IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA

ON THE 20TH DAY OFJUNE, 2017.

BEFORE HIS LORDSHIP:JUSTICE MARYANN E. ANENIH.

CASE NO: FCT/HC/CR/66/14

BETWEEN

FEDERAL REPUBLIC OF NIGERIA……..COMPLAINANT

AND

NURUDEEN NA'ALLAH……DEFENDANT

JUDGEMENT.

The defendant, Nuradeen Na'Allah is arraigned before this court on a two (2) count charge of offences contrary to Section 315 of the Penal Code and punishable under the same section of the Law. And offence contrary to section 289 of the Penal Code and punishable under the same section of the law.

The charge was filed on the 10th of March, 2014 against the Defendant.

Application for Leave to prefer a criminal charge against the defendant was granted by the court on the 25th of March, 2014 wherein the charge was deemed properly filed.

The Defendant is charged as follows:

Count One

That you Nuradeen Na'allah, a staff of MURG Bureau De Change of behind UTC, Sani Gamko Street Kaduna road, Niger State on or about the 10th day of July 2013 within the jurisdiction of this Honourable court did commit an illegal act to wit: Criminal Breach of Trust when one Murtala Abdullahi, the Managing Director of MURG

Bureau De Change entrusted you with the sum of One Million Dollars ($1,000,000.00) at Abuja to be delivered to his branch office at Kano and you dishonestly converted the said sum to your personal use and you, thereby committed an offence contrary to section 315 of the Penal Code and punishable under the same section of the law.

Count two

That you Nuradeen Na'allah, a staff of MURG Bureau De Change of behind UTC, Sani Gamko Street Kaduna road, Niger State on or about the 10th day of July 2013 within the jurisdiction of this Honourable court did commit an illegal act to wit: Theft when you dishonestly take the sum of of One Million Dollars ($1,000,000.00) belonging to MURG Bureau De Change without its consent and you, thereby committed an offence contrary to section 289 of the Penal Code and punishable under the same section of the law.

The defendant was arraigned before this court on the two count charge which was read and explained to the Defendant in English Language, the language of his election and he pleaded not guilty to the two count charge on the 25th of March, 2014.

The prosecution in proof of it's case called eight (8) witnesses.

On the 20th of November, 2014. Attah Bawa Adejo gave evidence as PW1. He did not tender any Exhibit. And he was cross examined.

On the same 20th of November, 2014 Elizabeth Joe Bassey (PW2) gave evidence and tendered the following Exhibits.

1. Exhibit A1 is the email dated 10th of July, 2013.
2. Exhibit A2 is FCMB Cheque Leaflets for Cheques Nos. 00463570 and 00468356 both dated 10th July, 2013.

3. Exhibit A3 is the scanned ID Card with acknowledgement dated 10th July, 2013 are admitted in evidence and marked Exhibits A1, A2 and A3.

He was cross examined.

On the 17th of March, 2015 Lawrence Bolude Ibitola (PW3) gave evidence and didn't tender any Exhibit and was cross examined.

The PW1, PW2 and PW3 are staff of FCMB where the cheques were issued and the sum of $1 Million given to the defendant. All 3 of them led evidence to show how the defendant came to the Bank for the sum of $1million (One Million Dollars) and a blow by blow account of how the said sum was cashed and handed over to the defendant.

I have found no need to recount nor review the evidence of the aforementioned prosecution witnesses as their evidence is found to be of no moment under the circumstance as the defendant never denied collecting nor receiving the money from the Bank.

On the 14th of May, 2015 Ibrahim Yakubu (PW4) gave evidence and didn't tender any Exhibit.

Under cross examination by the defendant's counsel, PW4 testified that:

> He's known to the defendant for two years plus now and has never known him to be assigned to take any funds somewhere. He was about to go upstairs when he met the defendant at the final stair case coming down at the ground floor. He saw him with a bag but he didn't know the content of the bag and cannot remember the description of the bag. He saw him when he kept the bag in the boot and also saw their company's reflective jacket in the boot. They spoke when they met because as colleagues they usually talk to one another. He had been downstairs for five minutes before the defendant came down.

When he came back he was the only one around the car although the place is a road and people pass by. While defendant was upstairs, he actually watched over the car for him and when the defendant came back defendant only opened the car and didn't open the boot again. It was the next day that his M.D told him that the defendant lost money. The office where he works (Murg Properties) is located on the 2nd floor.

It usually takes him 2 minutes from his own office to the ground floor. When defendant asked him to watch the car, he didn't tell him anything about prior conversation with the M.D.

On the 14th of May, 2015 Aminu Abubakar (PW5) gave evidence which was interpreted by Solomon Isa Court Registrar and no Exhibit was tendered by him. This evidence is well set out in the record of proceeding before the court.

Under cross examination by the defendant's counsel, PW5 testified that:

He told the court he received a call from his boss to transmit $700,000.00. He didn't receive the money so he couldn't have delivered it. It's only the defendant and himself that used the bag in question to transmit money. He cannot recount how many times he has dropped the defendant at the airport to send money but he know he has dropped him several times at the airport to transmit money. And on those previous occasions when he dropped him there was no incident about the money.

He has never travel alone to deliver such message. It was the same day defendant requested for the bag that he returned from Kano but cannot remember the time he arrived.

He gave defendant the bag at the ground floor of their office. At that time he gave him the bag there was nothing in his hands. He didn't see the money nor the car.

It was beside his car where he gave him the bag that they had this discussion when he told him his boss had said that he should come by air to Kano. This was within the premises of their office at the ground floor. The defendant didn't tell him that he was with any money. When he asked him to give him the bag he assured him that there's something on ground, hence he offered to take defendant to the airport for which defendant declined. The bag is specifically used for transmitting money. He also said he offered to take him to the airport knowing he must be carrying some money. It was also on the same day that his boss had initially asked him to bring $700,000.00 to Kano.

He didn't tell the court that he didn't know he was carrying money. He is now saying that he didn't know that the defendant had any money on him. After giving him the bag, he went for prayers in the Mosque within the office premises. When the defendant called him, he told him the money was stolen at the airport.

The police had interrogated him in respect of this matter. He's a driver to the company and normally takes the defendant to the airport and defendant also takes him to the airport, it all depends. When he was interrogated by the police he was released on bail. He was allowed to go without Surety.

He knows Ibrahim Yakubu. He works with Murg Properties Nig. Ltd. On that day he didn't see PW4, Ibrahim Yakubu and the defendant together.

On the 23rd of June, 2015 Murtala Abdullahi (PW6) gave evidence and no Exhibit was tendered by him but he only further identified

Exhibit 2. His evidence is also as reflected in the records before the court.

Under cross examination by the defendant's counsel, PW6 testified that:

> Defendant's schedule of duty while in his employment was going to Bank because he could write PW5 would use the car to carry him. Anytime he needs to have something to do with the Bank, he sends him.
>
> He doesn't have any blood relationship with the defendant. They are from the state and same village. He cannot remember if Aminu just returned from Kano to Abuja that same day of the incident. It was Garba that first told him about the missing money. He told him the defendant called him. He called the defendant and asked him what happened. He said he doesn't know how the money got lost. Then he called his Manager in Abuja. He could not remember if he called the defendant or defendant was the one that called him. He has on several occasions sent the defendant with money to Kano.
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> Defendant has conveyed more than $1,000,000.00 to him in Kano in the course of his duties. This was the first incident of this nature. The next day he met the defendant in Abuja, all he told him was that he went to the airport, opened the boot and didn't find the money. He then went to report to the Police at the Airport. The defendant was detained by the police. He cannot remember if others were detained with him. He cannot remember if the defendant was the only one he took on bail.
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> When he took him on bail, he told the police that he wants to try and ask him to see if he could bring any money back. After bailing him from the police station they came back to the office for some hours asking him to please say where his money was. He didn't take the defendant to an uncompleted building to detain him. He doesn't know how the defendant got back to

the police station. He never detained nor tortured the defendant for four days in any torture Chambers along Zuba road.

On the 23rd of June, 2015 Detective Mathew Michael (PW7) gave evidence. He further identified Exhibits A1, A2 and A3. And he tendered the following Exhibits:

1. Exhibit B is the Original Certificate of Compliance to Section 84 of the Evidence Act dated 16th June, 2015
2. Exhibit C1, C2 and C3 are three photographs.
3. Exhibit D1 and D2 are the written statements of the Defendant.

Under cross examination by the defendant's counsel, PW7 testified that:

> When this matter was transferred to Force CID an IPO from Airport Division handed the file to him. He is not an Engineer nor does he have any mechanical knowledge. In the course of his job, he has investigated car theft before. He has heard of what is called in local parlance as Master Key. It's likely one car key can open another. A spare key of a car should be able to open it.
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> During the course of investigation he went to MURG Plaza, FCMB and the Airport. Those are the places they went for investigation with findings. There were other places they went to but he didn't mention them because there were no findings there. He didn't visit the house of the defendant in the course of his investigations. He didn't go to the residence of Aminu Ibrahim and the Manager.There were statements of these persons taken by other colleagues but not him.
>
> The nominal complainant is Alhaji Murtala. He wrote his statement himself. There was a petition which he came to

adopt as part of his statement. Some body whom he can't remember now took the defendant on bail.

In his unit the PW6 bailed Aminu Ibrahim and Manager. They collected his account numbers. It was a local account. Anas, Defendant's Nephew was also released on bail.

They invited the Managing Director who invited the defendant upstairs. He said he only called him to give him money. The other two came back for confrontational interview. He didn't charge them along with the accused person. He cannot remember if the defendant told him that he had accident once on his way to Kano while conveying money. His boss who read out the statement of the defendant to him is CSP Ibrahim Bako.

After PW4, PW5 and Manger of MURG Bureau were interrogated they were not charged. The defendant told him of his predicament when he was taken to a detention place by PW6. He didn't tell him he was tortured. The IPO from Airport police station told him that the defendant told him that he escaped from the detention place and came to report at the police station.

On the same 23rd of June, 2015 Sergeant David Daniel (PW8) gave evidence and tendered Exhibit E which is the written statement of the defendant dated 12th July, 2013:

Under cross examination by the Defendant's Counsel, PW8 testified that:

He has never carried out any investigation on car theft and he has heard of what is called Master Key. It is not likely that the car could have been tampered with having been parked in such a busy area. He has investigated three persons in respect of this matter. They are Ibrahim Yakubu, and 2 others whose names he cannot remember because it's been a long

time. He later forwarded the case to C.I.D. It took about a week from the time he intercepted the case to the time he handed it over. During that period, the defendant was released on bail.

The nominal complainant being defendant boss took him on bail for in house settlement and that if they couldn't settle they would come back. The nominal complainant did not come back. But the defendant reported back. He said there was no settlement and the next thing that came to them was to hand over every thing involved in the case to Force CID which they complied with.

He didn't mention to him that he was tortured by the nominal complainant. He cannot remember how many days it took the defendant to return back to the Airport police station. From the inception to when they were asked to forward the matter to CID was about one week. He did conduct search on the other 3 accused person and Ibrahim Yakubu, PW4.

When the defendant reported back he called the complainant but coincidentally it was at that time they were asked to forward the matter to Force CID. When the complainant came after they called him, they asked him how far with their settlement. He said they didn't settle. He didn't tell him the accused escaped.

On the whole, the prosecution tendered nine (9) Exhibits which were admitted in evidence and marked as:

1. Exhibit A1 is the email dated 10th of July, 2013.
2. Exhibit A2 is FCMB Cheque Leaflets for Cheques Nos. 00463570 and 00468356 both dated 10th July, 2013.
3. Exhibit A3 is the scanned ID Card with acknowledgement dated 10th July, 2013.

4. Exhibit B is the Original Certificate of Compliance to Section 84 of the Evidence Act dated 16th June, 2015

5. Exhibit C1, C2 and C3 are three photographs.

6. Exhibit D1 and D2 are the written statements of the Defendant.

At the close of prosecution's case, the Defendant (Nurudeen Na' Allah) opened his defence and gave evidence on oath and was cross examined on the 28th of April, 2016 and 27th of September, 2016 respectively as DW1 and tendered no exhibit. His evidence in chief is also well laid out in the record of proceedings.

Under cross examination by the prosecution, DW1 testified that:

> He has been working for MURG (BDC) for about 2 years. Before this incident of loss, there's been no previous incident of him losing money. He knows Aminu Abubakar, the PW5. Sometimes within this two years he travelled with said Aminu to convey money from Abuja to Kano. On the day of the incident he was to travel alone and that's when the said $1,000,000.00 got lost.
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> He knows Alhaji Murtala, PW6. He is his Chairman. On that day PW6 didn't instruct him to convey the money together with Aminu. PW6 asked him to go alone to Kano that day. At the gate of MURG Plaza his office, he picked Annas and went with him to the Airport. The place he parked the car at the Airport Mosque is a place of free entry and free exit. If somebody tampers with the car where it was parked somebody would have seen him. The stair case where he parked the car at the MUG (BDC) is a place of free exit. If somebody had tampered with the car there, he doesn't know if somebody would have seen him. But he left somebody there to watch the car when he went upstairs.

He confirmed that the incident for which he is in court happened on 10th of July, 2013. On that date he didn't report the incident to the Airport police but reported the next day. When he finally reported at the Airport Police Station, he told them that he was at the airport with Annas on the day the money went missing.

It's correct he made a statement at the airport police station. It's this one marked as Exhibit E. He's not the one who wrote the statement they only asked him to sign and he did. He doesn't understand the hand writing in Exhibit E, it isn't his, so he cannot identify where the information that he was at the airport with Annas was written.

It's true he informed the court that his Chairman, Murtala Abdulahi, PW6 instructed him to go with his car to the airport. He did not instruct him to go with Aminu and Annas. PW6, his Chairman did not know he was with Annas on that day.

He doesn't know that there is CCTV Camera at MURG Plaza where he was working at the time of this incident. The staircase where he parked his car is close to the car park. People come and go at the staircase where he parked the car. The place is a public place. Things usually get missing in that plaza. He doesn't know whether the money was taken at the plaza or the airport.

He didn't say he's sure the money was taken at the Airport. He doesn't know where the money was taken.

The reason he travelled to the airport without Aminu is because that was the instruction of his Chairman, so that when he returned from Kano he can return back from the airport with his car.

It's correct he bought to and fro ticket Abuja/Kano - Kano/ Abuja. He didn't go to the Airport with Annas so that Annas

could bring the car back to MURG Plaza. Annas doesn't know anywhere in Abuja.

It's wrong he took Annas to the Airport because he wanted him to bring back money for him. That Exhibit D2 is not his handwriting and he cannot read it. Annas knew nothing about his movement. He didn't know he was carrying money. At the moment he discovered the money was lost he didn't call PW6 to inform him. At that time he was confused.

At close of evidence, Counsel to the defendant and prosecution filed, served and adopted their final written addresses before the court on the 9th of February, 2017.

Counsels' written addresses are summarised hereunder as follows:

The Defendant in his written address filed on the 2nd of February, 2017 and adopted on the 9th of February 2017, with further address on 20th of June 2017, formulated one issue for determination:

Whether the prosecution has proved the two count charge/ offences against the accused person.

Counsel to the defendant submitted that the prosecution must prove the elements of the offence strictly as contained in the charge since the purpose of the charge is to give good notice to the defence of the case. He referred the court to FGN V. MOHAMMED USMAN alias YARO YARO AND ANOR 2012 3 SCNJ (PT.1) 223 AT 237. He argued that the onus is on the prosecution to prove its case beyond reasonable doubt. And that by virtue of Section 135 of the Evidence Act 2011, there are three ways of proving the guilt of accused person which are; (a) by direct evidence of witnesses; or (b) by circumstantial evidence; or (c) by reliance on a confessional statement of an accused person voluntarily made. He cited the cases of STEPHEN V. STATE (2013) 8 NWLR (Pt.1355) pg. 153 and AKANLAWON V. STATE SC 455 (2016) 17, NLWR (Pt.1489) Pg.453 ratio 12.

He further submitted that for the prosecution to secure a conviction in a criminal case, all the ingredients of the offence/charge must be proved beyond reasonable doubt and that, this requirement cannot be sidetracked under any guise as it is obligatory. And that if the prosecution fails to discharge this burden of proof the accused person shall be discharged and acquitted. He referred the court to the following cases;

TAJUDEEN ALABI V. STATE (1993) 9 SCNJ 9 (Pt.1) 109 at 117 and 127.

OREPEKAN & 7 ORS. V. THE STATE (1993) 11SCNJ 68 AT 83

STATE V. FATAI AZEEZ & 4 ORS. (2008) 4 SCNJ 325 at 342

FABIAN NWATURUOCHA V. THE STATE (2011) 3 SCNJ 148 at 161.

He argued that the evidence of the prosecution contradicts the charge when on the one hand PW1, 2, 3, 4, 5 and 6 testified that the defendant had express instruction to collect and convey the money to Kano, while the charge in Count 2 is alleging that the accused dishonestly took the said sum without the consent of his Employer. He further proffered that the evidence of PW1, 2 and 3 are not relevant to the charge against the accused person, as he had never denied being instructed to collect the money and transmit same to their branch office in Kano. And that PW4 and 5, who were privy to the fact that the accused had One Million Dollars in his custody to transmit to Kano were let loose by the PW7 and PW8, (the Investigating Police Officers IPO'S). And that the circumstances surrounding the event at the plaza when PW5 directed the accused person where and how to park his car should have been a point where the police should beam their search lights.

He further argued that the presumption that the accused took Annas to the Airport rather than his co-worker is speculative and ill motivated as Annas is not privy to the fact that his brother was

carrying any money to the Airport. And that while answering questions during cross examination, the PW7, an experienced police officer confirmed there are incidence where a car could be opened by a master key.

In conclusion, Counsel submitted that the duty lies on the prosecution to prove its case beyond reasonable doubt and the general burden to rebut the presumption of innocence constitutionally guaranteed to the citizen. And that in the instant case, the prosecution failed woefully to prove its case beyond reasonable doubt as contained in its two count charge. And that based on the contradiction, loopholes and insufficient evidence from the prosecution to establish the particulars and elements of the offence as contained in the two count charge, the Honourable court should with respect discharge and acquit the accused person.

The prosecution in his written address filed on the 7th of February, 2017 and adopted on the 9th of February 2017, and further adopted on 20th of June 2017, formulated two issues for determination:

1. Whether the prosecution has proved the case of criminal breach of trust and theft against the Defendant beyond reasonable doubt and in a manner required by law.

2. Whether the Defendant failure to call a vital witness in his defence is not fatal to his defence.

On the first issue raised, Counsel to the Prosecution submitted that the prosecution has proved its case of criminal breach of trust and theft against the defendant beyond reasonable doubt and in a manner required by law. He referred the court to Sections 315 and 289 of the Penal Code.

He submitted that the evidence of PW1, PW2, PW3, PW4-PW6 clearly show without doubt that the Defendant was entrusted with $1,000,000.00 (One Million US Dollar) being a property of PW6. And that

the Defendant is an agent of PW6 and dishonestly treated the $1,000,000.00 (One Million US Dollar) in a manner which breached the trust reposed on him by the PW6.

He argued that PW6 who is a victim and owner of the said money, corroborated the evidence of PW5 one Aminu Abubakar to the effect that the Defendant was directed to go Kano with PW5 but the defendant owing to his evil intention deceived the PW5 that he (Defendant) was told to go alone. And that PW6 said it was only when he called PW5 for briefing that he discovered that the Defendant went alone and the defendant did not even call him (PW6) that the said money was allegedly missing but a third party (Flight agent) did. He submitted that the evidence of PW5, PW6-PW8 were direct and also independently confirmed, supported and strengthened each other in this case, hence associated the Defendant to commission of the offence. He referred the court to ARCHIBONG V. STATE (2007) 10 WRN 10.

He submitted that the Defendant's evidence did not contradict in any material respect the evidence of PW1-PW8. And that assuming without conceding that there was any contradiction in the prosecution's evidence, such contradiction if any was not overwhelming and sufficient to raise doubt as to the guilt of the defendant and as such does not warrant this court to interfere or negate the prosecution's case. He referred the court to **AFOLALU V. THE STATE (2010) ALL FWLR (PT.538) 812 at 837**. And that the prosecution has proved their case of criminal breach of trust against the defendant beyond reasonable doubt, as required by the law.

On the issue of theft, Counsel submitted that Sections 286, 289 of the Penal Code and it's conjunctive reading/ construction shows the ingredients of the offence of theft.

He argued further that Exhibit A1-A3 particularly the identity card of the defendant, at the back of which he signed and collected the said money, show that the defendant was the Clerk or Servant of PW6 (Murtala

Abdullahi) who is also the Nominal Complainant. He submitted that with the statement of fact above, the first limb of the offence is proved. And that the defendant acted dishonestly by not taking the money to Kano as directed by PW6.

He submitted that the defendant was sufficiently identified or linked to the offences charged and portrayed as having planned to defraud the PW6 and all the facts stated above are pointing irresistibly to the guilty mind and evil intention of the Defendant. And that the evidence in chief of the DW1 (Defendant) is contradictory and as such very unreliable when compared with his extra-judicial statement and cross examination. He referred the court to **AGBO V. STATE (2006) 6 NWLR (PT.977) AT PG.551.**

On issue 2, Counsel submitted that the Defendant's failure to call a vital witness in his defence is fatal to his defence. He argued that the defendant did inform the court in his evidence in chief that he travelled to Airport with one Annas Mohammed he picked at the gate of the PW6's Plaza and one would have thought that he will call him to show the way and manner the money was lost and make the commission of the offence improbable. He submitted that this singular action of the Defendant goes to show that he travelled with that said Annas Mohammed to collect the $1,000,000.00 and take it home for him. And that at the close of prosecution's case, the evidential burden shifts to the Defendant, which he must discharge. And that though he is not under any obligation to call any witness but he must not avoid his vital witness who will decide the case one way or the other.

In conclusion, prosecuting counsel urged the court to convict the defendant as charged since they have discharged the burden of proof as required by law. And also to award a liquidated compensation of one million Dollars against the Defendant in addition to the conviction.

I have considered the case of the prosecution against the defendant, the defence of the defendant, the entire evidence before the court and the

final written and oral addresses of both parties. And I am of the view that the issues for determination here are:

1. Whether the prosecution has discharged the burden placed on her by law to prove the offence of criminal breach of trust against the defendant beyond reasonable doubt.

2. Whether the prosecution has discharged the burden of proof against the defendant in respect of the offence of theft as required by law.

The Defendant is charged with the offences of criminal breach of trust and theft in respect of $1,000,000.00, allegedly entrusted to the defendant by PW6. The charge is brought under Sections 315 and 289 of the Penal Code. For ease of reference, it is imperative to reproduce the above sections of the Penal Code as same is relevant for the effective determination of this case.

Section 315 of the Penal Code provides that:

"Whoever, being in any manner entrusted with property or with any dominion over property in his capacity as a public servant or in the way of his business as a banker, factor, broker, legal practitioner or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine".

Section 289 of the Penal Code provides that:

"Whoever, being a clerk or servant or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished imprisonment for a term which may extend to seven years or with fine or with both."

Having clearly reproduced the sections of the Penal Code under which the defendant is charged, the court will proceed to examine the ingredients of the offences to determine the merit or otherwise of this case.

The first issue for determination is on proof of the offense of criminal breach of trust.

The offense of Criminal breach of trust is defined in Section 311 of the Penal Code as follows:

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

It is settled law that in order to succeed and secure a conviction for the offence of breach of trust, the prosecution must prove or establish the following ingredients-:

(a) That the accused was a clerk or servant of the person reposing trust in him.

(b) That he in such capacity entrusted with the property in question or with dominion over it.

(c) That he committed breach of trust in respect of it.

See

MARA V. STATE (2013) 3 NWLR (2012) 14 NWLR (Pt. 1320) page 287 at 318 to 319 at paragraph C.

AJIBOYE v. FRN (2014) LPELR-24325(CA) (Pp. 22-23, paras. E-A) Per ALKALI, J.C.A.

See also;

ONUOHA V. THE STATE (1988) NWLR (Pt.83) 460 or LPELR-2706(SC) (Pp.10-11, paras.F-C) where his lordship CRAIG, J.S.C.held that:

"the real point at issue and what the prosecution was expected to prove was whether there had been a criminal breach of trust by the Appellant. See the case of Akwule v. The Queen (1963) NNLR p. 105. In short, what the prosecution was expected to prove was (1) that the Appellant was a Public Servant (2) that in such capacity he had been entrusted with the money in question
(3) that he had committed a breach of trust in respect of the money i.e. either

(a) he had misappropriated it or

(b) converted it to his own use or

(c) in any way what so ever disposed of it fraudulently and in a manner contrary to the directive given to him."

It is trite law that where a person is charged under Section 315 of the Penal Code for the offence of criminal breach of trust, the prosecution must establish in addition to the ingredients stated in (1) above that such person so charged committed the offence in his capacity as a public servant or in the way of his business as a servant or agent. See
Onuoha v. The State (1988)(supra).

For support of this position see also

HON. YAKUBU IBRAHIM & ORS. V. COMMISSIONER OF POLICE (2010) LPELR-8984(CA) Pg. 17 to 18, Paras. E-E.

It is also settled law that in a criminal trial the important question always is whether there is evidence on every material ingredient of an offence that ought to be believed and/or disbelieved. And the Court is obligated to examine, analyse and weigh every material evidence before the court. For support of this See:

AHMADU V. STATE (2014) LPELR-23974(CA) (P. 51, paras. B-E)

STATE V. ONYEUKWU (2004) 14 NWLR (Pt 893) 340.

BELLO V. STATE (2007) 10 NWLR (Pt 1043) 564.

There's the need at this point therefore to carefully examine and weigh the totality of evidence before the court vis-a-vis the written statements of the defendant and the essential ingredients of the offence as seen above as same will enable the court to arrive at the just determination of this case.

The law is trite that where direct testimony of a witness is not available, the Court is permitted to infer from the facts proved by the evidence of others that may be logically inferred.
See

SANI V. STATE (2013) LPELR-20382(CA) (P. 15, paras. A-D).
In Obinna Osuoha v. State (2010) 16 NWLR (pt.1219) 364 at 375 the Court held that:
"Circumstantial evidence is proof where directtestimony of eye witness is not available, the Court ispermitted to infer from the facts proved the evidenceof others that may be logically inferred".
Similarly in Jua v. State (2010) 4 NWLR (pt. 1184)217 at 222 the Court held that;
"An accused person can be convicted of the offenceof culpable homicide punishable with death if thereexists cogent and compelling circumstantial evidenceto the fact that the accused person killed the victim".

See also;

Obinna Osuoha V. State (2010) 16 NWLR (pt. 1219) 364 at 375

As earlier noted, the defendant argued profusely that the evidence of the prosecution contradicts the charge. I have carefully perused the charge under which the defendant is arraigned before this court and I have also carefully reviewed the evidence adduced before the

court, I haven't found any material contradiction in the evidence of the Prosecution sufficient to destroy the case of the Prosecution with respect to this charge. And even if there are any contradiction whatsoever, they are too insignificant and go to no issue. See

MAFA V. THE STATE (2012) LPELR-9297 (CA) Pg. 20, Paras. F-G

and

IGBI V. THE STATE (2000) FWLR (PT.3) 358 AT 369 where the court held that:

"It is not in every trifling of the prosecution witnesses that could be fatal to its case. It is only when such inconsistence or contradictions are substantial and fundamental to the main issue in question before the court that thus create doubt in the mind of the trial court that an accused is entitled to benefit therefrom."

See also on this position;
OSUAGWU V. STATE (2009) 1 NWLR (PT. 1123) Pg. 523 (Pp. 543, Paras.B-E. where his lordship Fasanmi JCA cited with approval the case of I**SIBOR V. THE STATE (2002) FWLR (Pt.843); (2002) 4 NWLR (Pt.758) 741** when his lordship Uwaifoh, JSC held that:

"But in considering a case where contradictions have been recorded in the evidence of witnesses, it is important to always assess the materiality of those contradictions to the case presented. It is well established that contradictions which do not affect the substance of the issue to be decided are irrelevant. The contradictions must be shown to amount to a substantial disparagement of witness or witnesses concerned making it unsafe to rely on such witness or witnesses".

See also;

OMONGA V. THE STATE (2006) ALL FWLR (Pt.306) 930 at 948 Para. B

I have gone through the entire evidence and submission of defence Counsel. Suffice to say the defendant has not successfully revealed the existence of any material contradiction in the case of the prosecution.

Now the pertinent questions that arise herein are as contained in the already highlighted ingredients of the offence of criminal breach of trust which are:

1. Whether the defendant is an agent or servant of the nominal complainant and if the question is answered in the affirmative;

2. Whether the defendant was entrusted with the alleged missing $1,000,000.00 (One Million Dollars), the subject matter of charge; and

3. Whether the defendant acted dishonestly and converted the money to his own use or in any way whatsoever disposed of it fraudulently and in a manner contrary to the directive given to him.

In answering the first question above, the court has to examine the evidence on oath of the nominal Complainant PW6 (Murtala Abdullahi), the defendant's evidence on oath and the documents tendered in evidence to ascertain whether or not defendant is a servant of the nominal complainant.

Having gone through the evidence on oath of PW6 on the 23rd July, 2015, the evidence of DW1, defendant himself on the 28th of April, 2016 and Exhibit A3, it is clear and not in dispute that the defendant was an agent/servant and/or staff of the nominal complainant Murtala Abdullahi (PW6). This is also clearly reflected in the written statement of the defendant dated 23rd of July, 2013 tendered and admitted as Exhibit D1 where he stated that he is a staff with MURG BDC and that he is an in-law to the Chairman of the company (Alhaji Murtala Abdullahi) that is the PW6.

It is in the light of the above that this court can conveniently say that the defendant is a servant/employee of the nominal complainant. Since the first question is not in contention, it is therefore answered in the affirmative.

The second question is whether the defendant was entrusted with the alleged missing $1,000,000.00 (One Million Dollars), the subject matter of this case before the court.

In the evidence on oath before the court, PW6 (Nominal Complainant) gave evidence that on the 10th of July, 2013 he went to the bank with the intention of withdrawing $1 million but his bank in Kano said that they didn't have cash but that they had in Abuja branch hence he gave the bank the name of the defendant to give the bank officials in Abuja and asked the bank to pay the defendant. And after payment, the defendant called PW6 to confirm that he received the sum of $1,000,000.00 (One Million Dollars).

The defendant in his written statement, Exhibit D1 dated 23rd of July, 2013 stated that he was directed by his boss (PW6) through his boy to go and collect the sum of One Million dollars and he confirmed that the money was handed over to him by the Bank officials. Below is an excerpt of the written statement of the defendant dated 23/07/2013.

"I was instructed by my boss Alh. Muhammed Murtala through his boy one Garba Dankene to go and collect money at FCMB Bank at Central Area Abuja opposite NNPC Tower, I went to collect the foreign currency from one Mr Bolula a staff of the Bank who directed me to meet Mrs Elizabeth and Bawa who which (sic) the hand over the sum of one million UD dollars ($1,000,000=) and I did collect the cash and I came back to U.T.C. Plaza…"

Also, the defendant (DW1) in his own evidence on oath before the court on the 27th September, 2016 gave evidence that he received a call from his Kano Manager who asked him to go to the Bank to collect $1million. And that as soon as he entered the bank, he met Mr. Bolunle, the head of Operations who asked Mrs. Elizabeth and Mr. Bawa to release the sum of $1million to him, which they did. He

counted the money and confirmed it was $1 million, he collected same and left the Bank.

With the above mentioned pieces of evidence of PW6 and DW1 and the written statement of defendant, I am favourably disposed to accepting that the defendant was actually entrusted with the alleged missing $1,000,000.00 (One Million U.S Dollars), the subject matter of the charge against the defendant as same is also not in dispute.

The second question is also answered in the affirmative.

The third limb of the question is whether the defendant acted dishonestly and converted the money to his own personal use or in any way whatsoever disposed of it fraudulently and in a manner contrary to the directive given to him by his boss.

This third issue forms the gravamen of the allegation against the defendant in respect of the offense of criminal breach of trust.

The defense counsel in his final address submitted on behalf of the defendant that no evidence was adduced by the prosecution in proof of the charge against him. He made heavy weather about failure of the police to vigorously investigate the alibi of the defendant. He proffered firstly that defendant's MD who called him upstairs to give him N5,000.00 while the $1million was in his boot downstairs, who also asked him to fake an armed robbery attack as his explanation for the loss of the money was let loose by the police. And secondly that the PW4 and PW5 were let loose by the investigating police officers despite the stated fact that they were privy to the fact that the Defendant had the $1million in his car for onward transmission to Kano.

I wish to observe here that as rightly submitted by defense counsel, that the PW4 & PW5 admitted that they each helped defendant to watch the car and had knowledge of the money in the car respectively. However and with due respect to defense counsel these singular narrated actions of the PW4, PW5 and the MD do not constitute excuses nor explanations as to the whereabouts of the defendant when the money was stolen and cannot by any

stretch of the imagination inure to what is regarded as an alibi, at least not in law. BLACK'S LAW DICTIONARY 10TH EDITION defines alibi as:

"*1. A defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time. Fed. R. Crim. P.12.1.*

2. The quality, state, or condition of having been elsewhere when an offense was committed."

Judicial interpretation is also given to this term Alibi by the Supreme Court in plethora of decided cases which include inter alia

AREMU & ANOR V. THE STATE (1991) 7 NWLR PT. 201 pg 1 or LPELR 545 @ 34-35 PARA D-A. where his lordship NWOKEDI, J.S.C postulated that:

"Alibi is a defence that places the accused person atthe relevant time of crime in a different place fromthe scene of crime and so removed therefrom as torender it impossible for him to have committed theoffence. Being a matter peculiarly within hisknowledge the accused has a duty to disclose it tothe police at the earliest opportunity and before thetrial begins for it to be investigated. Proffering adefence of alibi for the first time in the witness-boxduring examination-in-chief is bad enough; doingso under cross-examination makes it a huge joke, ahoax. There is nothing in it. It is worthless. Itbecomes more irrelevant when not proffered as adefence during a counsel's address. I cannot readilythink of a situation where a court of law willdischarge and acquit an accused person solely onthe defence of alibi proffered by him for the firsttime from the witness box and under crossexamination."

See also;

OZAKI & ANOR V. THE STATE (1990) 1 NWLR PT. 124 pg 92 or LPELR 2888 pg 17 PARA C-F

The defense of alibi which the defence counsel sought to make out in his final address therefore cannot avail him. He did not lead any cogent nor unequivocal evidence to the effect that he was not present when the money went missing. He actually stated in his evidence that he only noticed the loss of the money at the airport. He didn't say at what precise point the money got lost. He in fact testified under cross examination that he didn't know if the money got missing at the plaza or Airport.

It is well settled that the evidential burden to adduce evidence in support of a defense of alibi if at all raised is usually on the defendant raising the defense. I find support for this principle in**OBAKPOLOR V. THE STATE (1991) 1 NWLR PT. 165 pg 113 or LPELR - 2148 pg 31-32 para G-B** wherein his lordship AKPATA JSC canvassed as follows:

"It is no proof of alibi for an accused person merelyto assert, as in this case, that he was not at thescene of crime and could not have been therebecause he was elsewhere. He must lead credibleevidence. The evidential burden of adducingevidence to support a defence of alibi is on theaccused person raising such defence because thefacts upon which the defence of alibi rests are facts
peculiarly within the knowledge of the accusedperson raising such a defence."

The defendant did not lead evidence of alibi in his oral testimony nor written statements.
Suffice to say that the defence of alibi was never part of the case of the defendant and it is too late in the day to attempt to smuggle it in nor rely on it.

More so the issue of alibi only came up for the first time in defence Counsel's final address. And it is settled law that the address of counsel no matter how coherent or erudite cannot take the place of credible evidence before the court.

See

UBN PLC & ANOR V. AYODARE SONS NIG LTD & ANOR(2007) 13 NWLR PT. 1052 pg 567 or LPELR-3391(SC) pg 50 PARA E.

"It is also settled law that address of counselhowever brilliant, cannot take the place of evidenceparticularly where there is no evidence, as in theinstant case, in support of the submission(s)."

See also

OLAGUNJU V. ADESOYE & ANOR(2009) 9 NWLR PT. 1146 pg 225 or LPELR-2555(SC) Pg 38 PARA C-D.

ALIUCHA & ANOR V. ELECHI & ORS (2012) LPELR-7823(SC) pg 37 PARA A-B.

BFI GROUP CORPORATION V. BUREAU OF PUBLIC ENTERPRISES (2012) LPELR-9339(SC) pg. 43, A-B. Per IFABIYI JSC

The reliance of alibi therefore cannot enure nor avail the defence of defendant.

Be that as it may there's also no direct evidence from any eyewitness before this court that they saw the defendant converting the money to his own use nor fraudulently disposing of same. This court is therefore duty bound to further examine the circumstances of the evidence and written statements before her.

This becomes necessary because in criminal trials the law is settled that guilt of a defendant can be established by evidence of an eye witness, circumstantial evidence or confessional statement of the defendant.

See

AFOLABI V. STATE (2016) LPELR-40300(SC) (Pp. 51-52, Paras. F-B).

OGISUGO V. STATE (2015) LPELR-24544(CA) (P. 25, paras. A-C).

OKUDO V. THE STATE (2001) 8 NWLR (PT 1234) 209 at 236 Paras. D.

See also

ALUFOHAI V. STATE (2014) LPELR-24215 (SC) (Pp. 26-27, paras. F-A) where his lordship ARIWOOLA, J.S.C reiterated as follows:

"In criminal trials, the law is that the guilt of an accused person for the commission of the offence charged can be established by any or all of the following:-

(a) The confessional statement of the accused;

(b) Circumstantial evidence;

(c) Evidence of an eye witness.

In the Evidence Act, the procedural law, in particular, Section 27(2) recognizes the relevance of confessional statements in criminal proceedings if such statements are made voluntarily."

The guilt of the defendant can be established by either or all of the several ways highlighted above before a conviction can be successfully secured. And in order to secure such a conviction the guilt of the defendant must be proved beyond reasonable doubt.

The burden of proof in a criminal trial is usually on the prosecution to prove the guilt of the accused person beyond reasonable doubt. See

ONWUKIRU v. STATE (1995) 2 NWLR (Pt.377) or (1994) LPELR-14224(CA) (P. 25, paras. E-F).

OFORLETE V. THE STATE (2000) 12 NWLR (Pt.681) 415 OR (2000) LPELR-2270(SC) (P. 15, paras. F-G)

SECTION 135(1) OF THE EVIDENCE ACT 2011 AS AMENDED.

See also
UMEH v. THE STATE (1973) 2 S.C. 7 or (1973) LPELR-3364(SC) (P.6, Paras.A-B) where his lordship Coker, J.S.C held that.

" In a criminal case the onus is on the prosecution to prove its case beyond all reasonable doubt. This principle is universally recognised as one of the plinths on which our criminal law is based."

The prosecution on the other hand in her final written address submitted that the evidence of PW5, PW6-PW8 strengthened each other in associating the defendant to the commission of the offense. That this position is further strengthened by the evidence of PW4-PW6 that although the defendant was asked by PW6 to go to the airport with PW5 his colleague at work he refused and rather went with his own brother Annas Mohammed., more so when there's also undisputed evidence that he usually goes with PW5 when he's transferring money. It is also undisputed that the defendant also neither reported the missing money to the airport police nor his boss PW6 on the day of the incident. The prosecution proffered that the omission to go with PW5 was an indication of a calculated opportunity to strike by defendant.

As was hitherto highlighted this court is at liberty to determine this case either by circumstantial evidence or written statement of defendant. It has therefore become imperative to highlight certain circumstances reflected in the undisputed evidence before the court.

My thinking is in tandem with that of prosecuting counsel that being the first time the defendant travelled to the airport without any other person from his office for foreign exchange transmission, it is curious that he reported same missing this one time, more so when it is in evidence that he was instructed to go with PW5 but failed to

and rather went with his own brother Anas . A fact which he didn't initially disclose in his first two statements at the earliest opportunity but which was later revealed in the course of investigation.

The PW5 stated in his evidence that the PW6 told him to take defendant to the airport but that he waited for him but defendant kept telling him he wasn't ready. That when PW6 later called to inquire about the trip he told him that the defendant was delaying and the PW6 told him to rest. However when the defendant was finally ready to go he offered to take him to the airport like they usually do but defendant declined the offer and drove himself.

The PW6 testified that he instructed the defendant to go to the airport with the PW5, although the defendant denies this.

In his evidence the DW1 said he drove his car to the airport because the PW6 asked him to go to the airport on his own with his car so that upon his return from Kano he could drive same home. However in another breath DW1 said he went to the airport with his brother Annas so that Annas could drive the car home and take money to his family.

The DW1 under cross examination testified that *"it's wrong I took Annas to the airport because I wanted him to bring money for me"* This is at variance with his written statement, where he said he took Annas to the Airport to take back the car and take money to his wife.

The DW1 also testified that when he got to the airport he went to pray at the mosque. That other than that he was in the car the whole period, however in another breath in his written statements of 12th July, 2013 and 23rd July, 2013 he had previously stated that when he got to the airport he got water from the tap and went to urinate and returned to the car and was in the car until it was time to board his flight when he discovered the money was no longer in the boot.

The same defendant in his oral testimony didn't say anything about going to urinate when he got to the airport. Below is an excerpt from his oral testimony on 27th September, 2016:

> *" On reaching the airport we couldn't easily get parking space due to the crowd.*
> *Eventually we parked at the front of the mosque at the airport. Then we observed our 4:00clock prayers and continued waiting for my agents call. At the time the mosque at the airport was an open ground where all activities could be seen. All this while we sat inside the car and I didn't bother to check whether the money is with me."*

The movement and antecedents of the defendant at the airport is vital and material to the resolution of this issue because the evidence of defendant before the court is to the effect that the money could only have been taken between his trip from MURG Plaza to the airport. It is therefore important under the circumstance to know at what points he had left the car unattended and for how long.

The defendant has given inconsistent accounts of the same events in his written statement and evidence before the court. The contradictions inherent in the above pieces of evidenceare material, substantial and affect the live issues before the court. They are therefore fatal to the case of the defendant as the court cannot rely on such evidence, contradictory accounts of the same episode. See

USIOBAIFO & ANOR V. USIOBAIFO & ANOR (2005) 3 NWLR PT. 913 pg 665 or LPELR-3428(SC) pg 19 Para D-Ewhere his lordship TOBI JSC held that:

"It is the law that contradictions in evidence ofwitnesses can only avail the opposite party wherethey are material, substantial and affect the liveissues in the matter, to the extent that they affectthe fortunes of the appeal in favour of the partyraising the issue."

See also;

DAREGO V. A.G LEVENTIS NIGERIA LTD & ORS (2015) LPELR-25009(CA) pg 22-23 PARA E-C where his lordship NIMPAR, J.C.A postulated as follows:

"Assessing the oral evidence that the appellant usedN2,500.00 (Two Thousand, Five Hundred Naira)daily on alternative transportation must be doneagainst the background of Exhibit BD 14. It isstraightforward here, the documentary evidencecannot verify the oral evidence because the figuresare at variance. There is therefore a contradiction.A contradiction or contradictory evidence is simplywhen a piece of evidence asserts or affirms the opposite of what the other asserts or when theygive inconsistent accounts of the same event, seeEKE v. THE STATE (2011) 3 LPELR - 1133(SC); OKOZIEBU v THE STATE (2003) 11NWLR (Pt 83) 327. The evidence in support ofthe claim of N2,500.00 (Two Thousand, FiveHundred Naira) is inconsistent and contradictory. The effect is that it destroys the case of the party."

The court cannot be expected to pick and chose which version of same witness's story to believe. Is it that he drove himself to the airport so he could upon his return drive same car back home or that he drove his own car accompanied by his brother to the airport so his brother Annas could drive it back home and take money to his family?

Consistent with foregoing also, Is the court to believe that when he got to the airport he only went to the mosque to pray or that he only went to the toilet to urinate or that he did both.

Any attempt by this court to pick and chose which version it prefers would amount to speculation or mere conjecture that is not supported by credible or unequivocal evidence before the court. See

AKPABIO & ORS V.THE STATE (1994)7 NWLR (Pt.359)635 or (1994) LPELR-369(SC)(Pp.52-53, paras. C-A) where Iguh, J.S.C held that:

"The point must be stressed that it is a fundamentalprinciple of law that findings of fact and conclusionsfrom facts of a trial court should be based onevidence adduced before the court and not onspeculation or possibilities.See State v. Aibangbee& anor (1988) 2 NSCC 192; (1988) 3 NWLR (Pt.84)548. It is not the function of a court of law tospeculate on possibilities which are not supportedby any evidence. See State v. Ibong Udo & anor(1964) 1 All NLR 243, Queen v. Gabriel AdaojuWilcox (1961) All NLR 631 and Iteshi Onwe v. State(1975) 9-11 S.C. 23 at 31. No trial court is entitledto draw conclusion of fact outside the availablelegal evidence before it. When a trial court veersoff course and acts on speculation and possibilitiesrather than on the concrete evidence before it, itobviously has abandoned its proper role and suchfacts or conclusions of fact found withoutappropriate evidence in support thereof will beregarded as perverse by an appellate court."

See also;

AGIP (NIGERIA) LTD V. AP INTERNATIONAL & ORS.(2010) LPELR-250(SC)(Pp. 66-67, paras. F-A) where his lordship ADEKEYE, J.S.C held that:

"It is trite principle also that a court should not decide a case on mere conjecture or speculation, Courts of laws are courts of facts and laws. They decide issues on facts established before them and on laws. They must avoid speculation."

And further in support of this principle is the decision in **IGABELE V. THE STATE (2006) LPELR-1441(SC) PG.18, Paras. C-E.**

Unfortunately the defendant did not call as witness his brother Annas who accompanied him to the airport to testify before this court to corroborate his story, clear the ambiguity created by his evidence or throw more light on their stay at the airport before discovering the money was no where to be found. The said Annas supposedly and according to the evidence of the defendant was the only other eye witness of events at the airport. Although it is settled that a case can be proved by the evidence of a single witness however where the evidence of a witness/es is not enough to

sustain the case of a party then the evidence of any other vital witness becomes important for the Party's case. See

MOHAMMED V. THE STATE 1991(SC) 5 NWLR PT. 192 pg 438 or LPELR-1901 pg 16 Para D-E.

and

MAGAJI V. THE NIGERIAN NAVY (2008) 8 NWLR PT. 1089 pg 338 or LPELR-1814(SC) pg 65 Para B-F where the court resonated the above principle as follows:

"It is again firmly, settled that a court,can and is entitled to act on the evidence of onesingle witness, if that witness is believed, given allthe circumstances, and a single credible witness,can establish a case beyond reasonable doubt,unless where the law requires corroboration. Thereare too many decided authorities in this regard.See the cases of Alonge v. Inspector. General ofPolice (1959) 4 FSC 203; Ali & Ors. v. The State(1988) 1 NWLR (Pt. 68) 1 @ 20 (supra); Ogoala v.The State (1991) 2 NWLR (Pt.175) 509 @ 533;(1991) 3 SCNJ. 61; Ugwumba v. The State (1993)5 NWLR (Pt. 2961 660 @ 674; (1993)6 SCNJ. 217;Theophilus v. The State (1996) 1 SCNJ. 79 @ 91;Nwaeze v. The State (1996) 2 SCNJ. 42 @ 51 andGira v. The State (1996) 4 SCNJ 95 @ 101 and TheState v. Godfrey Ajie (2000) 7 SCNJ 1, just tomention but a few."

See also
NKEBISI & ANOR V. THE STATE (2010) 5 NWLR PT. 1188 pg 471 or LPELR-2046(SC) pp 21-22 Para C-A.

As earlier observed the defendant did not state in his first two statements that he went to the airport with his brother Annas. The Investigating Police Officer testified that the information emerged in the course of investigation pursuant to which the defendant made his last written statement in evidence as Exhibit D2.

This omission by defendant is curious because being a fact within the exclusive knowledge of defendant that he went to the airport with Annas then he has the duty to have disclosed same to the

police at the earliest opportunity to assist the process of investigation of the whereabouts of the $1M (One Million US Dollars).

The investigating police officers PW7 & PW8 both testified that they found no evidence of any tampering with the boot of defendant's car. And the defendant under cross examination corroborated the evidence of the PW7 and PW8 that had any body tampered with the car at the airport where it was parked that somebody would have seen him, being a place of free entry and exit. He also agreed that the place where he parked the car at MURG Plaza was a public place.

Neither Annas nor his friend he was said to have dropped off to chat with at MURG plaza gate was called to testify, although Annas was interrogated by the police. It is the defendant's prerogative to conduct his case as he deems fit and he therefore either swims or sinks thereby. In this instance he would have to sink thereby as there's no evidence before this court that the defendant handled the said $1million in accordance with the directives of PW6 his Chairman.

Although there's no direct eye witness account of fraud by the defendant, the circumstances of this case and the evidence before the court impels this court to infer from the actions of the defendant a dishonest and guilty mind and that he fraudulently disposed of the said sum of $1million. I find support for this position in

ONUIHA V. STATE (Supra) and

ABEKE V. THE STATE (2007) 9 NWLR PT. 1040 pg 411 or LPELR-31(SC) pg 18 PARA C-Ewhere his lordship TOBI JSC while defining the terms mens rea and actus reus postulated that

"the guilty mind instigates the guilty act or flows into the guilty act."

See also

AKINLOLU V. STATE (2015) LPELR-25986 Pg 19 Para A-Dwhere his lordship NWEZE, J.S.C. resonated on the inference of an accused an accused person.

"Indeed, as the erudite Professor of Law, Frank Asogwah, has argued, and I endorse his views entirely, Intent can be proved either positively where there is proof of the declared intent of the accused person or inferentially from the overt act by the accused. Therefore, in law, an accused person is taken to intend the consequences of his voluntary act, when he foresees that it will probably happen, whether he desires it or not, Hyam v. DPP [1974] 2 All ER 41."

As a matter of fact the evidence of the PW3-PW8 before the court which I'm more inclined to believe given the corroboration of same, is to the effect that the defendant disposed of the money in a manner contrary to the directive of PW6. And the circumstance of the evidence of all the parties before the court and their demeanor which I took care to observe in the course of the proceedings, in my view all inexorably led to the presumption that the defendant committed criminal breach of trust in respect of the money by not appropriating it in the manner directed by his employer. See

ADEYINKA AJIBOYE V. FRN (2014) LPELR- 24325 pg. 22-23where the court postulated as follows;

" The ingredients of the offence of criminal breach oftrust are listed in Mara v. State (2013) 3 NWLR(2012) 14 NWLR (Pt. 1320) page 287 at 318 to319 at paragraph C where Onu, JSC held as follow-:

"In order to procure a conviction for the aboveoffence, the prosecution must prove or establish thefollowing ingredients-:

(a) That the accused was a clerk or servant of theperson reposing trust in him.

(b) That he in such capacity entrusted with theproperty in question or with dominion over it.

(c) That he committed breach of trust in respect ofit."

HON. YAKUBU IBRAHIM & ORS V. COMMISSIONER OF POLICE (2010) LPELR-8984(CA) pg 17-18 per ODILI JCA (as he then was)

Though not on all fours with the instant case but is quite instructive on presumption of existence of Facts in law is also the case of:

EZE V. THE STATE (1985) NWLR PT. 13 pg 429 or LPELR-1189(SC) 24-25 para C-C -

and

YUSUFF AL-HASSANI V. THE STATE (2010) LPELR-8674 (CA) pg 21 Para F

OGOGOVIE V STATE (2016) -LPELR (SC) pg 12-13 Para F - C Per ODILI JSC.

Where circumstantial evidence is cogent and unequivocal as in this case, it can form a sustainable basis for a conviction.

Just like the 'last seen' principle in homicide cases and the doctrine of recent possession in cases of receiving stolen goods, the defendant who admitted being the last person to handle the money has failed to lead any credible evidence to explain the whereabouts of the money that is contrary to the evidence before the court that he breached the trust reposed in him by the nominal complaint to hand over the $1million as directed by the nominal complainant. Therefore the prosecution has successfully proved the allegation of Criminal Breach of Trust against the defendant.

Suffice to say that issue one is resolved against the defendant and in favour of the prosecution.

The second issue for determination is on the charge of Theft against thedefendant.

Theft is defined in BLACKS LAW DICTIONARY as

"The wrongful taking and removing of another's personal property with the intent of depriving the true owner of it; larceny."

While the PENAL CODE particularly at Section 286 (1) defines Theft as follows:

"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."

See

NIGERIAN PORTS AUTHORITY V. ABU AIRADION AJOBI (2006) 13 NWLR PT. 998 pg 447 or LPELR - 2029 (SC) pg 19 PARA A-B

and

PSYCHIATRIC HOSPITALS MANAGEMENT BOARD V. EDOSA (2001) 5 NWLR PT 707 pg 621 or LPELR -2931 (SC) pg 20 para B-D where the Supreme Court describes the allegation of theft as a very serious allegation.

For the prosecution to succeed in a case of Theft, the following elements of the offense hereunder as canvassed by the court must be proved beyond reasonable doubt. See

AJIBOYE v. FRN (2014) LPELR-24325(CA) (Pp. 19-20, paras. E-C)
where the Court of Appeal held that:

"For the prosecution to succeed in proving theft the following element must be proved

(a) That the accused was at the time of the offence a committed clerk or servant and was employed in that capacity by the person in whose possession the stolen property was.

(b) That the property in question is moveable property.

(c) That the property was in the possession of the employer

(d) That the accused moved the property whilst in the possession of that employer.

(e) That he did so without the consent of his employer

(f) That he did so in order to take the property out of the possession of his employer.

(g) That he did so with intent to cause wrongful gain to himself or wrongful loss to the employer."

Seven ingredients of the offense of Theft have been highlighted above. A careful examination of these ingredients is quick to reveal that not all of them have been shown by the evidence before the court to exist in the instant case. Particularly it hasn't been established that the defendant moved the said sum out of the possession of his employer without the employer's consent.

As a matter of fact both the nominal complainant and the defendant testified that the nominal complainant (PW6) instructed the defendant to go to the Bank, collect the $1m, go to the airport, board a flight to Kano in order to hand over the money to the PW6. Thus at the time the money allegedly got missing it was no longer in the possession of the PW6. The defendant also did not move the money out of the possession of the PW6 without PW6's consent. As a matter of fact it was the PW6 who authorized him to withdraw the money from the bank for onward transmission to Kano. The collection of the said sum of $1m wasn't done to take same out of the possession of the PW6, but was done at PW6's instance.

The allegation of theft in count 2 of the charge is also a criminal offense which carries the same standard of proof beyond reasonable doubt as other criminal allegations. See

NPA V. AJOBI(Supra) pg 19 para A-B

The prosecution having succeeded in a case of criminal breach of trust against the defendant, the allegation of theft must also be separately proved beyond reasonable doubt as they are distinct and separate offenses. Quite instructive on this position is the the case of **MR. CHRISTIAN SPIESS V. MR. JOB ONI (2016) LPELR-40502(SC) pg 24 A-E** where his lordship MUHAMMAD JSC highlighted in his decision the aforementioned distinction as follows:

"I think it needs further clarification that the principle of criminal liability (mens rea) in each offence is seperate, distinct and independent of any other offence. The mens rea in the offence of theft is different from that of criminal trespass. Where the trial Judge or Magistrate fails to read mens rea in an offence of theft, that does not mean that he cannot find mens rea in the offence in the offence of criminal trespass. This is what happened in the present appeal. The appellant was discharged and acquitted on the offence of theft whereas he was found guilty by the learned trial Magistrate of the offence of criminal trespass. Thus, lack of mens rea in one offence cannot with all due respect, defeat mens rea in the other offence. Certainly, the two offences of theft and criminal trespass are two different offences created by Penal Code Law."

From the totality of the evidence adduced before the court, the prosecution has not sufficiently established the case of theft against the defendant.

Thus, suffice to say without further ado and in the light of the foregoing that the prosecution has not successfully proved beyond reasonable doubt the offense of Theft against the defendant.

Issue two is therefore resolved against the prosecution in favour of the defendant.

Consequently and in the final analysis from the totality of the evidence adduced I find the defendant, NURADEEN NALLAH guilty as charged of the offense of criminal breach of trust contrary to and punishable under Section 315 of the Penal Code and he is hereby accordingly convicted.

The defendant NURADEEN NALLAH however is found not guilty of the offense of Theft contrary to and punishable under Section 289 of the Penal Code as charged and is hereby accordingly discharged and acquitted of same.

SENTENCE

The Convict has been found guilty in respect of the offence of criminal breach of trust contrary to and punishable under Section 315 of the Penal Code.

It is acknowledged that the convict is a first time offender and a family man who is a bread winner in his family and for whom defence counsel has made a passionate appeal for leniency. For this reason the court would tamper justice with mercy and not give him maximum punishment. More so when the essence of sentence is also meant to be reformative and not merely punitive.

The foregoing having been stated I still believe the law must be allowed to take it's course for the purpose of deterrence to other people out there indulging in similar acts.

The law must live up to it's expectation of curbing excesses of persons involved in the get 'rich quick syndrome at any or all cost.

The level of culpability of the Convict from the evidence before the court appears quite high with significant harm as the sum of money involved is of significant value with equal degree of loss to the victim which all amounts to an aggravating factor in the consideration of sentence under the circumstance.

I have given due consideration to punishment for the offence as charged in Section 315 of the Penal Code which provides the punishment thus:

"Whoever, being in any manner entrusted with property or with any dominion over property in his capacity as a public servant or in the way of his business as a banker, factor, broker, legal practitioner or agent, commits criminal breach of trust in respect of that property,

shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine".

For the reasons set out above, and in line with the prescribed punishment by the Act the Convict is hereby sentenced to a term of 3 years imprisonment and is to also pay a fine N50,000.00.

And in line with the Sentencing guidelines and Sections 314 and 319 of the Administration of Criminal Justice Act 2015 the Convict is also hereby ordered to pay Compensation of $1,000,000.00 (One Million Dollars) to the victim of his crime which is principally the nominal complaint.

(Signed)

Honourable Judge.

Appearances:
E.A. Orji Esq for Prosecution
Hassan Dauda Esq Chief Legal Aid Officer for Legal Aid Council with Okoto Bruce Esq for Defendant.
F.I. Umahi Esq holds watching brief.