IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS WEDNESDAY THE 24TH DAY OF FEBRUARY, 2016

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO FCT/HC/CR/83/12

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA..................................COMPLAINANT

AND

1. ADEGBOYEGA LONDON
2. SYLVANUS BENEDICT } **..............................ACCUSED PERSONS**

JUDGMENT

The Accused persons were initially arraigned before this court on a two count charge bordering on criminal conspiracy and criminal breach of Trust punishable under **Section 97 and 312 of the Penal Code Act, Cap. 352 Laws of the Federation (LFN) 2004.**

The Accused persons all pleaded not guilty to the charge. Therefore the matter proceeded to trial on 17th July, 2012. The prosecution called two witnesses and tendered 8 Exhibits in evidence. The witnesses for the complainant were duly cross-examined by learned counsel to the Accused persons. At the close of the prosecutions case, counsel to the accused persons elected to make a no-case to answer submission on behalf of the accused persons. The court took written arguments of learned counsel on both sides of the aisle and in a considered Ruling on 27th March 2013 the court discharged the accused persons on the first count of conspiracy and ordered them to enter their defence on the second count of criminal breach of trust.

The complainant in the course of proceedings subsequently with leave of court Amended the charge to reflect the ruling of court on the no-case to answer submission. The Amended charge dated 17th September, 2015, to which the Accused persons pleaded not guilty to, reads as follows:

Count 1.

That you Adegboyega London being the Chairman of Mbatoo Cooperative society on or about 9th of December, 2009 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did dishonestly convert to your own use the sum of N4,826,850.00 (Four Million Eight Hundred and Twenty Six Thousand, Eight Hundred and Fifty Naira Only) given to you on behalf of Mbatoo Cooperative Society by the Federal Ministry of Mines and Steel Developments for the procurement of Atlas Copco XAS 47 Air Compressor, Jack Hammer with accessories and Diaphram Water Pump, to enhance your mining activities and thereby committed an offence punishable under Section 312 of the Penal Code Act Cap 532, Laws of the Federation of Nigeria.

Count 2.

That you Sylvanus Benedict being the Secretary of Mbatoo Cooperative society on or about 9th of December, 2009 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did dishonestly converts to your own use the sum of N4,826,850.00 (Four Million Eight Hundred and Twenty Six Thousand, Eight Hundred and Fifty Naira Only) given to you on behalf of Mbatoo Cooperative Society by the Federal Ministry of Mines and Steel developments for the procurement of Atlas Copco XAS 47 Air Compressor, Jack Hammer with accessories and Diaphram Water Pump, to enhance your mining activities and thereby committed an offence punishable under Section 312 of the Penal Code Act Cap 532, Laws of the Federation of Nigeria (Abuja) 2004.

As stated earlier the prosecution called two witnesses. I will proceed to summarise the essence of their evidence. PW1 is Ayokunle Bolujoko, an official of Sustainable Management of Mineral Resources Project. It is a World Bank funded project of the Federal Ministry of Mines and Steel Development and he is the national coordinator supervising artisanal and small scale mining macro project.

PW1 stated that the project is designed to enable artisanal miners and mining communities access to funding to assist in their mining activities. He stated that the procedure is for interested stakeholders to apply for the grant; the application is evaluated by the verification committee and if there is compliance with the modalities for the project, they recommend those who have qualified to a project consultative committee chaired by the permanent secretary of the ministry which gives the final approval. Once this approval is received, they then convey the approval to the successful beneficiary.

PW1 testified further that the Mbatoo Cooperative Society of Benue State was one of the beneficiaries. That after due approval, a letter of offer of award of grant of N4.8 Million vide **Exhibit P1** was communicated to the society on 16th November, 2009 and same was received and acknowledged by the secretary of the society. That following this acknowledgement, the beneficiary were invited to enter into a grant fund agreement with the ministry and the Accused persons duly acknowledged receipt of payment of the sum on behalf of the society. The payment acknowledgement and the agreement were tendered as **Exhibits P2** and **P3** respectively.

PW1 stated that the agreement states clearly the duties and obligations of parties and that the grant was to be strictly applied for the approved sub-project under the guidance and supervision of the officials of the project.

PW1 further testified that following the release of the grant and in the course of monitoring, they received a report that the society had misapplied the funds and they thereafter invited the chairman and secretary of the society to deliberate on the matter where they admitted they had deviated from the agreement and misapplied the funds. They then gave an undertaking vide **Exhibit P4** to refund the N4.8 Million grant within 7 days but that they have so far not made any refund which made them take a decision to report the matter to EFCC.

Under cross-examination, he stated that the grant was paid into the account of the society and that the accused persons represented the society. PW1 stated that he cannot remember whether he was told the reasons why they misapplied the funds. He stated that the agreement in convenant “c” states clearly how the grant is to be strictly utilised and any deviation means there is a misapplication of the funds. He stated that there was no letter explaining why the grant was misapplied. He stated that the

case was a breach of grant agreement and that it was a management decision to report the matter to EFCC.

PW1 stated that he was not shown any minutes of meeting where the members of the society agreed to deploy the grant in the way it was utilised. He agreed that the society was duly registered but he denied that he was informed of any challenges that the society faced in procuring equipments that the grant was given for. PW1 stated that the equipments to be procured were to be insured and the beneficiary was responsible for the insurance. PW1 stated that he is not aware of any agreement or indeed any problem between the suppliers of the equipment and the society.

PW2 is Abiemwense Uzamere, a staff of EFCC and part of the team of investigators that investigated this matter. His evidence is that they received a petition from the Federal Ministry of Mines and Steel vide **Exhibit P5** against 4 cooperative societies, and that the Accused persons are the chairman and secretary of one of the societies. That the petitions complained about the fact that grants were made to these societies for specific objectives but which they misapplied.

That upon receipt of the petition, they called on the Accused persons who reported to their office; the petition was given to them and they said they were familiar with the grant and their statements taken under caution and these were tendered as **Exhibits P6 and P7.**

PW2 stated that they then travelled to Gboko to see for themselves the mining sites. That in one of the sites, contrary to the statement of Accused persons that it had collapsed, they only found erosion in the mining pit as it was filled with water. PW2 said that they could not visit the other sites because the roads were inaccessible. After the inspection, Mr. Sylvanus, the 2nd Accused person made further statement tendered as **Exhibits P7A and P7B**. PW2 further testified that there investigation revealed that the equipments were not purchased as directed by the agreement.

Under cross-examination, PW2 stated that the petition, **Exhibit P5** seeks for recovery of the funds granted and that they therefore invited the Accused persons and also visited the sites. They also enquired from them how the fund was shared. They were told that they shared the money

among members of the society to each engage in independent mining but they were unable to do so and they could not therefore recover the funds.

PW2 said they demanded return of the funds and that the accused explained why they were not able to buy the equipments. He also stated that they did not tell him that they wrote the ministry to allow them deploy the funds to other uses. He said that the Accused persons told him that due to the collapse of the pit, they could not buy the equipments until the pit was recovered. PW2 said that they did not tell him that they used the funds for the recovery of the pits.

With the evidence of PW2, the complainant rested its case.

In defence, the Accused persons testified and called two additional witnesses.

Mr. Sylvanus Benedict testified as DW1. He stated that he knows Mbatoo Multi-purpose Cooperative Society Ltd and that it is registered and he is the secretary. The certificate of registration was tendered as **Exhibit D1.**

DW1 stated that sometimes in 2009, as a member of Miners Association of Nigeria, there head office informed them of a grant to artisanal miners to assist in production. They duly applied for the grant and after necessary verifications, the account of the society was credited with the sum of N4.8 Million. That the purpose of the grant was for them to buy X – 45 compressor machine and they signed an agreement to that effect.

DW1 stated further that while in Abuja for a workshop, their mining pit collapsed. When they verified the collapse, they wrote to both the Zonal and Project Coordinator of the collapse of the pit and that they could not buy the machines. DW1 stated that the cooperative agreed that the machines will be of no use since the pit has collapsed. That there was no response from the ministry so they went ahead to use the grant to hire machines to recover the pit. DW1 said they invited officials of the ministry to come and see what they were doing but that they refused to come because they did not give them money to recover pits but to buy equipments.

DW1 stated that they were invited to a meeting where they were asked why they did not buy the equipments. He stated that their letter was acknowledged through the E-mail account of the ministry. That they were informed at the meeting that since they had used the grant to hire

machines to recover their pits, they were given 7 days to recoup the grant so that they will be taken to where they will buy the equipments.

DW1 said they told them that 7 days was not enough but they were forced to write an undertaking to refund the money within 7 days, if not, they won't allow them to go and therefore they signed the undertaking.

DW1 said that a consultant visited their site in July 2010 and they did not hear from them until they were invited by the EFCC where they made their statements.

DW1 stated further that they have records of meetings where the cooperative agreed to utilise the money to recover the pits which was admitted as **Exhibit D2.** The agreement showing that they hired a machine to recover the pit was tendered as **Exhibit D3.** DW1 stated that the purpose of the grant was not for individual miners but for the whole cooperative.

Under cross-examination, DW1 stated that he has been mining since 2003. He said dry season is favourable for mining. He said the pit collapsed on 18th February, 2010. That a pit can collapse during dry season because, the more you dig into the ground, you meet water in the ground which soaks the walls of the pits. That the pit collapsed the day their account was credited; that it is a mere coincidence.

DW1 stated that **Exhibit D3** was entered into on 19th March, 2010 and that they paid N1.6 Million for the hiring of the machine.

He agreed that they entered into a contract for the usage of the funds. That they did not receive any written consent before they diverted the funds. That they waited to receive the written consent but when there was no response to the letter they wrote, the cooperative decided to utilise the money. That they have not bought the compressor because they are in court. DW1 stated that they have returned the equipments EFCC operatives saw at site when they came for inspection because they were paying on a daily basis to keep the equipments at the site.

DW2 is Engineer Adegboyega London and the chairman of Mbatoo Multi-purpose Cooperative Society Ltd. His evidence is similar in character and content with that of DW1. No purpose will be served repeating same.

Under cross-examination, He agreed that before they utilised the money the way they did, they did not get any written consent but that the

cooperative met and gave instructions for the use of the money. He also agreed that they entered into a contract which specified the purpose of the agreement and that he signed the agreement.

DW3 is Onwuchekwa Benjamin Kanu. He is a member of the Mbatoo Multi-purpose Cooperative Society Ltd and chairman of the **Business Committee.** He confirmed the issue of the grant given to the cooperative in 2010. That before then, there was a three days seminar organized by the Ministry of Mines in Abuja and they sent their representative. That they had an ugly incident as their mining pit collapsed and they reported the incident to their representatives at the conference who told them to stay action until they came back from Abuja.

DW3 further testified that when they came back, they briefed them on the outcome of the meeting and also told them that the compressor they were to buy must be insured and secondly that they are to be responsible for transporting the equipments from Abuja or wherever the supplier of the equipments reside.

He stated that when the cooperative met, they looked into the issue of the collapsed pit and the fact that they cannot have access to the material in the pit because of the collapse. They also considered that even if they buy the compressor, they cannot drill. They all looked at the financial implication of the insurance and raising fund for the people that will come from the ministry and the logistics surrounding it. They then detailed the secretary to write to the ministry to come and see what happened to their site but nobody came.

He stated that the cooperative then decided to remove the “over burden” that fell into the pit so as to have access to the birite stones in it and they had to hire an excavator which worked for 3 days at huge financial expenses to remove the “over burden.” That they had good intention in doing so as if they were successful in removing the “over burden,” they will be able to realise up to four trucks of birite within a reasonable time which will help them pay for the insurance for the compressor.

That as they were working towards this, they were informed that their leaders were needed in Abuja and that when they came back, they informed them that they were asked to give an undertaking that they will return the money they have already expended in the pit within 7 days.

He stated further that when they reported back, the cooperative said it was impossible to meet up with the demand and they questioned them as to why they gave the undertaking knowing what the grant was used for. That the workers on site deserted the place on hearing that the EFCC was involved in the matter. He stated that the Accused persons have no hand in any wrongdoing as they are only representatives and it is the cooperative that decides on how the money is to be used.

Under cross-examination, he said they are not less than 9 members in the cooperative; that they are 3 members in their business committee. He said that the grant was in 2010. He is not aware of the agreement as nothing was presented at the cooperative. That he knows only of the 7 days undertaking given by the Accused persons and that he is not aware that the grant was to be strictly utilised. That he believes that the accused persons gave comprehensive information of the grant because they were not given a copy of the agreement to read.

He said they made payment for the excavation through the business committee. That the signatories of the account are the chairman, secretary and treasurer. That they have proof of payment for the excavator but that they don't have receipts of purchases for engine oil, payment of labourers and other smaller payments. He however does not have the receipts with him. That they have not paid back the money because when EFCC became involved in the matter, everybody ran away from the site because of fear of arrest.

DW4 is Oyelede Paul. He is a member and vice chairman of the cooperative. His evidence in all material particulars is the same with that of DW3. No useful purpose will also be served repeating same.

Under cross-examination, he said they are 9 members of the cooperative. That the Accused persons told them of the agreement and they requested for it but that they informed them that they were not given. He said that the accused told them that the grant was to be used strictly for the purpose it was granted. That they deviated from the purpose because of the difficulties they faced with the collapsed pit. DW4 said that they did not apply for written permission before they deviated but they wrote to the ministry to come and see the collapsed pit but they did not come and since time was of the essence, they decided to use the money to work the pit. That they could not pay back the grant because of the involvement of EFCC. With the evidence of DW4, the defence rested their case.

Pursuant to the order of court, the parties filed and exchanged written addresses.

The final written address of the Accused persons is dated 10th July, 2015 and filed same date in the court's registry. In the said address, one issue was raised as arising for determination thus:

"Whether the prosecutor has proved the offence of criminal breach of trust against the Accused persons beyond reasonable doubt?"

The final address of the prosecution is dated 30th October, 2015 and filed on 2nd November, 2015 at the court's registry. In the said address, the prosecution similarly raised the same one issue as the defendants in the following terms:

"Whether the prosecutor has proved the count of criminal breach of trust against the Accused persons beyond reasonable doubt?"

I have carefully considered the charge in the matter, the evidence adduced and the written addresses filed by learned counsel herein to which I may refer to in the course of this judgment where necessary. It seems to me that the single broad issue as formulated by counsel on both sides of the aisle has captured the essence and or crux of the charge which shall shortly be resolved within the established threshold in law.

Now, it is not a matter for dispute that the charge accused persons are facing involves the alleged commission of crimes. Under our criminal justice system and here all parties are in agreement, that the burden or onus is clearly on the prosecution to prove the guilt of the accused persons beyond reasonable doubt. See **Section 135(1) of the Evidence Act.** The position of the law, as provided for by **Section 135(2) and (3) of the Evidence Act,** needs restatement, that the burden of proving that any person has been guilty of a crime or wrongful act is, subject to **Section 139 of the Act,** on the person who asserts it; and that if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the Accused person(s).

In shedding more light on the statutory responsibility and expectation of the prosecution to prove its case beyond reasonable doubt, the Supreme Court held in **Mufutau Bakare V. The state (1987)3 SC 1 at 32,** per Oputa, JSC (now late) as follows:

"Proof beyond reasonable doubt stems out of a compelling presumption of innocence inherent in our adversary system of criminal justice. To displace this presumption, the evidence of the prosecution must prove beyond reasonable doubt, not beyond the shadow of any doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure including the ministration of criminal justice."

See also **Lortim V. State (1997)2 N.W.L.R (pt.490)711 at 732; Okere V. The State (2001)2 N.W.L.R (pt.697)397 at 415 to 416; Emenegor V. State (2009)31 W.R.N 73; Nwaturuocha V. The State (2011)6 N.W.L.R (pt.1242)170.**

It is also well settled that in a criminal trial, the prosecution could discharge the burden placed on it by the provisions of **Section 135(2) and (3) of the Evidence Act,** to prove the ingredients of an offence, and invariably the guilt of an Accused Person beyond reasonable doubt, in any of the following well established and recognized manners, namely:

1. By the confessional statement of the accused which passes the requirement of the law; or

2. By direct evidence of eye witnesses who saw or witnessed the commission of the crime or offence; or

3. By circumstantial evidence which links the Accused Person and no other person to or with the commission of the crime or offence charged.

See **Lori V. State (1980)8 8-11 SC 18; Emeka V. State (2011)14 N.W.L.R (pt.734)668; Igabele V. State (2006)6 N.W.L.R (pt.975)100.**

Being therefore mindful of the well settled principles as espoused in the authorities cited in the foregoing, I shall proceed to examine the instant charge in the light of the evidence adduced by both the prosecution and the Accused Persons, in order to determine whether or not the prosecution has established the charges against the Accused Persons beyond reasonable doubt.

Now **Section 311 of the Penal Code Act** provides or defines criminal breach of trust as follows:

"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 willfully suffers any other person so to do, commits criminal breach of trust."

In order to establish an offence of criminal misappropriation or conversion against an accused person, an essential element that must be proved by the prosecution is that set out in **Section 16 of the Penal Code Act.** It provides that:

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

Therefore, the prosecution in this instance, is not only required to prove the act of misappropriation or conversion, but must by all means prove that the act was carried out with a dishonest intention by the accused persons to cause wrongful gain to themselves or another or a wrongful loss to any other person. See **Bakare & Ors V. The State (1968)1 All NLR 394.**

Learned counsel for the prosecution righty submitted that in order to establish an offence of criminal breach of trust, the prosecution is required to prove the following ingredients:

a. That the accused was entrusted with property or dominion over it.

b. That he dishonestly:
   - i) Misappropriated it; or
   - ii) Converted it to his own use;
   - iii) Used it; or
   - iv) 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) That he intentionally allowed some other persons to do as above.

See the cases of **Onuoha V. State (1988)3 N.W.L.R (pt.83)460 and Hon. Ibrahim & Ors V. Commissioner of Police (2010) LPELR 8984 CA.**

Having properly set out the key ingredients of the offence of criminal breach of trust, the simple, albeit, delicate task the court is to undertake now is to examine the evidence on record in the light of the legal ingredients required to establish the offences for which the accused persons were charged. It is trite principle that before a conclusion can be arrived at, that an offence has been committed by an accused person, the court must look for the ingredients of the offence and ascertain critically that the acts of the accused person(s) come within the confines of the particulars of the offence charged. See **Amadi V. State (1993)8 N.W.L.R (pt.314)646 at 664.**

Now relating the earlier listed ingredients to the evidence led on record, it must at first be determined if the moneys in question was entrusted to the Accused persons or that they had dominion over it. In resolving this issue, it appears to me critical to first resolve the issue raised by defence counsel as to the propriety of charging the Accused persons for offences allegedly committed by the Mbatoo Multi-purpose Cooperative Society which it is contended is a registered cooperative society and a cooperate entity.

It is the contention of learned counsel to the Accused persons relying on **Sections 332 (1), 333, 334 and 338 of the Criminal Procedure Code** that a cooperative entity ought to be held liable for its criminal acts. It was further submitted that the mining grant which is the subject of the instant charge was purposely given to the cooperative society and not to individuals or the accused persons and as such, the intention of the grantors therefore was not to hold individuals liable but the cooperative entity.

On the other side of the divide, the prosecutor submitted that the accused persons having represented the cooperative society during the entirety of the processing of the mining grant; signed the agreement and acknowledged receipt of the grant, that the veil of incorporation of the society could be lifted to find the accused persons liable. The case of **Trenco (Nig) Ltd V African Real Estate (1978) 7 LNN 146 at 153** was cited.

It was further submitted that the fact that the accused persons concealed material facts from the society, particularly as it relates to the agreement

they both signed with the ministry with respect to the mining grant, makes them individually liable for the offences charged.

I need not go into any detailed analysis in this judgment on the distinct corporate personality of a corporate entity. I would have thought that with the level of developments in the criminal law jurisprudence, the subject of criminal liability for corporate conduct need not generate much debate. The position as advanced by learned counsel to the accused persons is therefore not as closed as he wants us to believe.

I have carefully read the provisions of the CPC (supra) referred to and they are clear and unambiguous. There really should be no difficulty in appreciating their precise import.

The provisions merely makes corporate entities answerable for offences allegedly committed by them. Those sections nor any law for that matter have not precluded the courts from applying the principle of lifting the veil in appropriate cases, in order to find a corporate or artificial entity liable, through its human agents and officers, for offences committed by such artificial entities. The facts and justice of each case determines how the court applies these principles. Since the Mbatoo Multipurpose Cooporative has not been charged before this court, the statutory provisions referred to would not be availing in the circumstances.

The much trumpeted corporate shield for criminal liability on the authorities of our superior courts is no longer impregnable. Apart from the fact that the individual director could be held personally liable for criminal infractions personally committed by him in office, where the conduct was attributed to the company he acted for, the corporate veil could be lifted and where he is identified as the directing mind of the corporate entity, he could face penal actions. I will only refer here to a few pronouncements by our Superior Courts. In **Oyebanji V. The state (2011)LPELR 3765,** the Court of Appeal affirmed the conviction of the Appellant, being Managing Director of a limited liability company, charged with the offence of stealing money paid to the company for the importation of certain goods which were not supplied and for which moneys paid were not returned to the customer. In its unanimous judgment, the court held, per *Fasanmi, JCA,* as follows:

"In my humble opinion, this is a case in which the law should disregard the corporate entity and pay regard to the entities behind the legal veil of incorporation. Allegation of crime lifts the veil of corporate or voluntary associations and opens up the body to

prosecution upon good and substantial facts placed before a court of competent jurisdiction."

In **Vilbeko (Nigeria) Limited V. Nigerian Deposit Insurance Corporation (2006)12 N.W.L.R (pt.994)280 at 295,** Adekeye JCA (as he then was), elucidated on the doctrine of lifting the veil as follows:

"An incorporated limited liability company is always regarded as a separate and distinct entity from its shareholders and directors. The consequence of recognizing the separate personality of a company is to draw the veil of incorporation over the company. No one is entitled to go behind the veil. This Corporate Shell shall however be cracked in the interest of justice, particularly where the company is used as a mask or sham by the director to avoid recognition. In the eyes of equity, the court must be ready and willing to open the veil of incorporation to see the characters behind the company in the interest of justice. Since a statute will not be allowed to be used as an excuse to justify illegality or fraud, and once there is clear evidence of fraud or illegality, the veil will be lifted."

See also **Adeyemi V. Lan & Baker (Nigeria) Limited (2000)7 N.W.L.R (pt.663)33; Mezu V. Cooperative & Commerce Bank (Nigeria) Plc. (2013)3 N.W.L.R (pt.1340)188; Chinwo V. Owhonda(2008)3 N.W.L.R (pt.1074)347 at 362.**

Also apposite here is the dictum of Lord Denning, J (now late), in the English decision of **Bolton Engineering Company Limited V. Graham & Sons (1957)1 QB 159 at 172 to 173,** where the eminent jurist instructively stated as follows:

"A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of those managers is the state of mind of the company and is treated by law as such…"

I had at the beginning of this judgment given a deliberately comprehensive restatement of the evidence on both sides as it clearly provides the

necessary factual template in applying the legal regime in resolving the contending issues.

In the instant case, the undisputed evidence on record is clear to the effect that the accused persons, at all times material to the instant charge, were the chairman and secretary respectively of the mbatoo multipurpose cooperative society Ltd.

It is also undisputed that the letter of offer for the grant of the sum of N4, 826,850.00 **Exhibit P1**, together with 2 copies of the grant agreement which were to be executed and returned was received by the 2nd Accused, the secretary of the cooperative. I will return later on in the course of this judgment to this letter of offer.

It is also common ground that the two Accused persons signed or executed the grant fund agreement, **Exhibit P3** with the ministry of mines and steel development, sustainable management of mineral resources project. It is stating the obvious that this agreement constitutes the basis for the mutual reciprocity of legal relations and obligations between parties.

On the evidence, these critical documents to wit, the letter of offer **Exhibit P1** and the contract agreement, **Exhibit P3**, which the two accused persons signed and which was given to them vide **Exhibit P1** to study and return was not shown or presented to the other members of the cooperative. DW3, the chairman of the Business Committee of the society was unaware of the existence of the contract and the condition that it must be used for the purpose it was granted. DW4, the vice chairman of the society claimed that the accused persons only told them that they were asked to sign an agreement but that the contract document was not given to them. I will also return later to these documents which are fundamental to the relationship of parties.

It is also established in evidence that the two accused persons signed the payment acknowledgment form, **Exhibit P2** by which the said mining grant of N4, 826,850.00 was paid to the cooperative.

Again on the evidence, the two accused persons were also the chairman and secretary at the meeting of the society on 21st February, 2010 where it was decided that the mining grant be applied otherwise than clearly specified in the agreement they signed. It is also undisputed evidence that the accused persons fully aware of the terms of the agreement did not

receive any written permission to apply the funds contrary to the signed agreement.

Furthermore on the evidence, the 2nd accused person gave the undertaking vide **Exhibit P4** to refund the grant money within 7 days on or before 29th March, 2010, which undertaking they failed to fulfill.

Most importantly, absolutely no iota of evidence was produced either by the two accused persons or their other two witnesses on how the grant was disbursed and how it benefitted the society. On the evidence, it is common ground that the two accused together with the treasure are the sole signatories of the account of the cooperative.

It is true that a plant hire agreement was tendered vide **Exhibit D3,** but there is nothing in evidence showing whether this agreement was even put into effect. To underscore this point, I will refer to relevant key terms of the contract thus:

"11. CONDITION PRECEDENT TO COMMENCEMENT OF HIRE

11.1. Both Parties agree that RTL will mobilize the equipment to the designated site of the Hirer when RTL has received;

i. **The sum of N200, 000.00 (Two hundred thousand naira only) only from the Hirer for equipment mobilization and demobilization through a confirmation from RTL's bank. The sum of N1, 600,000.00 (One million, six hundred thousand naira only) only for being the cost of 8 day(s) 8 hourly use of the machine.**

11.2. RTL and the Hirer have agreed that the RTL will deploy the machine for extra days of work if RTL receives payment from the Hirer (confirmed from RTL's bank if paid into its account), for the agreed number of days (on or before 9am of the second day of operation, for the additional days of operation).

11.3. RTL and the Hirer have agreed that RTL will demobilize the machine at the expiration of the 8 hours of operation on the 8 days if RTL does not receive payment for further work on or before 9am of the second day of operation.

“PAYMENT TERMS:

- **The Hirer shall make an advance payment representing 8 days of operation into the RTL’s account before RTL begins operations.**

- **All necessary payments for the services of the leased equipment shall be made into RTL’s bank account and confirmed by RTL’s bank. Cheques made must be made in RTL’s name, and such cheques shall only be collected by the prearranged designated RTL company official. Cheques must be cleared and confirmed by RTL’s bank before mobilization of the equipment.**

- **Payment for overtime services shall be computed at a special rate per hour for each equipment utilized on the Hirer’s designated site.”**

The above are self explanatory. If any payments were to be made under **Exhibit D3**, it must be through a bank as the agreement clearly indicates. There is no evidence that any such moneys were paid through any bank. If indeed any money were paid to anybody to hire equipment as alleged, the question is how? It is difficult to accept that the accused persons who are signatories of the society account and principal officers cannot validate the claim of any alleged payment. There is also no evidence by the company from which the machines were allegedly hired of receiving the moneys for the hire.

The evidence that there are no receipt or evidence for alleged payments for engine oil bought, payment for labourers at the site and other **“smaller payments”** whatever this means only reinforces the complete absence of integrity in the whole exercise of the use of the mining grant. Are the labourers allegedly used ghosts and cannot be traced? What about the seller of the engine oil? What are these unexplained **“smaller payments.”**

How a world bank grant is used in this manner as if it is some personal money really calls to question the sence of propriety of those involved.

The evidence on record without any doubt reveal that the society, in whose name and for whose benefit the mining grant was processed and disbursed did not benefit in any significant or verifiable manner; rather the accused persons who signed the agreement, in concert with other unidentified

members agreed to divert the grant to other purposes in violation of the clear terms of the agreement; an agreement which they elected or chose not to show to the other members and bring the contents to their attention.

Indeed in the circumstances, I incline to the view that it would amount to a grave abdication of responsibility for the court to refuse to crack the corporate shield or shell in such circumstances to determine the culpability or otherwise of the accused persons who were charged before this court with respect to offences alleged against them in view of their crucial relationship with the cooperative society and the roles they placed in the processing of the grant and critically the disbursement of the mining grant.

For the reasons adumbrated above, I hold that the present charge is competently filed against the accused persons, as the directing minds and wills of the Mbatoo Multipurpose Cooperative Society. The façade of distinct corporate personality is no longer tenable as a cover for wrong doing.

I now return to the substantive offence of criminal breach of trust. I had earlier referred to the definition of criminal breach of trust under **Section 311 of the Penal Code Act** and the ingredients that the prosecution must prove in order to succeed in a charge of criminal breach of trust. I need not repeat them again.

Now relating these ingredients to the evidence on record, it must at first be determined if the mining grant was entrusted to the accused persons or that they had dominion over it. It must be noted immediately that **Entrustment** is not one esoteric term as sought to be made out by learned counsel to the accused persons.

The Oxford Advanced Learners Dictionary, 8th Edition at page 498 defined **"Entrust"** to mean **"to make somebody responsible for doing something or taking care of somebody"**

The above definition is clear. Lets see whether the evidence on record bears entrustment out or not.

Now on both the unchallenged evidence of PW1 and backed up by clear documentary evidence, it is not in dispute that the sum of N4, 826,850.00 was released to the Mbatoo Cooperative Society. The conduit used for the release of the grant was undoubtedly the Accused persons, who are principal officers of the cooperative and who dealt with the grantor at all

material times. As stated earlier the pay acknowledgement fund for the release of the fund vide **Exhibit P2** was duly signed by the accused persons as chairman and secretary respectively. Indeed on the evidence, when the grant was paid into the account of the cooperative, the 1st accused as chairman said he immediately received an **"alert"** on his phone.

Within this narrative of entrustment must be situated the grant fund agreement, **Exhibit P3** also signed by the accused persons. This agreement as stated earlier constitutes the basis for the mutual reciprocity of legal obligations between parties; parties are therefore bound by the terms. Now reading **Exhibit P3**, it will be appreciated that it is not just the usual civil contract by which a loan facility is granted.

The fund granted to the cooperative was one not meant to be paid back but to be utilised for a specific purpose or objective with the active supervision of the grantor. The two accused persons in evidence conceded to realising the full effect of the contract agreement they signed. They were under no illusions as to what the agreement meant or entailed.

Now this contract agreement was in real terms not on the evidence made known to any other member. As stated earlier, DW3 did not even know about the existence of the contract or its terms and this is somebody who is the chairman of the business committee of the society. DW4, who is said to be the vice chairman did not see a copy of the agreement because he said the Accused persons said they were not given. This assertion is clearly controverted by **Exhibit P1**, the letter of offer of the grant received by 2nd Accused which shows that 2 copies of the grant agreement was attached to enable members go through and execute before it is returned to the office of the project coordinator.

When the fact that they are the signatories to the account to which the grant was made or paid into is added to the equation, in addition to the fact that they are the sole repository of the contents of the agreement, it is difficult to accept the argument of learned counsel to the accused persons that they, the Accused were not entrusted with and accountable for the mining grant fund, in order that it is properly deployed judiciously for the purpose it was meant. There is absolutely no way that the grant money can be assessed by anybody without their stamp of approval. The grant fund was therefore under the circumstances such that was entrusted with the Accused persons by the grantor. They were clearly responsible for

ensuring that the grant was used within the purview of the agreement. No more.

On the whole, I am clearly not persuaded by the arguments of learned counsel to the Accused persons that they were not entrusted with the grant in the circumstances. I accordingly hereby hold that the prosecution clearly established the first essential ingredient of the offence of criminal breach of trust against the Accused persons.

It is to be noted that the succeeding ingredients required to prove the offence of criminal breach of trust as set out in the provision of **Section 311 of the Penal Code Act,** are couched disjunctively or in the alternatives. In other words, the prosecution only requires to prove any but not all of these alternatives, namely: whether the Accused persons dishonestly misappropriated the Mining grant fund; or whether they converted the funds to their own use; or whether they dishonestly used or disposed of the property in violation of any direction of law prescribing the mode in which that trust is to be discharged; or a legal contract express or implied, which they have made touching the discharge of the trust; or whether the Accused person willfully suffers any other person to do any of the foregoing.

On the basis of the findings I have already made in the foregoing; and upon further evaluation of the evidence led on the record, I shall proceed to determine the relevant element here, which deals with whether or not the Accused persons dishonestly used or disposed of the property in violation of an express legal contract which they had made touching the disbursement of the money entrusted to them.

I have noted the totality of the arguments vociferously canvassed**,** on this issue by learned counsel to the Accused persons which essentially is that allegation of criminal breach of trust is not necessarily a criminal offence without proof of dishonest intent. Learned counsel further submitted that the fact that the Accused persons did not apply the Mining funds granted to their Cooperative society for the purpose for which it was granted was not enough to pin them down to the offence of criminal breach of trust; and that their dishonest intent must necessarily be established. Learned counsel specifically referred to the illustration in the Notes on the penal code law cap 89 Laws of Northern Nigeria 1963 (4th Edition) By S. S. Richardson at page 242 thus:

"A residing in Kaduna is agent for Z residing at Zaria. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a sum of money to A with directions to A to invest the same in Government securities. A dishonestly disobeys the direction and employs the money in his own business. A has committed criminal breach of trust"

"BUT IF A, IN THE LAST ILLUSTRATION, NOT DISHONESTLY BUT IN GOOD FAITH BELIEVING THAT IT WILL BE MORE FOR Z'S ADVANTAGE TO HOLD BANK SHARES, DISOBEY Z'S DIRECTION AND BUYS BANK SHARES FOR Z INSTEAD OF BUYING GOVERNMENT SECURITIES, HERE, THOUGH Z SHOULD SUFFER LOSS AND SHOULD BE ENTITLED TO BRING A CIVIL ACTION AGAINST A ON ACCOUNT OF THAT LOSS, YET A NOT HAVING ACTED DISHONESTLY HAS NOT COMMITTED CRIMINAL BREACH OF TRUST."

I have here quoted the above in-extenso because I consider same relevant and apt I will apply it to this case.

Learned counsel therefore submitted that the prosecution had failed to establish that the Accused persons had dishonest intent, or the requisite mens rea, in order to make them liable for the offence charged. He contended that **"it is glaring that the mere fact that money was not used for the purpose it was meant for is not enough to pin a person with the offence of criminal breach of trust."**

This may well be so. In this case however, there is a clear recognition or indeed acceptance by Accused persons and including learned counsel that the grant was not used for the purpose it was meant for. The key question which was not fully addressed is what was the fund then applied to and how?

In the illustration (supra) referred to by counsel to the Accused, A was entrusted with money to invest in **Government securities** by Z. If he disobeys the direction and employs the money in his own business, he has committed breach of trust. Where however he did not dishonestly but in good faith believing that it will be more to Z's advantage to hold bank shares, he disobeys Z's direction and buys bank shares instead of government securities, A having not acted dishonestly has not committed breach of trust.

It is self evident here that while Z's direction, may have been flouted, but the money was without any shadow of doubt and in good faith **"invested"** not in **"government securities"** but in **"Bank shares."**

There is therefore clearly no intention of causing wrongful gain to himself or another or causing wrongful loss to any other person. **"A"** clearly exhibited good faith in the extant situation.

Is that the scenario in this case? Even if the mining grant was not used for the purpose it was meant for, is there any verifiable platform to show that it was applied in good faith and precisely and to whose benefit? These are the critical questions begging for answers. In resolving these issues we take our bearing from the evidence.

It is proper to state at first here, upon proper evaluation, that the Artisanal and Small Scale Mining (ASM) Grant Fund Agreement, **Exhibit P3**, executed between the Ministry of Mines and Steel Development and the Mbatoo Multipurpose Cooperative Society Limited, represented by the Accused persons , on 10th December, 2009, contains the elements of and constituted a valid legal contract between the parties thereto.

As I have repeated elsewhere in this judgment, this agreement clearly regulated the relationship of parties. Parties are bound by it and they cannot by oral evidence seek to vary or alter the terms contained therein. This is trite principle. See also **Section 128 of the Evidence Act.**

It is also not in dispute that as a follow up to the agreement, the grantor released the mining grant fund of the sum of N4, 826,850.00 to the society, which the Accused persons, in concert with other members chose to divert to other uses and in a manner not creditably established contrary to the clear and express terms of **Exhibit P3.**

I have carefully noted the reasons given by the Accused persons for the decision of the society to breach **Exhibit P3** and thus abandoned as it were the express intention of the parties to the agreement, as contained in their various extra-judicial statements, to wit **Exhibits P6 and P7;** and also as set out in the letter of undertaking, vide **Exhibit P4.** The same reasons were also captured in the minutes of meeting of the General Meeting held on 21st February, 2010 vide **Exhibit D2**. On a calm evaluation of these reasons, I incline to the view that the dishonest intent of the Accused persons lie not simply in the decision to counter-mand **Exhibit P3**, but on the following factors that are clearly inculpatory.

The failure to seek the consent and authorization of the grantors of the fund before proceeding to apply the grant for other purposes. The contention that they wrote to the grantors informing them of the collapse of their pit was not in any way or manner creditably established. On the evidence, the general meeting for the hiring of the excavator was held on 21st February, 2010 vide **Exhibit D2** but the letter informing the ministry of the collapse of the pit was only said to have been written on 26th February, 2010 about 5 days later. No copy of any such letter was tendered in evidence showing that it was written, sent and or delivered.

In view of the strenuous denial of the existence of such letter by PW1, the project supervisor, the burden of verifying this contested assertion was on Accused persons. That burden was not discharged.

Interestingly, on the evidence, the collapse of the pit occurred when the representatives of the society were attending a conference organized by the Donors at Abuja. Why this critical information was not immediately relayed to the project supervisors immediately they were informed only points at one direction, that of absence of good faith or acting rightly and properly in the circumstances.

Crucially the time frame between when this purported letter of 26th February, 2010 was said to have been written and when the agreement to hire the equipment, **Exhibit D3** was signed on 1st March, 2010 which is barely 4 or 5 days is clearly suspicious. I incline to the firm view that more time or reasonable time ought to have given in the circumstances to get a firm response from the Agency in charge of the grant. Although the 1st Accused said they waited for a month, even though he was not too sure of his facts, the evidence do not bear this out. It is clear that the Accused persons knowing full well the implications of the contract they signed were determined for reasons that are not salutary to proceed to misapply the grant contrary to the agreement. This must be so because the agreement to hire the excavator **Exhibit D3** was made on 1st March, 2010 and contains numerous terms which must have been negotiated, digested or appreciated before the execution. It is perfectly logical to assume that this process must have taken some time before the execution on 1st March, 2010. It is obvious to see through this smoke screen that no such letter informing the donor agency of the collapse of the pit was written as alleged. Even if it was written as alleged, the decision to commence negotiation to hire the equipment, the signing of the contract all done within a few days

gives the clearest indication that there was absolutely no real attempt to seek the approval of the ministry before the grant was misapplied.

The conduct of Accused persons here clearly depicts dishonest intent. Even if such letter was written, on the evidence, the Accused persons never received any go-ahead signal from the grantors to apply the funds other than as clearly directed by **Exhibit P3.**

This is more so when it is noted that **clause (h)** of **Exhibit P3** expressly states that the grantee shall obtain all necessary permits and approvals from relevant Government Agencies in relation to the sub-project; and most essentially that by **clause (n)** they shall be liable for prosecution if found to have used the funds for purposes other than that for which the grant was approved. The Accused persons who are clearly discerning and intelligent chose or elected to ignore these clear warning signals and they have no other persons but themselves to blame in the circumstances.

Again, in spite of the clear warning contained in **Exhibit P3**, the Accused persons proceeded to deal with the grant fund which they regarded as free funds, in the manner they chose without due regards to the terms guiding the use of the funds.

Furthermore, the dishonest intent similarly lies in the failure of the Accused persons to fully bring to the attention of the other members the agreement they signed which contains the above strictures.

In E**xhibit D2,** the General Meeting held on 21st February, 2010 where the decision of the General Meeting to counter-mand Exhibit P3 was taken, the chairman only informed the General Meeting that there is in place an agreement to buy a compressor without explaining in any detail the consequences of the action about to be undertaken as stated in **Exhibit P3**. The argument that they had no choice in the matter or that the decision to misapply the funds was taken by all members clearly lacks basis.

As stated earlier, there is nothing in evidence to establish that the members had even full knowledge of the critical elements of the agreement. DW3 and DW4 who are said to be also officers of the association had no significant knowledge of the terms of the agreement. DW3 the chairman of the business committee on his part has no knowledge of any contract. DW4 said Accused told them that they were not given copies of the contract which on the evidence is incorrect. It is difficult to situate any

unanimous approval in such unclear situation of absence of critical information on terms of the contract which the Accused persons had full knowledge of. In any event, there is nothing in evidence on the record to show that the Accused persons, as principal officers were compelled to accept the decision to defy **Exhibit P3**. I am in no doubt that if the fact of prosecution was made known to other members by Accused persons where the funds are misapplied, the alleged decision or position would have been different.

Crucially, even if the decision to convert the mining grant was that of the General Meeting as alleged, the disbursements of the funds were principally that of the chairman and secretary who knew of the significance of the contents of **Exhibit P3** and who are the signatories to the account in addition to the treasurer. In the circumstances it is deeply a matter of great concern that apart from the discredited bare oral evidence, absolutely no scintilla of evidence was produced showing how these funds were even utilised. I had earlier dealt with the plant hire agreement, **Exhibit D3** which was tendered in evidence and which I had held lacked credibility and did not show or prove how these moneys were used.

How a World Bank grant of this nature can be utilised in such cavalier manner without accountability or transparency or indeed any audit trail is indeed baffling, shocking and leaves much to be desired.

Considering the pivotal roles the Accused persons played in securing the grant, they surely must have known better and should have insisted on seeking prior approval from the grantee before such a decision was taken. And even in applying the funds, albeit wrongly in this case, there must be clear verifiable evidence on how the moneys were used. This case cries to high heavens for evidence of how the grant was used suggestive of a clear pattern of use of the grant for personal aggrandizement and in the process betraying the efforts of those unnamed Nigerians who worked tirelessly to secure the grant from the World Bank to help our local miners in the first place.

Even if it may be argued that it was impossible for the contract to be performed, the question then is whether the reasonable thing to have done in the circumstances was not to have informed the grantor of the challenges the society was facing with respect to the collapsed pit and the fact that the mining equipments would not be useful in the circumstances if

they were to proceed to purchase same, rather than unilaterally and without approval diverting the funds for clearly unascertained purposes.

I am therefore in no doubt that in electing to willfully defy the express provision of **Exhibit P3** without seeking the consent of the grantors of the mining fund; the failure to bring to attention of their members the full contract terms and its implications and the clear absence of transparency in the utilization of the funds under the clear authority of the Accused persons as principal officers and signatories of the account of the society, that the Accused persons clearly retained dishonest intent and I so hold.

The dishonest intention is even made more manifest when it is noted that there is nothing in evidence explaining what happened to the whole money subject of the grant. At the risk of sounding prolix, it is however important to reiterate that since the money by **Exhibit P3** was paid into a dedicated Bank Account, why is it difficult for the Accused persons to present the society's' Bank Statement of Account to which they are signatories to show how the moneys of the grant were disbursed. Even if it is accepted that as stated by DW1, the 2nd Accused, that they paid N1.6 Million for the hire, which it must be emphasised was not verified or proven, the question then is what happened to the balance of over N3 Million? This sum could not all have gone into payment of **"labourers", "buying engine oil"** and other unexplained **"smaller payment"** etc as alleged. The failure to produce the bank statement of account of the society or any evidence showing how the grant was utilised calls or allows for the application of the presumption under **Section 167 (d) of the Evidence Act** that the said statement of account and such other pieces of evidence are such that if produced would be unfavourable to the Accused persons hence the failure to produce same. Relevant here also is the fact that on record, the execution of the collapsed pit could not be completed because the workers there ran away under fear of been arrested by EFCC. What this signifies is that since the work was not completed, payment logically for work at the site would have stopped. There is nothing in evidence explaining what part of the grant, if any, remained under the circumstances. Nothing has also been refunded till date and no satisfactory explanation was on the evidence given on how the grant was completely utilised, beyond controverted oral assertions lacking in credibility.

It is difficult to resist the inclination on the proved facts that the Accused persons in their conduct and the manner they utilised the mining grant erroneously conceived and saw the grant as free funds. This is really

unfortunate. It is difficult to see how the World Bank and other Donor Agencies will have confidence in the future to give a helping hand when their confidence can be betrayed without scruples or any sence of compunction or penitence. I leave it at that.

I again and one more time return to the shares and the earlier illustration. In it, the remittance to A was used for **Bank Shares** instead of **Government securities** contrary to the directive. There is no dishonesty here. In this case the diversion of the mining grant was clearly not done under any precise or clearly defined template. The grant on the evidence simply **"disappeared"** into thin air. Therein lies the dishonesty and the criminal breach of trust and the difference between this case and the illustration referred to by learned counsel to the accused persons.

I had earlier at the beginning stated the burden of proof on the prosecution. I had similarly referred to the provision which states that if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted to the Accused Person(s). What this simply means is that where the prosecution establishes or crosses the threshold of proving its case beyond reasonable doubt, the onus then shifted to the defence to adduce evidence capable of creating some reasonable doubt in the mind of the trial judge.

The point must be emphasised to avoid any disposition to confusion that the primary onus of establishing the guilt of the Accused Persons still remains with the prosecution and this does not shift. What does shift is the secondary onus or the onus of adducing some evidence which may render the prosecutions' case impropable and therefore unlikely to be true and thereby create a reasonable doubt. See **Mufutau Bakare V. The State (supra) 1 at 32, 33-34.**

The accused persons here have not put up such facts in rebuttal or elicited facts in evidence susceptible to either guilt or innocence in which case doubt would have been created to inure in their favour.

On the basis of the foregoing therefore, I agree that the prosecution has crossed the legal threshold and proved beyond reasonable doubt that the Accused persons dishonestly misappropriated the mining grant fund in violation of the legal contract which they executed touching the usage of the fund.

In the final analysis and for the avoidance of any doubt, the judgment of court is that the prosecution has succeeded in proving the charge laid against the Accused persons in these proceedings and accordingly, I found and pronounce them guilty as charged.

……………………………

Hon. Justice A. I. Kutigi

SENTENCE

I have carefully considered the plea in mitigation by learned counsel to the Accused Persons. Now in considering the plea, I am obviously guided by the clear provisions of the law which provides the punishment for these offences. The punishment under **Section 312 of the Penal Code Act** range from imprisonment or fine or both. Whatever discretion that may be exercised by court must be such obviously allowed by law. It is trite law that the sentence of a court must be in accordance with that prescribed by the statute creating the offence. The court cannot therefore impose a higher punishment than that prescribed for the offence neither can a court impose a sentence which the statute creating the offence has not provided for. See **Ekpo V. State (1982) 1 NCR 34.**

Now my attitude when it comes to sentencing is basically that it must be a rational exercise with certain specific objectives. Some of these objectives have now been expressly provided for under the new Administration of Criminal Justice Act 2015 vide **Sections 311(2) and 401(2) of the Act.** It could be for retribution, deterrence, reformation etc in the hope that the type of sanction chosen will put the particular objective chosen however roughly into effect. The sentencing objective to be applied and therefore the type of sentence to give may vary depending on the needs of each particular case.

In discharging this no doubt difficult exercise, the court has to decide first on which of the above principles or objective apply better to the facts of a case and then the quantum of punishment that will accord with it.

In this case, if the objective is deterrence and reformation for the convicts and I presume they are then the maximum punishment for the offence as

provided for in the penal code appear to me particularly excessive in the light of the facts of this case. The convicts are first offenders and have acted in the circumstances of this charge on behalf of a larger group of persons.

In the same vein, it is a notorious fact that crimes of this nature now appear to be prevalent in our clime and the courts as preventive tools in the criminal justice system must not be seen to encourage criminal acts of this nature by giving light sentences. I am equally mindful of the fact or the general principle that the essence and aim of punishment is not necessarily to ruin or destroy the offender but to reform and deter others who may have like minds.

I have also taken into account their sober conduct and commendable comportment all through the trial proceedings. I must however also quickly point out that the convicts by the contents of the agreement they signed vide the provision of **clause 7 (n)** were sufficiently forewarned that they shall be liable for prosecution if it is found that they have used the funds granted for other purposes other than that for which the grant was approved. They therefore chose here not to heed this clear and unequivocal warning.

I have similarly noted the notorious fact that the prison system despite improved efficiency is still faced with enormous challenges not only in terms of structural capacity but also its reformatory capabilities. While all the above have clearly weighed on my mind, the basic underlying and indeed the most important variable for me is that a price or consequence must be paid for inappropriate behaviour. The message must however be sent out loud and clear that Grants of these nature are not free meal tickets.

Having weighed all these factors, I incline to the view that a light sentence is most desirable in the circumstances and would achieve the noble goals of deterrence and possibly reforming the convicts towards a pristine part of moral rectitude.

Accordingly with respect to COUNT 1 of the charge, the provision of **Section 312 of the Penal Code Act** under which the 1st Accused was charged and convicted imposes a term of imprisonment which may extend to seven years or with fine or with both.

Accordingly, on COUNT 1, I hereby sentence the Convict to a term of Two (2) years imprisonment but with an option of fine in the sum of N100, 000 only.

On COUNT 2 of the charge, the provision of **Section 312 of the Penal Code Act** under which the 2nd Accused was charged and convicted imposes a term of imprisonment which may extend to seven years or with fine or with both.

Accordingly on COUNT 2, I hereby sentence the Convict to a term of Two (2) years imprisonment but with an option of fine in the sum of N100,000.

In addition pursuant to the provision of **Section 78 of the Penal Code** and which is now reinforced by the provisions of **Section 314 and 319 of the Administration of Criminal Justice Act (ACJA) 2015,** the court is permitted to order for payment of compensation to the victim where the interest of justice permits in addition to the punishment already meted out on the convict.

In the circumstances and pursuant to the above provisions, the convicts are ordered to pay the sum of N2, 413,425 (Two Million, Four Hundred and Thirteen Thousand Naira) **each** to the Ministry of Mines and Steel Development (MMSD) through the Sustainable Management of Mineral Resources Project (SMMRP).

……………………………
Hon. Justice A. I. Kutigi

Appearances:

1. **I.G. Odibo (Mrs) for the Prosecution.**

2. **Nnodu Okeke, Esq., for the Accused Persons.**