

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL
CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE JUDE OKEKE**

ON FRIDAY THE 18th DAY OF SEPTEMBER, 2015

CHARGE NO: FCT/HC/CR/M/2800/2012

BETWEEN:

REPUBLIC OF NIGERIA COMPLAINANT

AND

NONG JIAN ZHONG (M) ACCUSED PERSON

JUDGMENT

On 28/3/2013, the Accused Person was arraigned in this Court on a 3-Count charge of conspiracy with one Li Meng (now at large), Breach of Trust and stealing of the sum of \$79,000.00 belonging to CCI BCEGI on or about 29/1/2012 contrary to Sections 96 (1) and 311 and punishable under Sections 96(1), 312 and 289 respectively of the Penal Code law. He pleaded not guilty to each Count of the charge.

The case proceeded to trial on 8/10/2013 with the prosecution calling three witnesses who testified as PW1 to PW3. They were all cross examined by Counsel for the Accused Person. The witnesses tendered the following documents as Exhibits.

- (1) Original Copy of Statement of the Accused Person written in Chinese Language and the English translated version – Exhibits A and A1 respectively.

- (2) Original Copy of Front page of acknowledgement of Receipt of money written by the Accused Person. The Chinese and translated English versions were admitted as Exhibits B1 and B respectively.
- (3) Original Copy of Letter of Discovery written by the Accused Person. The Chinese and English translated versions were admitted as Exhibits C1 and C respectively.
- (4) Original Copy of Accused Person's Statement at the Interpol, Nigeria Police Force Headquarter and the translated English version were admitted as Exhibits D1 and D respectively.

At the close of the prosecution's case, the Accused opened his defence by calling Mr. Daniel Nze who testified on his behalf as DW1 on 9/3/2015. He was crossed examined by the Counsel for the prosecution.

The Accused did not testify for himself. He closed his case on 9/3/2015 whereupon the Court gave the parties time frame within which to file and exchange Final Written Addresses which they did. The Learned Counsel for the parties adopted their respective Written Addresses in Court on 20/5/2015 thus setting the stage for this judgment.

I have carefully read and digested the evidence of witnesses for the parties and Written Addresses of their Counsel. The crucial issue that arises for determination is whether or not the prosecution has proved counts of the charge against the Accused Person beyond reasonable doubt to justify a finding of guilt against the Accused person.

To resolve this issue, I consider it necessary, for ease of reference to reproduce the counts of the charge against the Accused Person.

“COUNT ONE

That you Nong Jian Zhong (M) on or about the 29th day of January, 2012 at CCI BCEGI Nigeria Limited premises, Jabbi, Abuja, within the jurisdiction of this honourable Court, agreed with one Li Meng (now at large), to dishonestly remove the sum of seventy-nine thousand United States Dollars (\$79,000) from the safe of the said company and you thereby committed an offence contrary to Section 96 (1) of the Penal Code and punishable under the same Penal Code.

COUNT TWO

That you Nong Jian Zhong (M) on or about the 29th January , 2012 at CCI BCEGI Nigeria limited premise, Jabbi, Abuja within the jurisdiction of this honourable court, while being entrusted with the custody of the safe of the said company as an employer did commit breach of trust by fraudulently taking the sum of Seventy-Nine thousand United States Dollars (\$79,000) being the property of the said company, from the said safe with the aim of using the said money to set up your personal business in China and you thereby committed an offence contrary to Section 311 of the Penal Code and punishable under Section 312 of the same Penal code.

COUNT THREE

That you Nong Jian Zhong (M) on or about the 29th day of January, 2012 at CCI BCEGI Nigeria Limited premises, Jabbi, Abuja, within the jurisdiction of this honourable Court, while being an employee of CCI BCEGI Nigeria Ltd and having under your custody the safe of the said company, did dishonestly take the sum of seventy-nine thousand United States Dollars (\$79,000) being the property of the said CCI BCEGI Nigeria Limited without its consent with the intent to use the said sum of money to establish your personal business in China and you thereby committed an offence contrary to Section 286 of the Penal Code and punishable under Section 289 of the same Penal Code.”

The offence of Criminal Conspiracy is provided for in Section 96 (1) of the Penal Code. Under the Section, it is defined thus:-

“96 (1): when two or more persons agree to do or cause to be done-

- (a) illegal acts or
- (b) An act which is not illegal by illegal means, such an agreement is called criminal conspiracy”.

At page 77 of his Book NOTES ON THE PENAL CODE LAW: SS. Richardson explained the ingredients of the offence which the prosecution is under a duty to prove beyond reasonable doubt as being:-

- (1) An agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means.
- (2) Where the agreement is other than an agreement to commit an offence that same act besides the agreement was done by one or more of the parties in furtherance of the agreement.
- (3) Each of the Accused individually participated in the conspiracy.

The offence of Criminal Breach of Trust as provided in Section 311 of the Penal Code stipulates that “whoever, being in any manner entrusted with property or with any dominion over property dishonestly misappropriates or converts to his own use that property or dishonestly in violation of any directive of law prescribing the mode which such trust is to be discharged or of any legal contract express or implied which he has made touching the discharge of such trust or willfully suffers any other person so to do, commits criminal breach of trust.”

The ingredients of the offence include:-

- (1) That the Accused was entrusted with property or with dominion over it.
- (2) That he :-
 - (a) Misappropriated it; or
 - (b) Converted it to his own use
 - (c) Used it; or
 - (d) Disposed of it
- (3) That he did so in violation of:-
 - (a) Any direction of law prescribing the mode in which such trust was to be discharged.
 - (b) Any legal contract expressed or implied which he had made concerning the trust; or
 - (c) That he intentionally allowed some other person to do as above
- (4) That he acted as in 3 above dishonestly.

Section 286 of the Code on its part provides for the offence of theft in these words:-

“286 (1) whoever intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to take it, is said to commit theft.”

The ingredients are as follows:

- (a) That the property in question is movable property.
- (b) That the property was in the possession of a person.
- (c) That the Accused moved the property while in the possession of that person.

- (d) That he did so without the consent of that person.
- (e) That he did so in order to take the property out of the possession of that person.
- (f) That he did so with intent to cause wrongful gain to himself or wrongful loss to that person.

Now, what evidence has the prosecution placed before the Court in proof of the ingredients of each of these counts of the charge?

The gravamen of the evidence of prosecution's PW1 is that she is an Assistant to the President of C. C. I. BCEGI the nominal complainant. She knows the Accused as a co-worker in the company. He was the Project Manager of the company. His duties include looking after and managing the company's funds. When the president of the company left Nigeria, he handed over the funds of the company to him and he acknowledged receipt of it in her presence. The original copy of the receipt (which she identified) was dispatched to the Chinese police at the time when this case arose.

In January 2012, she received a call on a certain morning from a colleague by name Zing Lin who told her the Accused person committed a crime. That he took all the company's money and gave to another colleague by name Li Meng. That he (the Accused) feels so sorry for the action that he left a letter in his room. She went to the Accused's room and saw the letter on the desk and read the contents which were details of how he planned with Li Meng to take the company's money but realized he has been cheated by Li Meng who took all the money from him and flew to china.

She stated that on the instruction of the President of the company, she reported the matter to the police at Utako Abuja. Later same day, they received a call from the Chinese Embassy that the Accused surrendered himself to Embassy. She informed the police of this development and along with two policemen and the President, they went to the Embassy where the Accused was handed over to them. An official of the

Embassy also informed them the Accused made a confession and showed this letter of confession of the crime to them. She read it.

She also testified that at the embassy the Accused Person knelt down in front of the president and pleaded for forgiveness. The Accused was taken to the Utako Police Station where he wrote a statement. She made a translation of it from Chinese to English for the police as there was no interpreter around.

After going to the Utako Police Station, the Interpol became involved in the matter. She and the Accused were brought to the Interpol office where the Accused also wrote a statement in Chinese language and she translated it in to English Language.

Concluding, she testified Li Meng has not been arrested as he is still at large. When shown the Accused's Statements made at Utako Police Station and Interpol Office as well as her translation of them, she identified them by the Accused Person's handwriting and her's respectively.

Upon her recall, she further testified that the money handed over to the Accused and which he acknowledged receipt of were Dollars contained in a safebox. The Accused in receiving the money counted it before her. The Accused was the only one with key to the box which is meant for keeping the company's money.

She further told the Court that after seeing the letter in the Accused Person's room, they searched the company's safe box aforesaid but found it empty.

Under cross examination, she testified she is not a Personal Assistant to the President. She is rather an Assistant to the President. Her responsibilities include interpreting, translating internally and externally businesses of the company,

She admitted knowing Li Meng but was not aware there were some contractual transactions between him and the President of the company.

The witness also denied knowing whether or not the Accused had served several construction companies before being employed by the complainant company. Likewise for whether or not he was being owed accumulated salaries by the company and pleaded with the President to pay the salaries to him.

With respect to the Accused person's statements, she testified that after translating his statement at the Interpol Office, she read it over to him and he signed it. She also translated the Accused Person's statement at the Police Station from Chinese to English Language, did not read it to him but the Accused signed it. She did not translate the Acknowledgment of receipt of money written by the Accused at the time. She however did the translation when this case arose, did not read it to him but the Accused signed it when given to him.

Concluding, she testified that she was present when the Accused acknowledged receipt of the money from the President of the company, Likewise for when he wrote his statement at the Police Station. She would not remember if he signed the two documents.

The second Prosecution witness was Sgt. Ezekiel Aloga who testified as PW2. He testified inter alia that he is a Police Officer attached to the Utako Police Station, Abuja. He knows the Accused Person. He was the suspect in a case of Criminal Breach of Trust and Theft which was reported to his office by one Miss Joyce Xu-a Chinese National and Secretary to BCEGI/CCI- a construction company.

She reported to him that on 1/2/2012 about 1800 hours, she reported to the Utako Police Station that the Accused who is a staff of her company and responsible for taking custody of the company's money as its Treasurer stole the sum of 79,000 USA Dollars of the company and was taking refuge at the Chinese Embassy. She also showed him a

discovery letter written by the Accused to the President of the company Mr. Quin.

On the strength of the report, he proceeded to the Chinese Embassy and invited the Accused to the Police Station. At the station Joyce Xu in the presence of the Accused and the President of the company narrated how the theft took place in the company. She narrated in English Language and later translated it into Chinese Language to the Accused Person.

The Accused was given opportunity to tell his own side of the story. He stated that on 14/1/2012, he paid a visit to one Li Meng and they had a drink. The latter brought the idea of running their (ie the Accused and him Li Meng) running their own company. Li Meng asked him (the Accused) that since he was responsible for keeping custody of the company's money, he should break the company's safe in his possession and steal the money ie 79,000 USA Dollars so that both of them will go back to China and form their own company. That the Accused should tell the company that it was Nigerian Armed Robbers that robbed him of the money. He (the Accused) agreed with the suggestion and left.

On 29/1/2012, he (the Accused) broke the company's safe and stole the money and took it to Li Meng. The next day being 30/1/2012, he discovered that Li Meng has escaped to China with the money. Because he was not familiar with the terrain, the next day he wrote a discovery letter to the President of the company. The letter was written in Chinese Language. In it he admitted and narrated how the theft took place. Out of fear, he ran to the Chinese Embassy at Area 10 Garki Abuja. It was the embassy that handed him over to the complainant who handed him over to them (the police).

Testifying further, the witness stated that when asked if he could put into writing all he told them he said yes though he cannot write in English Language as he does not understand it. For this reason, he was allowed to write in Chinese Language. He was given a pen and statement Form and he wrote his statement in Chinese Language voluntarily.

When he was done, for the reason that none of them understands Chinese Language they (the police) asked the complainant to translate the statement from Chinese to English Language. The Accused signed both statements written in Chinese and English Languages. The complainant (Miss. Joyce Xu also signed the statement she translated from Chinese to English Language.

The next day being 2/2/2012, as it was a confessional statement made by the Accused Person, he and the complainant and the President of the company were arranged for D. P. O's interview. The D. P. O. read the English version of the statement and it was translated to the Accused in Chinese Language and he asked the Accused whether what he wrote was exactly what he did and he said yes. The D. P. O then endorsed the confessional statement in the presence of the Accused, the complainant and the President of the company.

Dwelling further, the witness stated that during investigations, the Accused also agreed he has been keeping custody of the money and the copy of the Acknowledgment receipt by which he received the money and the discovery letter were tendered to him by the complainant. The case was thereafter transferred to the Interpol at the Police Force Headquarters Abuja for investigations regarding Li Meng whom the Accused said he gave the money and who had fled to China which is beyond their jurisdiction.

Concluding, the witness said he could identify the Accused Person's statement which was translated by Miss. Joyce by the endorsement made in red ink on it by the D. P. O. He could identify the acknowledgment receipt by the fact that it is a photocopy and has only a page. The discovery letter on it part is made up of three pages and the English version of it two pages. The contents of the Acknowledgment receipt were explained and translated into English Language by Joyce. The statement of the Accused written in Chinese Language and the translated English version of it were admitted as Exhibits A and A1 respectively. The front page of the Acknowledgment receipt of money written in English Language was admitted as exhibit B while the Chinese version

was admitted as Exhibit B1. Finally, the translated English version of the letter of discovery was admitted as Exhibit C while the Chinese version was admitted as Exhibit C1.

Under cross examination, the witness testified inter alia, that the case was reported to the Utako Police Station by one Joyce Xu. During the investigation, a total sum of \$78,000 was involved. He was detailed by his Divisional Crime Officer to investigate the matter. There is no arrangement between his boss and management of the company with regard to the investigation of the case. Joyce Xu is a staff of Complainant Company. She is its Secretary. As at the time of the investigation, she was the only available interpreter.

When shown Exhibits A and A1, he said they are confessional statements of the Accused which were endorsed by his Divisional Police Officer (DPO). In the endorsements the DPO stated that he read the statement to the Accused Person. He also told him of the implication of confessional statement.

When shown Exhibit C, he said it is a discovery letter which is computer typed. He did not bother to find out who generated it from the computer. He was only concerned with the contents. It was not signed but the name of the Accused is on it.

When shown Exhibit B and B1 he said he saw it in the course of investigation. That it is also computer generated. Exhibit B1 is an English translation of Exhibit B which was done by Joyce Xu. The Chinese version was signed by the Accused while the other was not.

In his own testimony, the Prosecution PW3 (Insp. Abubakar Umar) testified inter alia, that he met the Accused on 12/9/2012 in the course of his investigations at the Police Force Headquarters Interpol office. On 12/9/2012, a case of conspiracy and theft was transferred from Utako Police Divisional Headquarter to the Interpol Office, Police Force Headquarters for investigation. Immediately after the transfer, the PW1 and the Accused Person were brought to their office. They were

given papers to write their statements. The PW1 wrote her statement. He filled up the information section of the Statement Form for the Accused and cautioned him in English Language. The team then understood he does not understand English so the complainant was asked to interpret the cautionary words to him and she did and he said he understood same and signed it. Later, the team provided him with a pen and he wrote his statement himself in Chinese Language and signed. After this, the statement was given to the complainant who translated it to English Language. After the transaction she read it to the Accused in Chinese and after he said he understood same, he signed it. The PW1 also signed the translated English version. The team having found the statement was confessional, compiled the case file and transmitted to a Superior Police Officer for the endorsement of the Commissioner of Police. Four days thereafter, he was transferred from Team C to Team A. With this, he ceased to have access to the case file. It was in court that he discovered the statement was not endorsed by the Superior Police Office. This, he believes, was an oversight. The original copy of the statement of the Accused Person at the Interpol Section of the Police Force Headquarters dated 12/9/2012 and the translated English version of same date were admitted as Exhibits D and D1 respectively.

Under cross examination, the witness testified inter alia, that he cannot say if a report was made of the team's findings as he was sent to another team after taking the Accused's Statement. The Nigeria Police has the powers to invite individuals or organisation to assist them in their investigations. This team did not write any other person to translate the statement of the accused into English but the accused agreed that the PW1 could do so.

When shown Exhibit D1, he said the signature of the accused on it is in English.

In his defence, the accused person called Mr. Daniel Eze who testified as DW1. He (the Accused did not testify).

The DW1 testified inter alia that the accused was his co-worker at BCEGI Construction Company, His own (ie DW1's) appointment was terminated as a result of redundancy. He was a causal Security Guard. His schedule was to secure the property and lives of other workers.

On 30/1/2012, their senior master claimed the accused person stole some amount of dollars from the company. The next day, the police arrested the accused and detained him at the Police Station.

He does not know Li Meng. He knows one Miss Joyce. She was a mistress to their senior master and always comes to their office.

He cannot say the state of relationship between the accused and their boss as he does not understand their Chinese Language.

The company has no safe. He has not seen any. All the monetary transactions are through banks.

Under cross examination, he testified his appointment was terminated on 12/5/2012. He was on night duty on the 30/1/2012. He was not in the company on 29th January, 2012. He witnessed the arrest of the accused by the Police on the ground that he stole some Dollars of the company. He knew why he was arrested because everybody was talking about it. The foregoing represent in details the evidence adduced by the Prosecution witnesses in support of the charge and sole witness of the Accused in defence.

The critical question that arises in the light of these pieces of evidence is whether or not the Prosecution has by the evidence of Pw1 to Pw3 vis-à-vis that of the Dw1 in defence proved the elements of the offences of conspiracy, criminal breach of trust and theft with which the Accused is charged.

The Prosecuting Counsel in her Final Written Address relied essentially on the contents of Exhibits A, A1, C, C1, D and D1 allegedly made by

the Accused to contend that not only do they disclose beyond reasonable doubt a conspiracy between the Accused and escapee Li Meng to steal the sum of \$75, 000 from the safe of CC1 BCEGI Nig. Ltd but also criminal breach of trust and theft of the money by the Accused person. She also places reliance on the testimonies of the Pw1 to Pw2 with regard to the Accused person's confession of the conspiracy, and breach of trust and theft of the money to them.

The plank of the Accused person's Counsel's contention as disclosed in his Final Written Address is that the Court should not ascribe probative value on the said confessional statements of the Accused for the reason that some of them fail to meet the requirement under Judges Rules, many of them are written in languages unknown to the Court having been written in Chinese language; the English versions are computer generated evidence which fail to meet the requirement of admissibility under Section 84 of the Evidence Act and all the English versions were not signed by the accused person and so qualify as worthless documents. There were also contentions about inconsistencies in the testimonies of PW1 to PW3. I will come to these later. For now, the questions that needs to be answered are:-

- (1). Whether or not the Accused made an oral confessional statement to any of the Prosecution witnesses.
- (2). Whether Exhibits A to C1 tendered by the Prosecution as confessional Statements of the Accused with regard to commission of the offence are indeed confessional statements on the basis of which it could be said the Accused admitted having committed the offences.

A confession has been defined in Section 28 of the Evidence Act 2011 as: -

“...an admission made at any time by a person charged with a crime, stating or suggest the inference that he committed that crime.”

The general position of the law is that admissions or confession can be formal (as in pleadings and written documents) and informal. Where either oral or written confession is proved against an Accused it is treated as an admission against the interest of the Accused who made it and the Court can validly rely on or attach probative value on it, depending on the circumstances in which it was made. In **NWACHUKWU V. STATE (2002) FWLR (Pt.123) p.312**, the Supreme Court explained that “An admission or confession has been said to be like any other evidence and it is the duty of the trial Court to consider the circumstances under which it was given and decide what weight that may be attached to the alleged confession.”

In **AKINMOJU V. STATE (2000) 4 SCNJ P. 179**, the Supreme Court, per Uwaifo JSC held that: -

“...It has been held that an admission made at anytime by a person charged with an offence (even before it was decided to formally charge him with committing a crime and although with no caution having been administered) suggesting that he committed the offence is a relevant fact against him, the maker and if made voluntarily is admissible in evidence.”

See: **BUBA V STATE (1994) 7 NWLR (Pt.355) p.195**, **KASA V. STATE (1994) 5 NWLR (Pt.344) p. 269**.

The Supreme Court per Iguh JSC further explained in **NWACHUKWU V. STATE** supra that: -

“The person to whom a confession or an admission is made by a party to a proceeding or by an Accused person is generally immaterial and a statement in the nature of a confession or an admission made by a person even to himself, if over-heard by someone else may be received in evidence if it amounts to a confession or an admission. See: **R V. SIMONS**

(1834) 6 C & p.540. In the present case, the evidence sought to be pronounced as hearsay and therefore Inadmissible is a statement made by the Appellant to PW2 in the course of Police enquiry and investigation of the case. Without doubt, the statement, to some extent amounts to a confession or admission and is damaging to and against the interest of the Appellant. It is plain to me that the evidence of PW2 under attack is admissible against the Appellant and it was up to the Court of trial to decide what weight was fairly to be attached to the alleged confession.”

These said, it needs to be pointed out that in all cases however, that for a confessional statement to be admissible, it must have been made voluntarily. Section 29(1) – (3) and (5) of the Evidence Act 2011 made provision in this regard thus: -

“29 (1) in any proceeding, a confession made by a Defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the Court in pursuance of this Section.”

The conditions which would render a confessional statement inadmissible which include whether or not it was obtained or made by oppression of the maker, i.e. under torture, inhuman and degrading treatment were set out in Subsection 2(a) to (5) of the Section. In effect, for a confession to attract and support a conviction, it must be proved to be free, voluntary, unambiguous, true, direct and positive. See: **CORPORAL JONA DAWA & ANOR V. THE STATE (1980) 8 – 11 SC p.236.** A confession will support a conviction if proved to be made and true. See: **JAMES OBI ACHABUA V. THE STATE (1976) 12 SC p.63; YESUFU V. THE STATE (1976) 6 SC p.167.**

It further needs to be pointed out that the legislature in drafting the Section 29 of the Evidence Act 2011 excluded the elements of

“inducement” or “promise” made to an Accused in extracting the confessional statement or admission as a vitiating factor contrary to the provision in the repealed Evidence Act.

Now, in this case, and as aforesaid, the Prosecution relies on the oral admission of having stolen the said money to the hearing of the Pw1 to Pw3 and his Written Statements to the Police at Utako, and Interpol and letter of discovery. I will deal with the alleged oral admissions first. It was the testimony of the Pw1 under examination in chief that after reading the letter of discovery left by the Accused after her attention was called to it by her colleagues Ling Liu and after receiving a call from the Chinese Embassy in Abuja that the Accused person surrendered himself thereat, she the President of the Complainant Company and two Policemen from Utako Police Station proceeded to the Embassy. There, an official of the Embassy after narrating to them how the Accused confessed to committing the crime to them handed him over to them along with the letter of confession he wrote there. The Accused at this point knelt down in front of the President of the Company and pleaded for forgiveness. The President asked him to stand up.

The PW1 was not cross examined on this piece of evidence by the defence. The Accused himself did not testify on it. His witness (the Dw1) also did not lead any evidence in contradiction of the above evidence. The implication of this failure either by himself or through his witness to lead evidence in contradiction or cross examine the Pw1 on the said evidence of confessing to the crime as well as kneeling down in front of the President of the Company and pleading for forgiveness for stealing the money is an admission of his having committed the offence. By the failure, the evidence of the oral confession stands unassailed and admitted.

The PW2 on his part gave evidence of how after the PW1 lodged a report of theft of the company’s money at the Utako Police Station, he along with the Pw1 proceeded to the Chinese Embassy where the Accused reportedly took refuge. From there, he took the Accused to the Utako Police Station on 1st February, 2012. At the Station, the Accused

was given opportunity to tell his side of the story. He (the Accused) then said that on 14th January, 2012 he paid a visit to one Le Meng and they had a drink in Le Meng's house. Le Meng brought the idea of their running their own business and asked him to, as the person keeping custody of the Company's money, break the safe and steal 79, 000 USA Dollars therefrom so that the two of them can fly back to China and with that form their own company. That he (the Accused) should tell the company that it was Nigeria armed robbers that robbed him of the money. He (the Accused) agreed with the suggestion and left.

That on 29th January, 2012, he (the Accused) broke the company's safe and stole the money and in the morning of that day gave it to Li Meng and came back and told the company that Nigeria armed robbers robbed him of the money. The next day being 30th January, 2012, however, he discovered that Li Meng has escaped to China with the money which was 79, 000 USA Dollars. Because he was not familiar with the terrain, the next day, he wrote a "discovery letter" to the President of the Company. In the letter he narrated how the theft took place. That out of fear, he ran to the Chinese Embassy which handed him over to them.

The PW2 further testified that when he asked him (the Accused) if he could put all he has told them into writing he said yes though he would write in Chinese and not English language as he does not understand it. He was then allowed to write his statement in Chinese language.

Just like the PW1, the PW2 was not cross examined by the Counsel for the Accused on this above testimony of oral confession of agreement with Li Meng and theft of the Complainant's money made to him by the Accused at the Utako Police Station. The Accused himself did not testify and thus did not debunk the testimony. The DW1 on his part did not adduce any evidence in contradiction of this oral confession made to the PW2 by the Accused. In the circumstances, the above testimony of the PW2 stands unchallenged, and uncontradicted and accordingly admitted. The settled position of the law is that where a witness testifies on an issue and is not cross examined on it by the adversary despite the opportunity he had, he is deemed to have accepted that piece of evidence

as true and correct and the Court is under a duty to act on it. **SEE: - AGBO V. STATE (2006) 6 NWLR (Pt.977) p.545.** The Accused having failed to cross examine the PW1 and PW2 with regard to their testimonies to the effect that he orally confessed to their hearing of having conspired with Li Meng and stolen the complainant's 79, 000 USA Dollars as aforesaid has in the eyes of the law admitted having made the confessions to them.

It is instructive that there is no evidence of the oral confession having been made to the hearing of PW1 and PW2 under any form of oppression before the Court so as to render the confessions involuntary and therefore inadmissible. In the circumstances, the Court comes to the view that the Accused person voluntarily confessed to conspiracy with Li Meng to steal and did steal the complainant's sum of ₦79, 000 USA Dollars. For these oral confessions alone, the Court could validly wind down on this Judgment but it is considered necessary to consider the written confessional statements said to have been made by the Accused at the Utako Police Station, Interpol Office and the Discovery letter.

It is the case of the Prosecution that the Accused made confessional Statements at the Utako Police Station and Interpol Office. Both statements were written in Chinese language by the Accused and translated into English language by the PW1. While the statements written in Chinese made at Utako Police Station was admitted as Exhibit A and the English version as Exhibit A1 that written in Chinese at the Interpol office was admitted as Exhibit D while the translated English version was admitted as Exhibit D1.

The Accused neither retracted nor contended any of the statements was obtained from him under any form of oppression. The learned defence Counsel has however contended without being specific that the statements of the Accused were written in Chinese language and therefore not admissible, Chinese not being language of the Court. He also contended that the English versions are computer generated evidence which did not comply with the provision of Section 84 of the Evidence Act being deficient of Certificate of Compliance with the

section. It was further contended all the English versions were not signed by the Accused and this being the case they are worthless documents not deserving of any probative value.

I have given due consideration to the above contentions vis-à-vis the response of the prosecution Counsel. It is elementary that unsigned document is worthless in the eyes of the law. It is also trite that the language of the Court is English language and for a document written in a language other than English to be admissible in evidence, it is desirable same be translated into English language and both documents tendered. See: **SAPELE V. THE QUEEN (1957) 2 JSC p.24; AKPAN V. STATE (1992) 6 NWLR (Pt. 248) p.439.** Where however, a statement to the Police was made by an Accused through an interpreter, the Statement will only be admissible through such an interpreter. In **OLALEKAN V. STATE (2001) 12 SCNJ p.94,** the Supreme Court explained that where an interpreter has been used in taking down an Accused person's confessional statement, such a statement is inadmissible in evidence unless the persons who interpreted it as well as the person who wrote it down are called as witnesses. The interpreter is also expected to lead evidence on questions he put to the Accused leading to the answers given. See also: **FRN V. USMAN (2012) 3 SC (P.1) p.128.**

In **JUA V. STATE (2008) ALL FWLR (Pt.440) p.766,** the Court of Appeal, per Ogunwimmiji JCA (as he then was) further explained thus with regard to confessional statement written in both vernacular and English languages: -

“The practice and procedure adopted in criminal trials over the years has been that on the admission of the confessional statement as exhibit, the trial Judge will cause the Police officer who tendered the statement to read both the vernacular and English versions in open Court to the hearing of the Accused person and his Counsel. This will further enable the

Accused to know the details of the evidence against him with a view to preparing his defence.”

In this case, a look at Exhibits A and A1 shows Exhibit A is the Statement of the Accused written at the Police Station. While Exhibit A1 is the version of it translated into English language by the PW1. Both Statements were as clearly shown on top of the line meant for signature of the Accused signed by the Accused person. The cautionary words in both statements were also signed by the Accused. The Accused Counsel’s contention that the Statements were not signed is therefore misconceived and rejected.

By the records of the Court too, the PW1 testified without contradiction that not only did she act as an interpreter in the recording of the Exhibit A1 she also wrote it down while the Accused wrote Exhibit A – the Chinese version. She also identified both statements when shown to her during the trial. She equally testified she read the translated English version of the statement to the Accused after writing it and thereafter he signed it.

The PW2 on his part gave uncontradicted evidence to the affect that after the accused had wrote his statement (Exhibit A) in Chinese language, for the reason that there was no other interpreter around, he asked the PW1 to interpret and translate same into English language which she did. Both the Accused and the Pw1 signed both versions of the statement. The next day, being 2nd February, 2012, given that the Statements made by the Accused were confessional in nature, he took him, the PW1 and President of the Company to the Divisional Police Officer (D.P.O) for interview. There, the D.P.O. read the English version of the Statement and it was translated into Chinese to the Accused. Thereafter he asked the Accused whether what he wrote was exactly what he did and he said yes. The D.P.O. then endorsed the statement in their presence.

The above pieces of evidence by Pw2 was neither challenged nor contradicted by the Accused, who as aforesaid did not testify in defence. His defence on his part did not adduce evidence in contradiction of this evidence in contradiction of this evidence. Under cross examination by the learned Counsel for the Accused, the Pw2 insisted the DPO not only read the statement to the Accused but also told the Accused the implication of confessional statement. He also insisted the D.P.O. endorsed the statement.

I have on my own part taken time to examine both statements (Exhibits A and A1). Both statements contain signed endorsements made at their back by the D. P.O. in these words: -

“ENDORSEMENT

TODAY 2ND FEB. 2012, THE SUSPECT WAS BROUGHT BEFORE ME WHERE I READ HIS CONFESSIONAL STATEMENT AND EXPLAINED THE IMPLICATION OF SUCH AND HE AGREED TO HAVE MADE SAME VOLUNTARILY WITHOUT INDUCEMENT, THREAT AND PROMISE OF ANY KIND; PLS.”

The above endorsement was signed and dated 2nd February, 2012 by the D.P.O under his name “USMAN K. UMAR” and the Accused “NONG JIAN HONG”.

From the foregoing, the Court is also satisfied that both the PW1, the PW2 and the D.P.O. took satisfactory steps as prescribed in the cases above in the recording and interpretation and translation of the statement of the Accused at Utako Police Station from Chinese language to English language. The Court is satisfied that the Accused very well

understood what he wrote in Chinese language, thereafter appended his signature on it.

These said, what then are the contents of Exhibits A and A1. A reading of same shows the Accused stated how he went to Li Meng's apartment and they drank together and how the latter convinced him, as the person responsible for safe keeping of the complainant's money in its safe box, to steal the money in it for them to start a business together and hire local Nigerians to pretend they broke into his house and robbed him of the money in order to cover the truth; how he agreed with the idea and how he gave the money (\$75, 000) to Li Meng in the morning of 29th January only for him to disappear and he could no longer reach him; how he then realized he had been betrayed and he has no way to hide and escape; how he on 31st January went to the Chinese Embassy.

Given the above contents of Exhibits A and A1, and in the absence of any evidence from the Accused showing same was made or written under any form of oppression, the Court holds Exhibits A and A1 qualify as confessional statement of Conspiracy and theft of the Complainant \$75, 000 USA Dollars voluntarily made by the Accused. The making of the statement having not been denied by the Accused either before or during trial, the Court holds it is an admission of commission of the offences of Conspiracy, Criminal breach of trust and theft of the Complainant's \$75, 000 USA Dollars with which he is charged. There is no gainsaying that by the Accused's confession in Exhibits A and A1 that the ingredients of the offences with which he is charged have been proved beyond reasonable doubt.

Assuming however I am wrong in my view above, I have also given considerations to Exhibits D and D1. The PW1 and PW3 testified the Accused made Exhibit D in Chinese language at the Interpol office when the matter got there following the lack of jurisdiction by the Nigerian Police to investigate Li Meng who was said to have fled to China, and it was translated into English language per Exhibit D1 by the Pw1. The PW3 recounted how on his getting to know the Accused does not understand English as claimed by him, he asked the PW1 to interpret

the cautionary words to him which she did and the Accused said he understood same. Thereafter he signed it. This done, the Accused then proceeded to write his statement in Chinese language which he signed at the end. The PW1 was then asked to translate the statement into English language which she did. After translating it, she read it over in Chinese language to the Accused and after he said he understood same he (the Accused) signed it. The interpreter also signed same.

A reading of Exhibits D and D1 shows Exhibit D1 contains same account by the Accused of how he agreed with Mr. Li Meng when they had drinks in his house to steal the Complainant's money using his position as the custodian of the Complainant's safe box; how they were to make it look he was robbed of the money by Nigerian robbers; how they were to use the money to start their own company; how he in furtherance of the agreement took the 75, 000 USA Dollars in the safe and gave to Li Meng who disappeared with same and he could no longer reach him; how he realized he has been betrayed; how he went to the Chinese Embassy and reported the crime he has committed and how he was later brought to Utako Police Station Abuja.

By records of the Court and just like in the case of Exhibits A and A1, the PW1 who interpreted and translated the Accused's statement from Chinese to English language testified in Court. The PW3 on his part testified without contradiction how the PW1 read over both the cautionary words and translated English version of the statement to the Accused and he, after saying he understood same, signed them. There is no evidence by the accused challenging or contradicting the above steps the PW1 and PW3 took in recording, interpreting, translating his statement. Indeed, under cross examination, the PW3, as an added measure, explained that the Accused agreed that the PW1 could translate this statement from Chinese to English which she did.

In confirmation of the testimonies of PW1 and PW3, a look at Exhibits D and D1 shows the accused did append his signature on both. A comparison of the signature he appended in Exhibits A and A1 with that

of Exhibits D and D1 show consistency in form and characters of his signature on both sets of documents.

In the light of the foregoing, the Court holds Exhibits D and D1 also qualify as voluntary confessional statement of commission of the offences with which he is charged by the Accused. Exhibits D and D1 having not been retracted amply corroborate the Accused's confession in Exhibits A and A1.

In coming to the foregoing view, I do not feign ignorance of the failure of the Pw1 and Pw3 to observe the Judge's Rules when Exhibits D and D1 were made as was the case in Exhibits A and A1. This nevertheless, does not serve to render inadmissible or vitiated the potency of Exhibits D and D1 against the Accused. This is because the Supreme Court has in a long line of cases held that the fact that a confessional statement has not been read over and confirmed before a superior Police officer will not ipso facto render it inadmissible or make it cease to be a confessional statement. See: **CHUAGWOM KIM V. THE STATE (1992) 4 NWLR (Pt.233) p.17; R V. SAPELE (1957) 2 FSC p.24; AKPAN V. STATE (1992) 6 NWLR (Pt.248) p.438.**

Be this as it may, I have also given a consideration to the contentions of the learned Counsel for the Accused with regard to Exhibits C and C1. As earlier pointed out, the language of the Court is English language. Exhibit C1 which is written in Chinese language, though allegedly translated into English language per Exhibit C, the said Exhibit C cannot command a probative value. This is because it is not signed by the purported author. In the light of this, I agree with the learned Accused's Counsel that Exhibits C and C1 are unavailing to the Prosecution being worthless in the eyes of the law.

The foregoing finding however does not affect in anyway the earlier finding of the Court that by the contents of Exhibits A and A1 on the one hand and Exhibits D and D1 on the other the Accused voluntarily confessed to the commission of the offences with which he is charged.

Beyond all these, it does appear that the contention by the Accused that he does not understand English language was a mere attempt to pull the wool over the eyes of PW1 to PW3 and the court. This is because, the learned Counsel for the Accused in the course of proceeding when the issue of interpreter arose deposed to on affidavit confirming that the Accused understands English language. The affidavit which is captioned "AFFIDAVIT OF COMPREHENSION OF ENGLISH" was deposed to on 19th February, 2015 by Mr. Solomon Agbo, one of the Accused's lawyers. He confirmed therein that the Accused spoke to his Principal Mr. Maxwell Opara in English language when he visited him in prison. That the Accused fully understands English language. This is a solemn declaration by the Accused's Counsel and takes the bottom off all his contentions that he does not understand English and Exhibits A and A1 and D and D1 written in English were not explained to him.

Finally, with regard to the alleged contradictions raised by Counsel for the Accused in paragraphs 3.9 to 9.33 of his Written Address, it does appear to me that the material ones have been adduced in the findings of the Court. As for the amount of money stolen, it is instructive the accused was charged with stealing 75, 000 USA Dollars and same was found by the Court as the sum he admitted in Exhibits A and A1 and D and D1 as stolen by him.

With respect to whether or not the Pw1 was an Assistant to the President of the Company or his girlfriend/mistress or secretary, Court holds the view that even if there are contradictions in the Prosecution's witnesses description of her, the contradictions are not on matters central to the case which essentially are whether or not the Accused person committed the offences and same are admitted in Exhibits A and A1 and D and D1 by him. Even if the Pw1 is a tainted witness, that will not adversely affect the Court's finding that the Accused voluntarily confessed to committing the offence to Pw1 to Pw3 and made Exhibit A and A and D and D1.

Likewise the issue of where the accused was arrested is peripheral to the matters in issue in the case. Indeed, assuming they are made out, none

of the alleged contradictions raised by the learned Counsel for the Accused can validly be said to supplant or override all important findings by the Court that the Accused by the force of Exhibits A and A1 and D and D1 voluntarily confessed conspiring with Mr. Li Meng and stealing the Complainant's 75, 000 USA Dollars as charged. The alleged contradictions fade into insignificance in the light of the above findings and are unavailing.

By reasons of all I have struggled to say above, I hold the Prosecution has proved beyond reasonable doubt by reason of the Accused person's admission of commission of the offences the ingredients of the offences with which he is charged. I therefore resolve the sole issue raised above in favour of the Prosecution against the Accused person. Accordingly, the Accused is found guilty of each count of the charge. He is accordingly convicted.

SIGNED.
HON. JUDGE
18/9/2015.

ALLOCUTUS (IF ANY)

Mr. Opara:

We thank the Court for the Judgment. Our job as Counsel is to assist the Accused.

We apply for leniency for the convict. He is a first offender. He has been in detention since 2nd February, 2012 – over three years now. He has no body in Nigeria. The wife and children are in China. If the Court looks at the Accused, since the trial he has shown remorse for what he had done. His demeanor shows that.

Also, the essence of sentencing to prison is for reformation and not punishment. We promise the Accused will not commit an offence again.

To err is human and to forgive is divine. We urge the Court to be Lenient to the Accused.

COURT:-

I have listened to the submissions of Counsel for the Accused person. The prosecuting Counsel is absent from Court without explanation and so no submissions by her.

The Accused was charged with the offences of Conspiracy, Criminal Breach of Trust and Theft of 75, 000 USA Dollars.

The offence of Conspiracy other than conspiracy to commit an offence punishable with death is punishable under Section 97(2) of the Penal Code with a Term of Imprisonment not exceeding six months.

The offence of Criminal Breach of Trust is punishable with imprisonment for a term which may extend to seven years or with fine or with both under Section 312 of the Penal Code.

The offence of Theft by a servant of an employer is punishable with imprisonment for a term which may extend to seven years or with fine or with both under Section 289 of the Penal Code.

The Accused has been found guilty of each of these offences. By the words of Sections 97(2), 312 and 289 of the Penal Code, the Court has a discretion with regard to the sentence to be passed, so long as it does not exceed the term stipulated therein.

In this case, the defence Counsel has passionately appealed to the Court to consider the facts that the Accused is a first offender and has been in detention since 2nd February, 2012 – a period over three years now.

I have given due consideration to the punishments provided for the offences vis-à-vis the submissions of the learned Defence Counsel. There is no evidence in contradiction of the assertion that the Accused

has spent over three years in detention before this Judgment. This fact weighs heavily in mind. Since the essence of imprisonment is reformatory and not just to punish the offender, I consider that, given the number of years he has been in detention, the Accused should in the exercise of the Court's discretion given a light sentence. Accordingly, in the exercise of the Court's discretion, the Accused who in my observation of his demeanour in the box appears remorseful and repentant is sentenced to six months imprisonment without option of fine for each Count of the charge. The sentences are to run concurrently.

SIGNED.

HON. JUDGE

18/9/2015.