.That means Defendant acted dishonestly in the discharge of his duty towards complainant.

By virtue of Section 31 Penal Code, evidently the Prosecutor has proved the elements of the offence charged.

It is therefore my finding that the Defendant did not carry out the purpose for which the PW3 entrusted the total sum of $150,000 to him.

The Defendant could not credibly account for the money given to him to open a fixed deposit account and fix same therein, by the PW3. Invariably, it follows without doubt, that the Defendant disposed of the money in violation of the express agreement between him and the PW3 concerning the trust.

The evidence led beforethe Court has therefore and further established the 2nd and 3rdingredients of the offence the Defendant is charged for.

The 4th and final ingredient of the offence is dishonesty; **whether the Defendant acted dishonestly?**

Section 16 of the Penal Code defines dishonest act thus:

> ***"16. A person is said to do a thing "dishonestly" whodoes that thing with the intention of causing a wrongful gain to himself or another or of causing loss to any other person."***

From the conduct of the Defendant in the transaction between him and the PW3 as regards the subject of this charge, a dishonest intent is manifest.

From the evidence before me, evidently the Defendant had no intention of opening a fixed deposit account for the PW3, but in

order to give the PW3 the impression that a fixed deposit account has been opened for him, he issued a stamped bank teller to the PW3 and subsequently received continuously, further funds deposited into thenon-existent fixed deposit account. Defendant claimed in his statement PW2A that he deposited the money in his personal name yet he was issuing deposit slips in the name of the PW3. In his unbridled lies, Defendant claimed he used the money to purchase property on PW3 instruction.

In his evidence in chief, the Defendant stated that he invested the money in a Bureau De Change for which he was paid interest. There is no evidence that such interest was paid over to the PW3. Also the contradictory evidence of the Defendant goes to make him an unreliable witness and the attitude of the Court is to disbelieve the Defendant.

It is therefore crystal clear, that the Defendant dishonestly converted and disposed of the sum of $150,000 belonging to the PW3, contrary to his express agreement with the PW3, with the intentionof causing wrongful gain to himself. The Defendant thereby, acted dishonestly. – See **Ibrahim J. Usman v. Mamman K. Munga (2012) LPELR-15186(CA).**

From the totality of the foregoing, it is my finding and I so hold, that the prosecution has established all the essential ingredients of the offence of criminal breach of trust contrary to Section 311 of the Penal Code against the Defendant herein. The prosecution has thus proved its case against the Defendant beyond reasonable doubt.

Accordingly the Defendant is hereby convicted as charged.

Relying on Section 321(1) & (b) the law invokes the Court discretion to either adjourn or not to consider sentencing.

Without much ado I exercise my discretion by inviting the Defendant's counsel for allocutus before sentencing.

ALLOCUTUS.

Defendant is a family man the first son of the family with enormous responsibility. His children are in the University alongside his siblings. During his entire life in the banking sector this is the only offence he is found wanting.

Court:

Throughout the trial the learned counsel diligently conducted the case with utmost decorum and integrity.

SENTENCE:

Upon finding the Defendant guilty, the Defendant is sentenced to 2 years imprisonment or pay a fine of N2million in the alternative.

Relying on Section 321(1) & (b) Defendant is ordered to make a restitution of $150,000 to the nominal complainant, Air Vice Marshal Steve Onuh within 6 months of this order.

HON. JUSTICE A. O. OTALUKA
25/11/2021.