

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT 20 GUDU-ABUJA**  
**ON THURSDAY THE 30<sup>TH</sup> DAY OF JUNE 2022**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE R. OSHO-ADEBIYI**  
**CHARGE NO.FCT/HC/CR/507/2019**

**BETWEEN:**

**INSPECTOR GENERAL OF POLICE ----- COMPLAINANT**

**AND**

- 1. YUNUSA TANKO SALISU**
- 2. PETER AMEH-----DEFENDANTS**

**JUDGMENT**

The Prosecution on the 19th day of September 2019 filed a 9-count charge against the Defendants bordering on conspiracy, criminal misappropriation, criminal conversion, and money laundering, contrary to sections 97, 287, 309, 312 and 314 of the Penal Code Act and section 15 (1) of the Money Laundering (Prohibition) Act. The charges against the Defendants are hereunder reproduced.

Count 1

That you Yunusa Tanko Salisu 'm' 49 years of No. 5 Shalon Street, Dawaki Dutse, Abuja and Peter Ameh 'm' 42 years of No. 5 Wari Street, Off Emeka Anyoaku Street, Garki, Abuja between July 2013 and July 2015 in Abuja within the jurisdiction of this honourable Court, did conspire among yourselves to commit an offence to wit: criminal misappropriation and thereby committed an offence contrary to Section 96 and punishable under Section 97 of the Penal Code Act.

## Count 2

That you YunusaTankoSalisu 'm' 49 years of No. 5 Shalon Street, DawakiDutse Abuja and Peter Ameh 'm' 42 years of No. 5 Warri Street, Off Emeka Anyoako Street, Garki Abuja between July 2013 and July 2015 within the jurisdiction of this Honourable Court while serving as the National Chairman and National Secretary of Inter Party Advisory Council (IPAC) fraudulently withdrew the total sum of N41,644,400.00 (Forty One Million, Six Hundred and Forty Four Thousand, Four Hundred Naira) only from Inter-Party Advisory Council Account No. 1012144915 domiciled in Zenith Bank, on the pretence that you are going to embark on advocacy programme of the Council, however, having withdrew the money, you dishonestly misappropriated or converted same to your use and thereby committed an offence punishable under Section 312 of the Penal Code Act.

## COUNT 3

That you YunusaTankoSalisu 'm' 49 years of No. 5 Shalon Street, DawakiDutse Abuja and Peter Ameh 'm' 42 years of No. 5 Warri Street, Off Emeka Anyoako Street, Garki Abuja sometime in 2015 within the jurisdiction of this Honourable Court while serving as the National Chairman and National Secretary of Inter-Party Advisory Council (IPAC) fraudulently misappropriated the sum of N23,000,000.00 (Twenty Three Million Naira) and converted same to your use and thereby committed an offence punishable under Section 312 of the Penal Code Act.

## COUNT 4

That you YunusaTankoSalisu 'm' 49 years of No. 5 Shalon Street, DawakiDutse Abuja and Peter Ameh 'm' 42 years of No. 5 Warri Street,

Off Emeka Anyoako Street, Garki Abuja sometime in 2015 within the jurisdiction of this Honourable Court while serving as the National Chairman and National Secretary of Inter-Party Advisory Council (IPAC) fraudulently misappropriated the sum of N23,000,000.00 (Twenty Three Million Naira) and converted same to your use and thereby committed an offence punishable under Section 309 of the Penal Code Act.

Count 5

That you YunusaTankoSalisu 'm' 49 years of No. 5 Shalon Street, DawakiDutse Abuja and Peter Ameh 'm' 42 years of No. 5 Warri Street, Off Emeka Anyoako Street, Garki Abuja between July 2013 and July 2015 within the jurisdiction of this Honourable Court did convert the sum of N41,644,400.00 (Forty One Million, Six Hundred and Forty Four Thousand, Four Hundred Naira) to yourselves, being property derived directly from proceed of theft with the aim of concealing or disguising the illicit origin or source of the money, and thereby committed an offence punishable under Section 15(1) of the Money Laundering (Prohibition) Act LFN 2011.

Count 6

That you YunusaTankoSalisu 'm' 49 years of No. 5 Shalon Street, DawakiDutse, Abuja and Peter Ameh 'm' 42 years of No. 5 Warri Street, Off Emeka Anyoako Street, Garki Abuja between July 2013 and July 2015 within the jurisdiction of this Honourable Court did conspire among yourselves to commit an offence to wit: theft and thereby committed an offence contrary to Section 97(1) and punishable under Section 287 of the penal code.

Count 7

That you YunusaTankoSalisu 'm' 49 years of No. 5 Shalon Street, DawakiDutse Abuja and Peter Ameh 'm' 42 years of No. 5 Warri Street, Off Emeka Anyoako Street, Garki Abuja between July 2013 and July 2015 within the jurisdiction of this Honourable Court did dishonestly take or withdrew the total sum of N41,644,400.00 (Forty One Million, Six Hundred and Forty Four Thousand, Four Hundred Naira) from Inter-Party Advisory Council account domiciled with Zenith Bank account no. 1012144915 without the Council's consent and thereby committed an offence punishable under Section 287 of the Penal Code.

Count 8

That you YunusaTankoSalisu 'm' 49 years of No. 5 Shalon Street, DawakiDutse Abuja and Peter Ameh 'm' 42 years of NO. 5 Warri Street, Off Emeka Anyoako Street, Garki Abuja between July 2013 and July 2015 within the jurisdiction of this Honourable Court did dishonestly take or withdrew the total sum of N41,644,400.00 (Forty One Million, Six Hundred and Forty Four Thousand, Four Hundred Naira) from Inter-Party Advisory Council account domiciled with Zenith Bank account no. 1012144915 without the Council consent and thereby committed an offence punishable under Section 314 of the Penal Code.

Count 9

That you YunusaTankoSalisu 'm' 49 years of No. 5 Shalon Street, DawakiDutse, Abuja and Peter Ameh 'm' 42 years of NO. 5 WarriStreet, Off Emeka Anyoako Street, Garki Abuja between July 2013 and July 2015 within the jurisdiction of this Honourable Court did dishonestly misappropriated or converted the sum of N41,644,400.00 (Forty One Million, Six Hundred and Forty Four Thousand, Four Hundred Naira) and thereby committed an offence contrary to Section 311 and punishable under Section 312 of the Penal Code.

The Defendants pleaded not guilty to all charges and the matter was set down for hearing. Trial in this suit commenced on the 11<sup>th</sup> day of November 2020. The prosecution in proof of their case, called a sole witness being the nominal complainant who testified as PW1. It is the evidence of the prosecution that the 1<sup>st</sup> defendant was the National Chairman of Interparty Advisory Council (IPAC) between 2013 -2015, and the 2<sup>nd</sup> defendant was IPAC's National Secretary. That PW1 being a National Secretary of Unity Party of Nigeria participated in all IPAC activities. That after the tenure of the Defendants, Alh. Bashur Yusuf Ibrahim was elected IPAC Chairman in 2015 and PW1 served as a national secretary of the electoral commission that conducted the 2015 election. That after the election, the Defendants refused to hand over to the newly elected chairman including the finances, which is against the rules and code of conduct of IPAC.

That INEC assists parties through IPAC with funds and between the period the Defendants led the IPAC, INEC gave N41, 660,400.00 (Forty-one million, six hundred and sixty thousand, four hundred naira), and paid the money into the IPAC Account with Zenith Bank and the money was misappropriated by the Defendants. That during the Ekiti State gubernatorial election, INEC paid another money into the Zenith Bank Account. That after the tenure of the Defendants, the new chairman of IPAC, Hon. Nelado wanted to access the money but could not as the defendants continued to operate that account. That after Hon. Nelado realized that he could not access the account, he informed the first defendant and requested for a mandate to change the signatories of the account which he refused, but for the intervention of INEC. That Hon. Nelado thereafter directed the manager of the branch of Zenith Bank to print out 6 months statement of the account, which said statement was presented to the general assembly of IPAC and it showed some fraudulent acts. That monies were paid into personal accounts without approval by the general assembly of IPAC as

required and a petition was written to the Inspector General of Police to investigate the matter.

Under cross examination, the PW1 stated that being a stakeholder in IPAC, he knows the Defendants did not handover and that throughout their tenure only the chairman and secretary operated the IPAC account to the exclusion of the treasurer as he was not informed.

That although he became a member in 2014, there are records to show what transpired between 2013-2015 which said records he used to write his petition as he got his information from records presented to the General assembly by Hon. Nelado. That the records from Hon. Nelado reveals activities from 2013, 2014 and 2015 obtained from Zenith Bank statement of account of IPAC.

PW1 affirmed that IPAC meetings are held at hotels where refreshments and honorarium which could be in cash or bank transfer are shared to attendees, which said moneys belong to the political parties through IPAC. That the money paid between 4<sup>th</sup> December 2014 and 30<sup>th</sup> June 2015 by INEC to IPAC was to be used for sensitization of the election but from the printout of the statement from Zenith bank it revealed that the money was paid into personal accounts of some IPAC leaders. That although from the code of conduct, it is the responsibility of the chairman (first defendant) to approve expenditure and financial commitment on behalf of IPAC, however, the code of conduct did not approve the chairman to pay IPAC monies into personal account. That although the Secretary is a signatory, the treasurer who is also a signatory to the account was not privileged to be a signatory to that account throughout the tenure. That IPAC money went into personal accounts wherein the chairman and secretary had interest.

In proof, PW1 tendered the following documents, which was admitted in evidence as follows:

1. Petition written to the I.G.Pon behalf of UPN dated 3<sup>rd</sup> September 2018 and signed by Alh. Abubakar Abdullai Sokoto (PW1) marked as Exhibit UPN 1.
  2. 3 pages of statement of PW1 dated 11 September 2018 as ExhibitUPN2
- Under cross examination, the following documents were tendered through PW1: -
3. Code of Conduct for Political parties as 2013 Exhibit UPN3
  4. Revised Code of Conduct for Political Parties in Nigeria, 2018 as Exhibit UPN4.

The prosecution closed their case, and the Defendants open their case with the 1<sup>st</sup> Defendant, testifying as the DW1. It is the evidence of the DW1 that he is the chairman of National Conscience Party (NCP) and a member of Interparty AdvisoryCouncil (IPAC) as well as the sole representatives of his party inthe IPAC council.

That IPAC is an umbrella body of all registered political parties. Its functions are advisory as well as sensitization and advocacy. That they usually hold general assembly meetings and EXCO meetings in hotels and halls as they had no secretariat at that time. That in those meetings, honorarium and refreshment are usually served to members. That IPAC gets financial support from INEC which was used to finance the meetings. That he was the chairman of IPAC and also the authorizing officerand signatory "A"while 2<sup>nd</sup>Defendant was signatory "B" between 2013/2015. That the funds from INEC are administered for the sensitization and advocacy around the whole country for violent free election.

That on 14/8/2019, the secretary of IPAC, Mrs. Georgina Dakpokpo wrote a letter on behalf of IPAC signed by about 80 members of IPAC out of 91 wherein they confirmed that no money was missing in the IPAC account.That the money paid into the IPAC account between 4/12/2014 and 30/6/2015, by INEC with a total sum of N29m was for sensitization of a violent free election in the

federation which they did by going from State to state starting from FCT all through the 36 states and that was instrumental to the violent free election held in 2015.

That the IPAC election held in 2015 ended in a stalemate and an appeal panel was set up led by one of the elders of IPAC wherein a re-run election was done with the 2<sup>nd</sup> defendant emerging the winner and he immediately handed over to the 2<sup>nd</sup> defendant and he never operated the account afterwards.

The DW1 tendered the following documents in evidence as follows:-

1. Letter dated 14/8/2019 signed by National Chairman of IPAC attached with four annexures. Annexures I, II, III and IV marked as Exhibit UPN5
2. CTC of results of IPAC national election held on 21<sup>st</sup> April 2015 admitted marked as Exhibit UPN6.

The Court thereafter adjourned the case for cross examination of the DW1. On the next date for hearing, the prosecution was absent without any letter of adjournment having been served hearing notice for that date. The Court on application of the Defendants' Counsel, foreclosed the prosecution from cross examination and the Court adjourned the case for respective Counsel to file their written address. The prosecution failed to file their written address.

The Defendants' Counsel on his part filed his written address wherein he raised a sole issue for determination thus **"Whether the prosecution has proved its case against the Defendants beyond any reasonable doubt.**

Counsel submitted that the penal provisions of our laws give the prosecution the choice of proving its case against an accused person by deploying one or all of the three means of proof of crime, to wit: by direct credible and reliable eyewitness or victim of the offence; through circumstantial evidence pointing to the guilt of the accused person or through voluntary confessional statement of the accused person, which the prosecution has completely failed to prove.



Submitted that on allegation of criminal conspiracy the prosecution has failed to prove the existence of any agreement between the Defendants either to carry out an unlawful act or to carry out a lawful act in an unlawful manner. Submitted that from the evidence before the Court, the Defendants did not conspire to commit any offence but only discharged their statutory duties as chairman and secretary of IPAC respectively and urged the Court to so hold.

On allegation of criminal misappropriation and conversion, Counsel submitted that the prosecution has woefully failed to prove that the Defendants criminally misappropriated or converted IPAC's money to their personal use instead, there is abounding evidence on record that IPAC as the umbrella body for all political parties meets regularly to discuss Political Parties affairs and also engages in advocacy for violent free elections and that IPAC holds its meetings in hotels/conference halls, during which refreshments are served as well as payment of honorarium to its members. Counsel urged the Court to hold that the prosecution has failed to prove its allegation of criminal misappropriation and criminal conversion against the Defendants.

Counsel on allegation of money laundering submitted that the prosecution who alleged that the Defendants transferred IPAC's money to themselves neglected to tender IPAC's bank account or the Defendants' bank account in order to show such transfers or show that the Defendants indeed operated IPAC's account after the expiration of their tenure.

Counsel urged the Court to hold that the prosecution has also failed to rebut the Defendants' evidence to the effect that IPAC through its secretary wrote a letter signed by about 80 out of 91 Chairmen of political parties to the Inspector General of Police stating that based on their internal investigation; there was no case of missing money during the tenure of the Defendants.

It is also Counsel's submission that from the flaws in the testimony of PW1, there is no doubt that he is also a tainted witness as the PW1 having lost his election,

wrote his alleged petition, and appeared in court to testify against the Defendants because of his personal political vendetta against the Defendants.

Counsel submitted finally that the allegation of crime against a person only raises

mere circumstances of suspicion against that person and suspicion does not amount to legal proof of the commission of a crime and urged the Court to dismiss the prosecution's case and to discharge and acquit the Defendants.

Counsel relied on several authorities, a few of which are underlisted: -

1. Aigbangbon V. The State (2000) 7 NWLR (PT 666) 686 at 704
2. State VS Gwangwan (2015) 13 NWLR (PT.1477) 600
3. Oguno V. The State (2013) 15 NWLR (Pt. 1377) 1.
4. Adeleke V. The State (2013) LPELR-20971(SC)
5. Federal Republic of Nigeria V. Yahaya (2019) 7NWLRPT 1670 85 LPELR-46379 (SC)
6. Udeogu V. Federal Republic of Nigeria (2016)LPELR-40102 (SC)
7. Ewugba V. State (2017) LPELR-43833 (SC)

I have evaluated the totality of the evidence before this Court and the written address of the Defendants' Counsel and to completely determine this instant suit, the issue that calls for determination is "WHETHER THE PROSECUTION HAS SUCCESSFULLY PROVED ITS CASE AGAINST THE DEFENDANTS".

The Defendants have been charged in Counts 1 and 6 for conspiracy to commit criminal misappropriation and conspiracy to commit theft contrary to Section 96 and 97 (1) of the Penal Code, respectively, and the law is well settled that if an indictment contains both a substantive and a conspiracy charge, the right procedure is to first deal with the substantive accusation, and then examine how far the conspiracy count has been proved in relation to the outcome of that charge. See the case of SAMINU v. STATE (2019) LPELR-47622(SC).

The Defendants in counts 2, 3, 4 and 9, are charged with fraudulently withdrawing the total sum of N41, 644,400.00 and the sum of N23m from the Inter-Party Advisory Council Account domiciled with Zenith Bank while serving as the National Chairman and National Secretary of IPAC on the pretense of embarking on advocacy program and instead dishonesty or misappropriated/converted the said funds for their personal use thereby committing an offence punishable under section 312 of the Penal Code and 309 of the Penal Code.

To proceed, it will be pertinent to look at section 309, 312, of the penal code to determine whether or not the Defendant committed the said offence. The said Section 309 of the Penal code provides that “*whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to seven years or with both.*”

Section 312 of the Penal code provides; thus, “*Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.*”

For the Defendants to be said to be liable to the offences charged in counts 2,3,4 and 9, the following elements must be present (i) That the Defendants were entrusted with property or had dominion over it (ii) That the Defendants misappropriated or converted it to their use. (iii) That it was done in violation of any direction of law that states the mode the money was to be discharged or (iv) That they acted dishonesty. See the case of UZOAGBA & ANOR V. C.O.P (2012) LPELR – 15525 (SC). The elements must co-exist with none missing for the requirement of the law on proof to be met. This is the position of the Supreme Court as held by Peter Odili JCC (as she then was) in the case of EDUN & ANOR V. FRN (2019) LPELR – 469&7 (SC).

In this instant case, the Prosecution through PW1 gave evidence of the fact that monies were paid by INEC to IPAC to which the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants were the Chairman and Secretary respectively and were signatories and in charge of the funds, to be used for advocacy program for free and fair elections. Firstly, as to whether the Defendants were placed with the property, in this case, funds from INEC. The fact that monies were paid into the IPAC account is undisputed. Also, that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were signatories to the said funds in the IPAC account for the period of 2013 to 2015 is undisputed. The PW1 in fact, testified that INEC paid the total sum of N41,644,400.00 into the IPAC account which from the funding provisions of both the 2013 and 2018 code of Conduct for political parties are to be maintained and managed through an account with the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant as Chairman and Secretary. This fact is undisputed between parties as the 1<sup>st</sup> Defendant confirmed in his evidence as being the authorizing officer from 2013/2015 as well as the 2<sup>nd</sup> Defendant as signatories to the account. However, the total sum paid by INEC into the IPAC account is disputed. From the evidence of the PW1, the alleged total sum paid to IPAC account is the sum of N41,644,400.00 which the Defendants allegedly converted to their personal use. Also alleged is the sum of N23,000,00.00. I must state that nowhere in the evidence of the PW1 was the sum of N23,000,000.00 ever mentioned, neither was the said sum stated in the statement of the PW1, that is Exhibit UPN2. That being said, it is clear that indeed the Defendants were placed in trust over the funds lodged in the IPAC account, however, the total sum placed in the account or alleged to be misappropriated is unclear.

The next issue is whether the Defendants misappropriate the funds put in their care or converted it for their personal use. The prosecution through the PW1 gave evidence to the fact that the Defendants misappropriated the sum N41,644,400.00 given to IPAC by INEC and that monies were paid into personal accounts without approval by the general assembly of IPAC. In proof of

this, the PW1 tendered the petition written to the IGP and his statement that is Exhibit. UPN 1 and 2. From the exhibits particularly UPN2, nowhere was it mentioned that the Defendants misappropriated the sum of N41,644, 400.00 nor the sum of N23m. How the Defendants misappropriated the funds was not stated by the PW1. Bare mentioning that the said sums were transferred to personal account without more is not sufficient to prove that the Defendants misappropriated funds. The Prosecution ought to have tendered the said statement of account where the discovery of the discrepancies was found, but the prosecution failed to provide the statement of account. Infact, under cross-examination, the PW1 stated that there are records to show how the Defendants misappropriated funds which was what led him to write the petition as in Exhibit UPN1. The said records which form the basis of the allegation is not before this Court.

The PW1 also under cross-examination confirmed that the money's collected from INEC was to be used for sensitization however from the printout of the bank statement, it showed money was paid into personal account of IPAC leaders. That said print out is also not before this Court. The question therefore is from the totality of the evidence before this court can it be said that the Defendants dishonestly misappropriated or converted to their use, the sum of N41,644,400.00 and the sum of N23m for their personal use? The failure of the prosecution to show that indeed the above sums were lodged in the IPAC account and how the Defendants converted the said monies for their personal use, therefore removes the second element of the said offence as earlier stated, that is that they misappropriated and converted the funds for their personal use.

The next element is that the use of the funds was done in violation of the mode the money was to be discharged. From the evidence before this court, nowhere was it mentioned how the Defendants used the total sum of N41,644,400.00 and

N23m of the funds paid by INEC to IPAC. From the entirety of the evidence of the PW1 there is no where he made mention of the sum of N23m. The PW1 in his examination in chief merely stated *“Normally, INEC helps parties through IPAC with funds. Within the period Defendants led the IPAC, INEC gave N41,644,400.00 and paid the money into the IPAC account....The money was misappropriated by the Defendants.* Thus, the intended use of the sum of N41,644,400.00 was not stated throughout the evidence of the PW1 or in the exhibits tendered. There is also no evidence before this court to show that the Defendants acted dishonestly. In fact under cross examination, the PW1 admitted to the fact that IPAC holds meeting in hotels where refreshments and honorarium are served and shared amongst attendees. PW1 also confirmed that the money was meant for sensitization for violent free election throughout the country in 2015 and confirmed that the election was free and fair. The evidence of the DW1 that sensitization was carried out in the 36 states was not controverted by the prosecution. The inference to be drawn therefore from the totality of the evidence is that the prosecution has not been able to prove that the said funds were not used for the purpose they were intended for.

Therefore, as it relates to counts 2, 3, 4 and 9 the prosecution has failed to prove the elements of the offence as stated in those counts having failed to produce vital evidence such as the records obtained by the PW1 which formed the basis of his Petition to the IGP or the bank statements showing the amounts paid into the IPAC account and the bank statements of the Defendants’ showing that indeed the monies were converted to their personal use. The Court in the case of **SHURUMO v. STATE**(2010) LPELR-3069(SC)**Per ALOMA MARIAM MUKHTAR, JSC (Pp 13 - 13 Paras C - D)**held thus:

*“I think the most important thing is that in a criminal case the prosecution must endeavour to prove its case beyond reasonable*

*doubt with the vital and relevant evidence it can produce. What is vital evidence? An evidence that goes to the root of the ingredients and elements of an offence of which an accused person is charged."*

Also, in **STATE v. CHUKWU**(2021) LPELR-56610(SC) **Per MOHAMMED LAWAL GARBA, JSC (Pp 88 - 88 Paras B - E)**held

*"The proof beyond reasonable doubt required by the law, means, in simplest of terms, proof of all the essential or vital ingredients or elements constituting an offence with admissible, credible and sufficient evidence to the satisfaction of the Court."*

Consequently, the prosecution having failed to prove the essential elements of the offences as charged against the Defendants, the charge in counts 2, 3, 4, and 9 is accordingly dismissed.

The Defendants are in count 5 charged with converting the sum of N41,644.400.00 to themselves being property derived directly from proceed of theft with the aim of concealing or disguising the illicit origin of source of the money by committing an offence punishable under section 15(1) of the money laundering (Prohibition) Act LFN 2011. The said provisions provides that any person who directly or indirectly conceals or disguises the origin of or converts, any fund knowing that the fund forms part of the proceeds of an unlawful act commits an offence.

For money laundering to happen, there must be a predicate offence, which is, a crime that led to the money that is being tried to be passed off as clean money. Thus, without proof of previous crime/criminal circumstances, it is hard or nearly impossible to prove money laundering. This is the position of the Court as contained in the case of SHEKARAU V. FRN (2020)LPELR – 52029 (CA). The

question that therefore begs to be answered at this point is, is there any illegal act done by the Defendants which yielded funds sought to be laundered as clean money? From the totality of the evidence before me, there is nothing before this Court that shows that the Defendants did any act that yielded or can be said to be proceed of crime sought to be laundered. The prosecution has also failed to show or prove that the Defendants have the necessary intention of causing wrongful gain. Accordingly, the charge on this Count is dismissed.

The Defendants are in counts 7 and 8 charged with dishonestly taking or withdrawing the total sum of N41,664,400 without consent thereby committing an offence punishable under section 287 and 314 of the penal code. For the prosecution to prove this offence, the following elements must be present.

1. That the property in movable (that is the funds).
2. That it was in possession of a person (IPAC)
3. That the Defendants moved the property while it was in the possession of that person.
4. That movement was done without the consent of that person
5. To take the property out of the possession of that person.
6. With the intent to cause wrongful gain to himself or wrongful loss to that person. See the case of GREMA v. STATE (2020) LPELR-51432(CA)

The burden of proving that all these elements were done by the Defendants rest on the prosecution which must be done beyond reasonable doubt. It is the evidence of the PW1 that the Defendants being signatories to the IPAC account withdrew the sum of N41,644.400.00 without the consent of the Council. There is no other fact or evidence to corroborate this fact as stated by the PW1. The prosecution failed to call another witness or a member of the council to corroborate the fact that there were indeed funds that were withdrawn by the



Defendants without the consent of the Council. Moreso, as stated earlier there is no evidence before this Court that indeed the Defendants withdrew the total sum as alleged by the Defendants.

It is therefore my view that the Prosecution has failed to prove the charges as stated in Counts 7 and 8 and it is hereby dismissed.

Having examined the entirety of the evidence of the prosecution that is evidence of the PW1 as well as the documentary evidence tendered before this Court, the question to be answered is whether the charge of conspiracy in count 1 and 6 has been proved in this case. For conspiracy to stand the prosecution must establish the elements of agreements to do something which is unlawful or to do something which is legal but by unlawful means or doing things towards common purpose. In this instant case, the prosecution from the evidence adduced failed to produce independent evidence before this Court to prove the charge of conspiracy. The law is that where the prosecution fails to adduce independent evidence to prove the offence of conspiracy but concentrate on the evidence in proof of the substantive offence to infer conspiracy, the charge of conspiracy will fail. See the case of C.O.P v. OGOR & ORS(2022) LPELR-57558(SC). Hence the prosecution has failed to prove the charge of conspiracy to commit criminal misappropriation, and theft having failed to adduce distinct evidence to prove that the Defendants conspired to commit the said offences. Accordingly, the charge of conspiracy in count 1 and 6 is hereby dismissed.

In the final analysis, the Prosecution having failed to prove its case against the Defendants beyond reasonable doubt, the charges leveled against the Defendants are dismissed and the Defendants are hereby discharged and acquitted.

Parties: Defendants present.

Appearances: B. O. EkureEsq., with E. J. Pemu, Esq., for the Defendants.  
Prosecution not represented.

HON JUSTICE MODUPE R. OSHO-ADEBIYI  
JUDGE  
30<sup>TH</sup> JUNE 2022