

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE A.A.I. BANJOKO- JUDGE
DELIVERED ON THE 12TH OF JUNE 2018**

CHARGE NO: FCT/HC/CR/81/07

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

CHIEF JOSHUA CHIBI DARIYE.....DEFENDANT

ROTIMI JACOBS SAN WITH H.O. EJIGA ESQ, O.A. ATOLAGBE ESQ, TAYO OLUKOTUN ESQ FOR THE PROSECUTION

KANU G. AGABI (CON), SAN WITH PAUL EROKORO SAN, JOHN OCHOGWU ESQ, PETER ERIVWODE ESQ AND AKINOLA AFOLARIN ESQ FOR THE DEFENCE

JUDGMENT

Chief Joshua Chibi Dariye, a Former Two-Term Governor of Plateau State of Nigeria from 1999 to 2007 and currently a Serving Senator at the National Assembly representing Plateau Central Senatorial District is charged on a23 Count Amended Charge Sheet dated and filed on the 9th of May 2016 before this Court for the following Counts of Offences: -

COUNT 1

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **19th July, 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties to wit: the Cheque in the Sum of **N1, 161, 162, 900.00 (One Billion, One Hundred and Sixty One Million, One Hundred and Sixty Two Thousand, Nine Hundred Naira)**, which you collected from the Ecological Funds Office in Abuja for and on behalf of Plateau State Government and which Sum was meant to address the ecological problems of the State committed Criminal Breach of Trust in respect of the said Properties when you deposited the Cheque with your Banker (AllStates Trust Bank Plc.) Abuja Branch and cleared same through the said Bank, where you operated an Account in the name of an Unregistered Company (Ebenezer Retnan Ventures), without paying the Cheque into the Account of Plateau State Government that it was meant for and you committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990**.

COUNT 2

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **19th of July, 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties to wit: Plateau State Government's Ecological Funds released by the Federal Government of Nigeria to address ecological problems of the State, committed Criminal Breach of Trust in respect of the said Property by diverting the Sum of **N160, 000, 000. 00 (One Hundred and Sixty Million Naira)** thereof into the Private Account of an Unregistered Company owned by you and known as Ebenezer Retnan Ventures and you thereby committed under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 3

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **19th July, 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory dishonestly misappropriated certain Properties, to wit: Plateau State Government's Ecological Funds released by the Federal Government of Nigeria to address ecological problems of the State, by diverting the Sum of **N160, 000,000.00 (One Hundred and Sixty Million Naira)** thereof into the Private Account of an Unregistered Company owned by you and known as Ebenezer Retnan Ventures and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 4

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **20th July, 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties, to wit: **N80, 000, 000.00 (Eighty Million Naira)** which Sum formed part of the Plateau State Government's Ecological Funds released by the Federal Government to address ecological problems of the State, committed Criminal Breach of Trust in respect of the said Properties when you transferred same into the Union Homes Account of the then Permanent Secretary of Ecological Funds, **Mr. Kingsley Nkumah**, as Gratification for facilitating the release of the Cheque to you, and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 5

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **15th August, 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties to wit: **N100, 000,000.00 (One Hundred Million Naira)** which Sum formed part of the Plateau State Government's Ecological Funds released by the Federal Government to address the ecological problems of the State, committed Criminal Breach of Trust in respect of the said Properties when you transferred same into the Account of Marine Float Limited and you thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 6

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **20th July 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties, to wit: **N100, 000,000.00 (One Hundred Million Naira)** which Sum formed part of the Plateau State Government's Ecological Funds released by the Federal Government to address ecological problems of the State, committed Criminal Breach of Trust in respect of the said Properties when you transferred same to the Peoples Democratic Party (PDP), South West, and you thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 7

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **20th July 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties, to wit: **N16, 862, 900.00 (Sixteen Million, Eight Hundred Sixty Two Thousand, Nine Hundred Naira)** which Sum formed part of the Plateau State Government's Ecological Funds released by the Federal Government to address ecological problems of the State, committed Criminal Breach of Trust in respect of the said Properties when you took the said Sum which you titled "**Sundry Number II**" and you thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 8

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **3rd May, 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties, to wit: the Sum of **N204, 000, 000.00(Two Hundred and Four Million Naira)** which formed part of their Funds in the Account of Plateau State Accountant General Office, committed Criminal Breach of Trust in respect of the said Properties by diverting the said Sum of **N204, 000, 000.00(Two Hundred and Four Million Naira)** into the Private Account of an Unregistered Company owned by you and know as Ebenezer Retnan Ventures and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 9

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **3rd May, 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, dishonestly misappropriated certain Properties to wit: the Sum of **N204, 000, 000. 00 (Two Hundred and Four Million Naira)** which formed part of the Funds in the Account of Plateau State Accountant General's Office by transferring same into the Private Account of an Unregistered Company owned by you and know as Ebenezer Retnan Ventures and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 10

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **29th November 2000** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau

State and in such capacity entrusted with dominion over certain Properties, to wit: the Sum of **N53, 600, 643.05 (Fifty Three Million, Six Hundred Thousand, Six Hundred and Forty Three Naira, Five Kobo)** which formed part of the Funds in the Account of Plateau State Accountant General's Office, committed Criminal Breach of Trust in respect of the said Properties by diverting the same into the Private Account of an Unregistered Company owned by you and know as Ebenezer Retnan Ventures and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 11

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **29th November 2000** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory dishonestly misappropriated certain Properties, to wit: the Sum of **N53, 600, 643.05 (Fifty Three Million, Six Hundred Thousand, Six Hundred and Forty Three Naira, Five Kobo)** which formed part of the Funds in the Account of Plateau State Accountant General's Office, by transferring same into the Private Account of an Unregistered Company owned by you and know as Ebenezer Retnan Ventures and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 12

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **17th January, 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory dishonestly misappropriated certain Properties, to wit: the Sum of **N6, 000, 000. 00 (Six Million Naira)** belonging to the Plateau State Water Board and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 13

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **25th March, 2003** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties, to wit: the Sum of **N10, 000, 000. 00 (Ten Million Naira)** which Sum formed part of the Funds of Plateau State Government, committed Criminal Breach of Trust in respect of the said Properties and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 14

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **25th March 2003** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory dishonestly misappropriated certain Properties, to wit: the Sum of **N10, 000, 000. 00 (Ten Million Naira)** belonging to the Plateau State Government and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 15

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **14th April 2003** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties, to wit: the Sum of **N25, 000, 000. 00 (Twenty Five Million Naira)**, which Sum formed part of the Funds of Plateau State Government committed Criminal Breach of Trust in respect of the said Properties and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990**.

COUNT 16

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **17th January 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, dishonestly misappropriated certain Properties, to wit: the Sum of **N25, 000,000.00 (Twenty Five Million Naira)** belonging to the Plateau State Government and you thereby committed an Offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990**.

COUNT 17

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **6th April, 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties to wit: the Sum of **N273, 000,000.00 (Two Hundred and Seventy Three Million Naira)** which Sum formed part of the Funds of Plateau State Government committed Criminal Breach of Trust in respect of the said Properties and you thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990**.

COUNT 18

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **6th April 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory dishonestly misappropriated certain Properties, to wit: the Sum of **N273, 000,000.00 (Two Hundred and Seventy Three Million Naira)** belonging to the Plateau State Government and you thereby committed an offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990**.

COUNT 19

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **29th November, 2000** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties, to wit: the Sum of **N53, 600,643.05 (Fifty Three Million, Six Hundred Thousand, Six Hundred and Forty Three Naira, Five Kobo)** which Sum formed part of the Funds of Plateau State Government, committed Criminal Breach of Trust in respect of the said Properties and you thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990**.

COUNT 20

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **29th November 2000** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory dishonestly misappropriated certain Properties to wit: the Sum of **N53, 600,643.05 (Fifty Three Million, Six Hundred Thousand, Six Hundred and Forty Three Naira, Five Kobo)** belonging to the Plateau State Government and you thereby committed an offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 21

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **24th November 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties to wit: the Sum of **N21, 000,000.00 (Twenty Million Naira)** which Sum formed part of the Funds of Plateau State Government committed Criminal Breach of Trust in respect of the said Properties and you thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 22

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **24th November 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory dishonestly misappropriated certain Properties, to wit: the Sum of **N21, 000,000.00 (Twenty One Million Naira)** belonging to the Plateau State Government and you thereby committed an offence punishable under **Section 309 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

COUNT 23

That you **CHIEF JOSHUA CHIBI DARIYE** on or about **19th July 2001** at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while being the Governor of Plateau State and in such capacity entrusted with dominion over certain Properties, to wit: Plateau State Government Ecological Funds released by the Federal Government to address ecological problems of the State, committed Criminal Breach of Trust in respect of the said Property by diverting the Sum of **N250, 000, 000. 00 (Two Hundred Million Naira)** thereof into the Private Account of a company known as Pinnacle Communications Limited and part of which Money was used to purchase for you Flat 28, Regents Plaza Apartment, 8 Greville Road, London NW8 at the Sum of **£395, 000 (Three Hundred and Ninety Five Thousand Pounds)** and you thereby committed an Offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of Federation of Nigeria 1990.**

The Defendant was initially arraigned on the 13th day July of 2007, and after his Plea was taken, had filed a Motion dated the 17th day of July 2007, seeking to Quash the Charges preferred against him. This Court gave a Considered Ruling, refusing the Application and the Defendant appealed the Court's Ruling through the Court of Appeal and the Supreme Court.

In 2015, the Supreme Court dismissed the Defendant's Appeal ordering him to proceed with his Trial and further ordering Accelerated and Expeditious Hearing of the Case.

The Trial commenced on the 25th of January 2016 with the evidence of the Prosecution, who called a total of **Ten (10) Witnesses** to prove its Case, whilst the Defendant called **Sixteen (16) Witnesses** in Defence, making a Total Number of **Twenty-Six (26) Witnesses** in this Trial.

At Close of Trial, the Defendant, in his Final Written Address dated the 10th of November 2017 and filed on the Same Day, raised Twelve Issues for Determination, namely: -

1. **COUNTS 1,2,4,5,6,7,8,10,13,15,17,19,21 AND 23, which charge the Defendant with Criminal Breach of Trust punishable under Section 315 of the Penal Code, are all defective and incompetent in that essentials of the Offence of Criminal Breach of Trust have been omitted. These omissions are fatal. In particular, dishonesty, which is an element of the Offence of Criminal Breach of Trust, has been omitted. It is no surprise that as the element of dishonesty was not charged, no attempt was made at proving it.**

2. **The case is rife with Contradictions and inconsistencies giving rise to reasonable doubts that ought to be resolved in favour of the Defendant. For instance, whereas in Charge No: FHC/KD/144C/2004 (FEDERAL REPUBLIC OF NIGERIA VS AWE ODESSA & 5 ORS), it was alleged by the Prosecution that the Cheque, subject of the Charge in Counts 1,2,4,5,6,7,8,10,13,15,17,19,21, and 23 was unlawfully procured by the Defendant, in this Court, the allegation is that the Cheque was entrusted to the Defendant-a material contradiction, which no attempt was made to resolve. This Honourable Court is humbly and respectfully urged to resolve the doubt arising in favour of the Defendant.**

3. **There is no indication in the Counts charging Criminal Breach of Trust of the Direction of Law prescribing the mode in which the trust alleged to have been breached, is to be discharged or of any legal contract, express or implied, which Defendant made touching the discharge of such trust, or that the Defendant wilfully suffered any other Person to breach the trust or that the Defendant disposed of the assets contrary to such specified directive.**

4. **There is no proof of Misappropriation as charged in Counts: 1, 2, 4, 5, 6, 7, 8, 10, 13, 15, 17, 19, 21, and 23. On the contrary, there is the Judgment of a Court of competent jurisdiction to the effect that the Funds were not misappropriated by the Defendant. There is also the Report of the House of Assembly of Plateau State to the same effect.**

5. **The Judgment of the Honourable Justice Liman in Charge No: FHC/KD/144C/2004 (FEDERAL REPUBLIC OF NIGERIA VS AWE ODESSA & 5 ORS) delivered on the (sic) was to the effect that the Defendant did not misappropriate the Funds charged in these Counts-a decision against which the Prosecution did not appeal. The Prosecution is estopped from contending the contrary by alleging in these proceedings that the Defendant committed Criminal Breach of Trust in respect of the same Funds.**

6. **The Prosecution is bound by the Findings made by the Plateau State House of Assembly exercising its powers of investigation under Section 128 of the Constitution of the Federal Republic of Nigeria to investigate corruption-findings, which are to the effect that the Defendant did not misappropriate the Funds charged in these Counts. It is instructive that the investigation conducted by the House of Assembly was at the instance of the Economic and**

Financial Crimes Commission through a Petition, alleging that the Defendant had committed Criminal Breach of Trust in Counts: 1, 2, 4, 5, 6, 7, 8, 10, 13, 15, 17, 19, 21, and 23.

7. Counts 1, 2, 4, 5, 6, 7, 8, 10, 13, 15, 17, 19, 21, and 23, which charge Criminal Breach of Trust are vague and therefore bad in that the Person or authority alleged to have entrusted the Defendant with dominion over the monies charged, is not specified. The allegation in the Charge relates to the place where the Cheque is alleged to have been collected.

8. Counts 3, 9, 11, 12, 14, 16, 18, 20 and 22, which charge the Defendant with Criminal Misappropriation of the Funds specified in those Counts, are inherently defective in that the Funds alleged to have been misappropriated, were not in the possession of the Defendant at the time of the alleged Criminal Misappropriation nor is there any proof of dishonesty as charged.

9. In the light of the evidence of PW5, the Accountant General of Plateau State, to the effect that no monies belonging to Plateau State Government can be paid out of the coffers of the State, without due authorization and accompanying vouchers, the logical inference arising from the failure of the Prosecution to tender the vouchers supporting the payments charged in Counts: 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 is either that the said vouchers have been withheld, in which case the presumption is that the evidence is detrimental to the case of the Prosecution or that the payments did not emanate from Plateau State as alleged in the various counts. In either case, the Counts ought to fail.

10. Having regard to the evidence of PW1 that Plateau State did not report loss of any Funds and having regard to the Report of the Committee of Plateau State House of Assembly exonerating the Defendant, all the counts of the information must fail for lack of proof beyond reasonable doubt as required by Law.

11. There is nothing known to Law as an Unregistered Company as charged in Counts 2, 3, 8, 9, 10 and 11. In the light of that fact, the attribution of the ownership of Ebenezer Retnan Ventures, a Non-Existent Entity, to the Defendant does not disclose any offence in that an Unregistered Company cannot have ownership.

12. The evidence called in respect of all the Offences charged is either insufficient, irrelevant, immaterial or inconsistent and do not suffice to prove the offences charged beyond reasonable doubt as required by Law.

Issues 2, and 12 will be considered when the substance of the case is being determined.

In his introduction to these issues, Learned Silk additionally submitted on Two Sub-Issues, namely:

- a) Virtually all the Witnesses were neither Actors nor Participants in the events giving rise to these Charges; and***
- b) Different Sets of Witnesses were called at Different Times to prove the Same Allegations and failed on each occasion.***

The Prosecution, on the other hand, in his Written Address dated the 22nd of December 2017 and filed on the same day, raised only **A Sole** Issue for the Court's determination, namely: **"Whether having**

regards to the evidence adduced before this Honourable Court and the Exhibits tendered, the Prosecution has not proved its case against the Defendant beyond reasonable doubt”.

In the **Defendant’s Reply on Points of Law** dated and filed on the 28th day of February 2018, he responded to Issues raised by the Prosecution and submitted on some Additional New Issues such as:

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- 1. The Contention that Ebenezer Retnan Ventures is not a Party to this Criminal Charge and ought to be heard;**
- 2. His Contention that the Defendant was not standing Trial for Breach of the Procurement Law; and**
- 3. Exhibit P13, the Defendant’s Extra-Judicial Statements are inadmissible for being Products of Question and Answer Session.**

All in all, the Defence ended up raising **Seventeen (17) Issues**, aside of his Contentions on Hearsay Evidence and Contradictory Evidence, with the Prosecution maintaining its **One (1) Sole Issue** earlier raised.

Now, the Court from a very careful look at the **Twenty-Three (23) Counts** of the Amended Criminal Charge filed on the 9th of May 2016, finds it is easy to discern that the Defendant is facing **Fourteen (14) Counts of Criminal Breach of Trust** punishable under **Section 315 of the Penal Code Act** and **Nine (9) Counts of Criminal Misappropriation** punishable under **Section 309 of the Penal Code Act**.

In regard to the **Fourteen (14) Counts of Criminal Breach of Trust** Offences, there are Two (2) Distinct Sets of Situations/Circumstances, and they are: -

- A. Offences relating to the Ecological Funds in Counts 1, 2, 4, 5, 6, 7, and 23; and**
- B. Offences relating to Various Sums of Money alleged to have been obtained from the Plateau State Government in General and then specifically, from the Account of the Office of the Accountant General of Plateau State Government, which are as contained in Counts 8, 10, 13, 15, 17, 19 and 21.**

In regard to the **Nine (9) Offences of Criminal Misappropriation**, there are **Three (3)** very clear Situations or Sets of Circumstances and they are: -

- A. One Offence relating to the Ecological Funds, in which Count 3 is pertinent;**
- B. Offences relating to various Sums alleged to have been obtained from Plateau State Government, which are as contained in Counts 9, 11, 14, 16, 18, 20, and 22; and**
- C. One Offence relating to the Plateau State Water Board, as contained in Count 12.**

After a careful consideration of the evidence adduced throughout the Trial, and the Submissions of Learned Silks in their Oral and Written Addresses, this Court will formulate the following issues for determination, namely:

1. ***“Whether the Contentions that virtually all the Witnesses were neither Actors nor Participants in the events giving rise to these Charges and whether the fact that different sets of Witnesses were called at different times to prove the same allegation and failed on each occasion, are material contentions sufficient to deflect guilt from the Defendant”.***
2. ***From the twelve issues highlighted by Learned Silk representing the Defendant, whether the Preliminary Issues of Issue Estoppel, both involving the Federal High Court and the Plateau State House of Assembly as set out under Issues 4, 5, and 6, will avail the Defendant and further, whether, the queries regarding the Charges as set out under Issue 1, and 3 will be resolved in favour of the Defendant.***
3. ***The raising of a New Issue in a Reply on Point of Law, on a Challenge that the Defendant’s Extra-Judicial Statements in Exhibits P13A to C, were obtained during a Question and Answer Session;***
4. ***The Exhibits P15C, Statement of Account of Ebenezer Retnan Ventures and P16, P17 and P18, Statements of the Accountant General of Plateau State were dumped on the Court;***
5. ***“Whether, the Prosecution successfully discharged the Criminal Burden of Proof establishing Criminal Breach of Trust against the Defendant in Counts 1,2, 4, 5, 6, 7, 8, 10, 13, 15, 17, 19, 21 and 23; and***
6. ***“Whether the Prosecution established the guilt of the Defendant beyond a Reasonable Doubt for the Offences of Criminal Misappropriation brought under Counts 3, 9, 11, 14, 16, 18, 20 and 22”.***

At the onset it is important to state that the Objections raised by the Defence Silk, Kanu Agabi SAN, as seen in his Final Written Addresses, permeated throughout the Substantive Issues and the Evidence adduced during the Trial in regard to Criminal Breach of Trust. These Objections were of a Preliminary and Foundational Nature that the Court must first wade through these Webs of Contentions/Objections in order to deal with the Substantive Issues before the Court.

The **First Issue** for determination is: -

“Whether the Contentions that virtually all the Witnesses were neither Actors nor Participants in the events giving rise to these Charges; and whether the fact that Different Sets of Witnesses were called at Different Times to prove the Same Allegation and failed on each occasion, are Material Contentions sufficient to deflect guilt from the Defendant”.

Learned Silk, representing the Defendant, Kanu Agabi SAN submitted on this **First Issue** that all the Prosecution Witnesses were Investigators namely **PW1, PW2, PW7, PW8, PW9 and PW10**, and stated that the remaining Witnesses called, only tendered Documents made or prepared by other

Persons and as such, their evidence were insignificant, immaterial or irrelevant to the Charge at hand and some of the Witnesses gave contradictory evidence.

He noted that virtually no Actor or Participant played out in the events giving rise to this Present Charges. It was only PW2, Mr. James Olanrewaju Adewusi, who was an Actor or Participant and his evidence was to the effect that he released the Central Bank Cheque in question to Mr. Victor Dilang, who was not called as a Witness by the Prosecution and who did not give incriminating evidence against the Defendant. The evidence rendered by Mr. Adewusi, PW2, who testified that the Cheque was delivered to Victor Dilang, ran contrary to the Charge that the Defendant was entrusted with the Cheque, and to the Prosecution's assertion at the Kaduna Federal High Court Trial, which alleged that the Defendant unlawfully procured the Cheque.

Learned Silk cited the cases of **OGUONZE VS THE STATE (1998) 4 SC PAGE 110 AT PAGES 155, 156 PARAS 40-5 (SC); EDOHO VS THE STATE (2004) 5 NWLR PART 865 PAGE 17 AT PAGE 51 PARA A-C (CA); NNOLIM VS THE STATE (1993) 3 NWLR PART 283 PAGE 569 AT PAGES 569, 581 PARA B**, to argue the point that the Prosecution had a duty to call all Material or Vital Witnesses, who knew something significant about the matter, and failure to do so meant that the Prosecution had failed to prove beyond reasonable doubt the burden placed on it.

Learned Silk, however, pointed out that it was in fact the Defence that called Victor Dilang, who testified as DW15.

Learned Silk further observed that not a Single Witness from AllStates Trust Bank, who participated in the events leading to these Charges were called as Witnesses to testify and he stated the reason to have been due to the fact that these Officials of the Bank were unjustifiably charged to Court but were subsequently discharged and acquitted. According to him, the failure to call the Bank Officials was fatal, as they needed to clear the air about why they paid Cheques raised in the name of the Bank into the Account of Ebenezer Retnan Ventures.

Other Principal Actor Witnesses not called by the Prosecution were the Accountant- General of Plateau State, Mr. Nuhu Madaki and other Signatories of the Account belonging to Plateau State Government, as no monies could be paid out of the State Account without due authorization and accompanying Vouchers. The mere fact that Criminal Charges had been filed against these Persons in other Courts will not constitute proof against the Defendant that he is Guilty of Criminal Misappropriation.

Kanu Agabi SAN further discussed **Section 167 of the Evidence Act, 2011** to draw out the implication of the failure by the Prosecution to call Material Witnesses, submitting that this resulted in the withholding of the Material Witnesses' evidence that would have been unfavourable to the Prosecution. He relied on the cases of **SAM ONYEJIUWA CHINEKWE VS ANTHONY AKUBUEZE CHINEKWE (2010) 12 NWLR PART 1208 PAGE 226 AT PAGE 231; CHUKWUKA OGUDO VS THE STATE (2011) LPELR-SC 341/2010 PAGES 28, 29 PARAS F-A PER RHODES VIVOUR JSC.**

Learned Silk's Second Contention on this First Issue raised is that Different Sets of Witnesses were called on different occasions to prove the same allegation and had failed. He submitted that aside of PW1, Detective Musa Sunday and PW3, Bamanga Bello, who remained constant; Different Witnesses were called at different times and fora, to prove the same allegations. He listed out the Witnesses interrogated by the Economic and Financial Crimes Commission (EFCC) on the Petition lodged, and listed out the Witnesses who testified at the Federal High Court at Kaduna, and also listed out the

Lone Witness who testified before the Plateau State House of Assembly and finally, the Ten Witnesses who testified before this Court.

According to Learned Silk, it was expected that the Testifying Witnesses be the same throughout the different occasions, set out above. However, the Prosecution in the above different occasions had called entirely different sets of Witnesses to prove the same allegations against the same Person. Illustrating his point, Learned Silk submitted that these same sets of evidence were adduced before the Plateau State House of Assembly, who exonerated the Defendant, which occasioned the Prosecution to change its Witnesses. Still on this same evidence, Liman J. sitting at the Kaduna Federal High Court yet again exonerated the Defendant, who in his Judgment admitted as **Exhibit D21B**, rejected the testimonies of Inspector Musa Sunday and Bamanga Bello.

Therefore, Learned Silk concluded that the Charge is speculative and fishy, as the Prosecution was hunting for a Court to agree with him.

In his own Written Address, Learned Silk for the Prosecution did not specifically respond to these Issues, which fact was pointed out by Learned Silk to the Defence, who in his Reply on Points of Law, cited the case of **M.C.T. VS EZE (2006) 2 NWLR PART 964 PAGE 221 AT PAGE 241 PARAS E-G, PER ADAMU JCA**, to argue that the Prosecution is deemed to have conceded all the issues and arguments of the Defendant, to which no answer was offered in this regard.

Now, after a careful consideration of the above Issues, it is Trite Law that the Prosecution is required to call the Number of Witness or Witnesses who, in his assessment and considered opinion are necessary and sufficient to establish the Charges framed against the Defendant. In the case of **ANSELEM AKALONU VS THE STATE (2002) NSCQR VOLUME 10 AT PAGE 1251, PER KUTIGI JSC at Page 1260, His Lordship** stated that the Prosecution always has a discretion as to the number of Witnesses it would call to prove its case and it is not necessary to call a multitude of Witnesses, where only a few can do. See also **CHIMA IJIOFFOR VS THE STATE (2001) NSCQLR VOLUME 6 PAGE 209, PER EJIWUNMI JSC, His Lordship** stated that the Prosecution's duty lies in calling such Witnesses as they would require to establish their case against a Defendant. **ACHIKE JSC** further stated that the prosecutorial responsibility is to establish its case beyond reasonable doubt in order to secure the conviction of the Appellant. How they get around achieving this, is entirely the business of the Prosecution. Whether they field one, two or more Witnesses in satisfaction of such proof, will surely depend on the circumstances of each case. But under no circumstances will the Accused Person dictate to the Prosecution regarding the Person or Number of Witnesses that they must field as Witness or Witnesses.

In **ADESINA& ANOR VS THE STATE (2012) LPELR-9722 (SC) PER ADEKEYE JSC**, concurred with the above, when Heheld that, on the issue of Witnesses to call, it is the prerogative of the Prosecution to call Witnesses relevant to its case. He further held as Settled Law the fact that the Prosecution is not bound to call every Person that was linked to the scene of the crime by his physical presence to give evidence of what he saw. Once Persons who can testify as to the actual commission of crime have done so, it will suffice for the satisfaction of proof beyond reasonable doubt in line with **Section 138 of the Evidence Act**.

In **VICTOR ESSIEN VS THE STATE (2013) 6 SCNJ PAGE 32**, it was held that the Prosecution is only duty bound to call essential Witnesses.

Further, in **DR. SEGUN ODUNEYE VS THE STATE (2001) NSCQLR VOLUME 5 AT PAGE 1**, the Supreme Court held that the choice of Witnesses is a matter of strategy and the decision is entirely at the discretion of the Prosecution. While it was recognized that a conviction could be based on the evidence of a sole Witness, the Prosecution is required to call Material Witnesses in proof of their case. It was held to be invidious to insist that the Prosecution must field every Witness connected with the case. Undoubtedly, the Prosecution is obliged to make all Material Witnesses available to the Defence even though they would field them in proof of the case for the State. Reference in this case, was made to the **West African Court of Appeal** in the case of **R VS KUREE 7 WACA PAGE 175 AT PAGE 177**, which held as follows, *“It is well established that, it is the duty of the Prosecution to place before the Court all available relevant evidence. This does not mean, of course, that a whole host of Witnesses must be called upon the same point, but it does mean that if there is a vital point in issue and there is one Witness whose evidence would settle it one way or the other, that Witness ought to be called. The Prosecution has no duty to call and field All Known Material Witnesses so long as they call and field All Material Witnesses that **they may consider necessary** for proof of their case beyond reasonable doubt. Additionally, it must be emphasized that Material or Indispensable Witnesses crucial for eliciting and setting the basis of the Prosecution’s case, must inevitably be called and fielded by the Prosecution, notwithstanding that the Consequence of such Witness’s testimony is favourable to or against the case of the Prosecution. To act otherwise, of course, would leave an indelible question mark in the Prosecution’s case that must be resolved in favour of the Defence.”*

Therefore, it is immaterial that more Witnesses could be called, except where it is specifically indicated that those Witnesses, if called would be adverse to the Prosecution’s case. See the cases of **OKPULOR VS THE STATE (1990) LPELR-2523 PER BELGORE JSC AND ONAH VS THE STATE (1985) 3 NWLR PT 12 AT 236; THE STATE VS OLATUNJI (2003) SC LPELR-3227 SC PER NIKI TOBI JSC; OGBODU VS THE STATE (1987) SC LPELR-2282; OCHANI VS THE STATE (2017) SC LPELR-4235; ADAMU VS THE STATE (2017) SC LPELR-41436; GALADIMA VS THE STATE (2017) SC LPELR-43469 AND ADEGBITE VS THE STATE (2017) SC LPELR-42585.**

In the case of **IME DAVID IDIOK VS THE STATE (2008) NSCQR VOLUME 34 PAGE 827 AT PAGE 858, HIS LORDSHIP NIKI TOBI JSC**, in following the dictum in **ONA VS THE STATE (1985) 3 NLR PART 12 AT 236**, held that the Prosecution has a discretion to call Witnesses of **its choice**. The Prosecution is under no Constitutional or Statutory Duty to call a Particular Witness or Particular Sets of Witnesses. The Prosecution has not the Legal Duty to call a Village or Community of Witnesses and an Accused Person cannot dictate to the Prosecution, Witnesses it should call to prosecute him. See further, the cases of **EVARISTUS MOZIE VS THE STATE (2012), (CA) PER SANKEY JCA**, who added that it does not lie in the mouth of the Defendant to dictate to the prosecution, the number of Witnesses it should call in proof of its case. As long as the Witnesses it calls or the evidence it adduces are, in its own opinion, sufficient to establish its case to the standard required by law, it is immaterial to the Court that a Particular Witness was not called. That is the decision of the Prosecution; **See also AKPAN VS THE STATE (1991) LPELR-380 (SC); SUNDAY VS THE STATE (2010) SC. PER TABAI JSC LPELR-1470; EMMANUEL OLABODE VS THE STATE PER OKORO JCA (AS HE THEN WAS)** stated in essence the above and added that although it was desirable to call Witnesses who are vital and material to the determination of a case, such failure cannot be a sufficient reason to quash the conviction of the Appellant, where there are other evidence sufficient and convincing enough to convict the Accused. There is no Rule of Law, which says that once a Particular Witness is not called, it is fatal to the Prosecution’s case.

Her Lordship, **AMINA AUGIE (JCA) (AS SHE THEN WAS, NOW JSC), IN OSAZUWA & ORS VS ISIBOR & ANOR (2003) LPELR-7295 (CA), AT PARAS A-B** stated that there is no Rule Of Law or Evidence, which lays down that all Persons who know about a particular fact must be made Witnesses to testify on the issue before it can be proved. **SEE ALSO SIMON VS THE STATE (2017), (SC) LPELR-41988 PER MUHAMMAD JSC AT PARAS E-F.**

Therefore, guided by these Principles severally laid down by the Apex Court, the ability of a Prosecution to determine the Number and Quality of its Witness or Witnesses cannot be questioned by the Court and certainly not by the Defence. After all, it is its case and will swim or sink with its choice in the mode it applies in propagating the evidence it has against the Defendant. It is the quality of the evidence it leads that sustains its case.

Therefore, it remained the choice of the Prosecution not to call the Accountant- General of Plateau State and other Signatories of Plateau State Government Account, and it remained his choice not to call the Bankers from the AllStates Trust Bank. In any event, it is in evidence that the Defendant actually called Mr. Adonye Roberts, an erstwhile Staff of AllStates Trust Bank. As regards the failure of the Prosecution to call Mr. Victor Dilang, the point is, Mr. Victor Dilang was actually called albeit by the Defence to testify. So, what is the problem? The value of their testimony, which the Defence hoped would be rendered in Court, was actually received by the Court and there was no complaint by the Defence or even the Prosecution, that their Evidence was unsatisfactory. In the case of **BASSEY AKPAN ARCHIBONG VS THE STATE (2006) LPELR-537 (SC), ONU JSC AT PARAS B-C** held inter alia that *"It is our Law that unless expressly so provided, no particular number of Witnesses is required for the proof of any fact. See Section 178 (1) of the Evidence Act Cap 61 and where the defence desires to call a particular Witness not called by the Prosecution, it is perfectly free to do so."*

On the **Second Contention** that different Sets of Witnesses were called on different occasions, such as, at the EFCC for investigation, before the Plateau State House of Assembly Committee on the Inquiry, before the Federal High Court in Kaduna and before this Court, to prove the same allegation but had failed, regard is had to the case of **OLUSINA AJAYI VS THE STATE (2013) NSCQR VOLUME 53.2 AT PAGE 632**, which is on point and as held by **AKA' AHS JSC**, *"It is clear that Criminal Investigations are carried out by the Police based on information at the disposal of the Force and the Investigator uses his discretion at the disposal of the Force to determine how to go about the work. It was observed that there was no Law, which stipulates the order in which investigations are to be carried out."*

Therefore, it is not within the purview of the Defence Silk to contend that the Witnesses interrogated by the Investigators were not utilised for the Trials both at the Court in Kaduna State and this Court. Interviewing or Interrogation of Witnesses by an Investigator does not equate to the Investigator finding their evidence relevant and worthy, presentable and adding value to the case he intends to prosecute against the Defendant. In any event, the Defence may have had a point had the testimonies of the Witnesses differed at the Federal High Court in Kaduna and before this Court. Had PW1, Detective Musa Sunday and PW3, Mr. Bamanga Bello, rendered Contradictory Evidence, then the Defence could have used such contradictions against them before this Court, to show their Credibility as Witnesses. See the cases of **ALADE VS ABORISHADE (1960) 5 FSC PAGE 167 PER ABBOTT, F.J.**

As regards the Case reported to the Plateau State House of Assembly, the same logic applies here, as the Prosecution believed that the Sole Witness they produced to testify before the House Committee was sufficient to prove their case. As earlier stated, the Prosecution will sink or swim with whatever

evidence they choose to present and in this instance regarding the Inquiry before the House, they sank with their evidence because the Defendant was exonerated. It is not the place of the Defence to challenge the Strategy adopted by the Prosecution in their choice of their Fielded Witnesses.

The same analogy applies to the various Witnesses said to have been summoned by the Prosecution to testify in their regard before the Federal High Court in Kaduna State and before this present Court. Aside of the obvious fact that the Prosecution has a prerogative or discretion in calling Witnesses, there is also the obvious fact that the Charges at both the Federal High Court and this Court are different. The Class of Witnesses expected to prove the Offences under the **Miscellaneous Offences Decree as Amended by the Tribunals (Certain Consequential Amendments, etc.) Decree No. 62 of 1999** and those necessary to establish the Offences of Abetment and Conspiracy are not necessarily the Class of Witnesses relevant under a Charge of Criminal Breach of Trust and Criminal Misappropriation. The thrust of the Prosecution in Kaduna was to prosecute the Bankers for Abetment. Here in this Court, the thrust was specifically against the Defendant for the Offences of Criminal Breach of Trust and Criminal Misappropriation and therefore, the Trial before this Court can conceivably tolerate another Class of Witnesses.

Therefore, the Objections raised in regard to Witnesses, is found untenable and the Objections are discountenanced.

The **Second Issue** set out for determination by the Court is as regards the **Questions of Issue Estoppel**, and **Charges** and will be considered in the order they are stated above.

As regards **Issue Estoppel**, Learned Silk representing the Defendant had centered his submissions on an Earlier Judgment of the Federal High Court as well as the Decision of the Plateau State House of Assembly. He relied on the Judgment delivered by my Learned Brother, Liman J. of the Federal High Court, sitting in Kaduna delivered on the 29th of July 2005, which was tendered and admitted without any Objection, as **Exhibit D21B in Charge No: FHC/KD/144C/2004 in the case of FEDERAL REPUBLIC OF NIGERIA VS AWE ODESSA & 5 ORS.**

In this case, Officials of AllStates Trust Bank, were charged under a Four Count Charge of Conspiracy to commit a Felony, which consisted in accepting from the Defendant, a Central Bank Cheque knowing that it was unlawfully procured and agreeing to do an illegal act by aiding and facilitating the misappropriation by the Defendant of the proceeds of the Central Bank Cheque in the Sum of N1, 161, 162, 900.00 (One Billion, One Hundred and Sixty Two Million, Nine Hundred Thousand Naira Only).

The Bankers were all acquitted on the ground that there was no proof that Chief Joshua Dariye, had misappropriated the proceeds of the Cheque as alleged. The Court had also held that the act of the Defendant in disbursing the Funds was the Official Act of the Government of Plateau State.

Learned Silk pointed out that in both cases concerning the Bankers in Kaduna State and this present case, the Complainant, remained the same, namely the Economic and Financial Crimes Commission. Therefore, he concluded that the Findings of Liman J. that the Defendant did not dishonestly misappropriate Funds ESTOPS the Prosecution from continuing to contend the contrary in this present case, as the issues, facts, Witnesses and evidence proffered in the two cases are the same. According to him, the Judgment of Liman J., found the Defendant Not Guilty of Criminal Breach of Trust. He noted that the Prosecution is bound by this Judgment, moreso, as the Prosecution did not

Appeal the Judgment delivered. According to Learned Silk, PW3, Bamanga Bello, had told the Court that he testified before Liman J. and had given the same evidence. Further, PW1 had admitted under Cross-Examination that the act of the Defendant in disbursing the Funds was Official. It was therefore based on this same evidence that the Defendants were discharged and acquitted.

According to Learned Silk, since the Finding of the Federal High Court, being a Competent Court of Jurisdiction had settled the question of Misappropriation and of whether the disbursement was an Official Act, it will constitute a Gross Abuse of the Judicial Process to re-open and seek to re-litigate the very same issue of Dishonest Misappropriation in the face of an Explicit Finding.

Learned Silk further stated that the only difference in these two cases is that in this present case, it is additionally alleged that Funds in the Office of the Accountant General of Plateau State and the Plateau State Water Board, were Criminally Misappropriated by the Defendant.

On this contention, Learned Silk cited the cases of **APC VS PDP & ORS (2015) LPELR-24587 SC PG 116 PARAS B-D PER RHODES VIVOUR J.S.C.; AD VS FAYOSE (2004) CA, AFWLR PT 222 AT PG 1719** to submit that the Rule of Estoppel is a Rule of Evidence, and the matter which will found an Issue Estoppel, may be of law, fact, or mixed law and fact. Once a specific point has been distinctly put in issue and has been determined with certainty, the Court will not allow that issue to be re-litigated by the same or different parties. It precludes a Party to a Proceeding from making against the other Party, an assertion, whether of fact or of the legal consequences of facts, the correctness of which was an essential element in the previous cause of action or defence, in the previous proceedings, between the same parties or their predecessors-in-title, and upon which the Court made a finding.

According to Learned Silk, the justification for these Principles is that there must be an end to litigation as captured in the Latin Maxim "Interest Reipublica Ut Sit Finis Litium", and that no one should be twice vexed over the same issue.

Learned Silk then set out the conditions for the application of Issue Estoppel by relying on the Case Law Authorities of **IKENI VS EFAMO (2001) 10 NWLR PT 720 AT PG 1; AJIBOYE VS ISHOLA (2006) 13 NWLR PT 998 AT 628 PER ONNOGHEN JSC (AS HE THEN WAS) AT PARA C-E AND EZEKIEL ADEDAYO VS ALHAJI YAKUBU BABALOLA & ORS (1998) LPELR-85 SC PER OGWUEGBU JSC.**

Further, in the case of **TIJANI IKOTUN VS OBA SAMSON OYEKANMI & ANOR (2008) LPELR-1485 (SC), (2008) 10 NWLR PT 1094 AT 100 PER CHUKWUMA-ENEH JSC**, it was held that the Res, Parties and Claims in the Present Suit need not necessarily be the same as those in the Previous Proceedings. It was also immaterial whether the issue in the previous case involved a Criminal Proceeding and the present case is Civil. On this contention, he cited the cases of **AMOS O. ARO VS SALAMI FABOLUDE (1983) LPELR-558 SC, ALL NLR AT 67 PER ANIOGOLU JSC AT PAGE 24 AT PARAS B-D RELYING ON THE CASE OF HUNTER VS CHIEF CONSTABLE OF WEST MIDLANDS POLICE (1981) 3 WLR AT 906.**

Learned Silk also relied on the cases of **GEORGE VS FRN (2014) ALL FWLR PT 718, 879 AT 894 AT PARAS B-D; ZAKARI VS NIGERIAN ARMY COUNCIL (2015) LPELR-24721 SC; AGBITI VS NIGERIAN ARMY (2011) 4 NWLR PT 1236 AND DALHATU VS TURAKI (2003) 15 NWLR PT 843, 310 AT 349 PARAS D-F PER EDOZIE JSC; ADISA VS OYINWOLA (2000) and BRAITHWAITE VS SKYE BANK PLC (2012) LPELR-15532 SC**, to submit that identical cases with the same or similar

facts and laws, should receive identical treatment and consideration, to ensure certainty and some level of prediction in the Law, and that is the whole essence of Judicial Discipline.

Therefore, Learned Silk submitted that it is only logical that the fate, which befell the Kaduna Trial, ought also to befall this Court, as the act of the Prosecution in this case is speculative and suspicious and no amount of suspicion however strong, can ground a conviction. Moreover, a Court of Competent Jurisdiction in its Findings had found that no Funds were misappropriated and that estopped the Prosecution from continuing to contend the contrary. This is what Issue Estoppel and Res judicata entail and Courts must be seen to be consistent.

In response, Learned Silk representing the Complainant, submitted that the Charges preferred against the Officials of AllStates Trust Bank were prescribed under **Section 3 (2) (a) and 10 (6) of the Miscellaneous Offences Decree as Amended by the Tribunals (Certain Consequential Amendment etc.) Decree No 62 of 1999 AND SECTION 83 AND 97 (1) OF THE PENAL CODE ACT, LFN (ABUJA)**. These Sections referred to Counts 1 and 2 of the Kaduna Charge, which had to do with the unlawful acceptance of the Central Bank Cheque in the Sum of N1, 161, 162, 900 from Joshua Dariye, which they knew to be unlawfully procured by Chief Joshua Dariye. There is therefore, nothing in these provisions that prescribe the Offences of Criminal Breach of Trust or Criminal Misappropriation under **Sections 315 and 309 of the Penal Code**.

Also from the Charge, the Six Defendants were charged with Conspiracy to do an illegal act, which is Criminal Misappropriation, by aiding Chief Joshua Dariye to dishonestly misappropriate to his own use, the proceeds of the value of the Central Bank Cheque drawn out in favour of Plateau State Government, under **Sections 83, 97 (1) and 309 of the Penal Code**. Liman J. had upheld the No-Case Submission on the grounds that the Prosecution did not prove that the Defendants knew that the Cheque was unlawfully procured by Governor Joshua Dariye under Counts 1 and 2. Further, the Prosecution did not prove that the Cheque was criminally misappropriated under **Section 309**, to make the Defendants liable for Conspiracy, in that it was not shown that the disbursement of the Fund was not the Official Act of the Plateau State Government. Further still, dishonesty was not proved. He stated the basis of this Finding to be that Joshua Dariye was not called upon to testify and it was difficult for the Trial Judge to hold that the Prosecutor had made out a case of Conspiracy and Abetment against the Defendant Bankers.

Learned Silk for the Prosecution held the view that the contention by the Defence on Issue Estoppel was wrong for the following reasons: -

1) As at the date of the Judgment in **Exhibit D21B**, the Defendant could not be prosecuted as he enjoyed immunity under **Section 308 of the 1999 Constitution**. He was not a Party to the Judgment in that case as he was not charged before the Federal High Court and he was still serving as the Governor of Plateau State. Therefore, by the nature of the immunity he enjoyed, the Defendant could not be charged to Court and no incriminating pronouncement could be made against him in any Court, while he was the Governor of Plateau State. He cited the cases of **FAWEHINMI VS IGP (2002) 7 NWLR PT. 767, 606 AT 699-700 PER KALGO JSC**, who held that Holders of Offices mentioned under **Section 308 of the 1999 Constitution** could only be investigated but not questioned, arrested or detained in connection to such investigation. However, the immunity was not forever from Full Criminal Investigation or any Criminal Proceedings in respect of any Offence allegedly committed by him or during the Tenure of his Office.

2) Secondly, the Doctrine of Issue Estoppel was inapplicable to Criminal Cases and does not apply to this case. He distinguished the cases cited by the Defence, starting with the case of **ARO VS FABOLUDE (1983) NSCC PAGE 43**, which he argued was a Land Dispute Matter. Further, the case of **HUNTER VS CHIEF CONSTABLE OF WEST MIDLANDS POLICE (1981) 3 ALL ER AT 727** was in regard to a Claim for Damages filed by Hunter against the Police Officers he claimed assaulted him, and this was a Civil Suit. The House of Lords, in this case went on to hold that the Doctrine of Issue Estoppel has no place in English Criminal Law. Finally distinguished, was the case of **DPP VS HUMPHREYS (1976) 2 ALL ER AT 497, PER LAW LORDS VISCOUNT DILHOURNE; DEVLIN AND HAILSHAM**, where it was severally held that there was a lack of mutuality between the application of the Rule against Double Jeopardy in Criminal Cases and the Rule of Finality in Civil Litigation. They also had held that to hold Issue Estoppel applicable in Criminal Cases would be to import a new doctrine, as it had not and never had a place in English Criminal Law. In Criminal Cases, it takes the form of Double Jeopardy of which the simplest application is to be found in the Plea of Autrefois Convict and Autrefois Acquit.

Further, it was held that the Civil Doctrine of Issue Estoppel is based on the necessity for Finality between Private Litigants, whereas the Doctrine in Criminal Proceedings is based on the Prohibition of Double Jeopardy.

Learned Silk, representing the Prosecution also referred to **Archbold on Criminal Pleading, Evidence and Practice 2012, at Paragraph 4-221**, where it was stated that the Civil Doctrine of Issue Estoppel has no application to Criminal Law.

Rotimi Jacobs SAN, further referred the Court to the **1999 Constitution, As Amended in Section 36 (9)**, on Double Jeopardy as well as **Sections 238, 239, 240 and 277 of the Administration of Criminal Justice Act 2015**, to submit that the Doctrine of Issue Estoppel was not recognized in Criminal Proceedings, and cited the cases of **FRN VS IGBINEDION (2015) 2 NWLR PT. 1444, AT 475 PER OGUNWUMIJU JCA AND FRN VS NWOSU (2016) 17 NWLR PT. 1542, 226 AT 294-295 AND 305-306**.

According to Learned Silk, there is no question of Double Jeopardy, as the Defendant was not charged or acquitted as per **Exhibit D21B** and the Order of Acquittal made by the Federal High Court in Kaduna, cannot be extended to the Defendant as guaranteed by the **1999 Constitution**. Also for the Defendant to fall under the above-cited Sections of the **Administration of Criminal Justice Act**, providing for Autrefois Convict or Acquit, he must show that he had been earlier tried, convicted or acquitted for the same Offence. He pointed out that even **Sections 239 and 240** created an exception to the Rule as an acquitted or convicted Defendant may afterwards be tried for a distinct Offence on separate Charges in certain circumstances.

In this case, he argued that the Defendant was not a Party to **Exhibit D21B** and he pointed out that the cases cited by the Defence of **IKENI VS EFAMO (2001) 10 NWLR PT 720 AT 1; AJIBOYE VS ISHOLA (2006) 13 NWLR PT 998, AT 628 AND ADEDAYO VS BABALOLA (1995) 7 NWLR PT 408 AT 383**, all referred to situations where the Parties were the same. Further, on the reliance by the Defence on the case of **TIJANI IKOTUN VS OBA SAMSON OYEKANMI (2008) 10 NWLR PT 1094 AT 100**, Learned Silk submitted that the Supreme Court never held that the Parties in Issue Estoppel need not be the same. What is required is that Parties or their Privies must be involved.

The provisions of **Section 173 of the Evidence Act (2011)** was also cited by Learned Silk, Jacobs to the effect that every Judgment is conclusive proof, as against the Parties and their Privies, of facts directly in issue, unless evidence was admitted in the action in which Judgment was delivered, which

is excluded in the action in which that Judgment is intended to be proved. He cited the cases of **MAKUN VS FEDERAL UNIVERSITY OF TECHNOLOGY, MINNA (2011), 2 NWLR PT. 1050 PER GALADIMA JSC; OLORIEGBE VS OMOTESHO (1993) 1 NWLR PT 270 AT 386; AGBOGUNLERI VS DEPO (2008) ALL FWLR PT. 408 AT 240 AT 261; BALOGUN VS ODE (2009) ALL FWLR PT 358, 1050 AT 1065-1066.**

Further, Learned Silk for the Prosecution submitted that the Offences for which the Defendants were charged before the Federal High Court, Kaduna were State Offences for which the Federal High Court had no jurisdiction to adjudicate upon. In support of this contention, he cited the cases of **EHINDERO VS FRN (2014) 10 NWLR PT 1415 AT 281; THE STATE VS WILLIAMS (1978) NSCC 38 AT 44; ABBAS VS COP (1998) 12 NWLR PT 577, 308 AT 318 AND FRN VS NWOSU (2016) 17 NWLR PT 1541, 226 AT 291 C-F, PER MUHAMMAD JSC.**

In this case at hand, the Offence of Criminal Misappropriation under **Section 308** as contained in **Exhibit D21B** are not matters listed under **Section 251 (1)** of the Constitution in respect of which the Federal High Court has jurisdiction to entertain, and any pronouncement made by it on those Offences cannot ground a Plea of Issue Estoppel at all. Therefore in all, Learned Silk concluded that the contention of the Defence on Issue Estoppel does not represent the Position of the Law.

In Reply on Points of Law, Learned Silk representing the Defendant submitted that the Judgment of Liman J., in **Exhibit D21B**, having not been set aside on Appeal, is valid, subsisting and binding, operating to estop this Court from coming to any conclusion other than that, the Funds forming the subject matter on **Counts 1, 2, 4, 5, 6, 7, 8, 10, 13, 15, 17, 19, 21 and 23** were not misappropriated. He argued the point that it was not within the Jurisdictional Competence of this Court, to declare the Judgment in **Exhibit D21B**, of the Federal High Court, a Court of Competent Jurisdiction, as having been reached without Jurisdiction. The effect of the Prosecution's invitation to this Court to make a finding that another Court of concurrent or co-ordinate jurisdiction had no jurisdiction, is that this Court should sit on Appeal over that Judgment, which practice the Apex Court berates and deprecates, citing the cases of **AKPORUE & ORS VS OKEI & ORS (1973), 8 NSCC AT 649 AT 654 and ONWUKA VS MADUKE (1998) 4 NWLR PT547 AT 344 AT 353.**

Further, he submitted that the Law is trite that Issue Estoppel does in fact apply to both Civil and Criminal Proceedings and cited the Supreme Court Case of **ARO VS SALAMI FABOLUDE (1983) LPELR-558; ALL NLR 67, PAGES 8-9, PARAS G-F PER ANIAGOLU JSC**, for which the Prosecution had not referred this Court to any divergent Nigerian Case Law Authority emanating from the Appellate Courts, and in fact, none exists. Therefore, the Apex Court's Decision remained extant and subsisting and he urged the Court to reject the persuasive decisions of the English Courts in preference to the Decisions of our Supreme Court.

Apart from that, Kanu Agabi SAN submitted that Parties in the Previous Proceedings need not be the same as those in the Present Case for the defence of Issue Estoppel to be proved, and unlike Res Judicata, it is immaterial that at the time of the Trial of that Case, the Defendant enjoyed Immunity from prosecution. He cited the case of **TIJANI IKOTUN VS OBA SAMSON OYEKANNI & ANOR (2008) LPELR-1485 SC PER CHUKWUMAH-ENEH JSC**, to argue as immaterial that the Present Defendant enjoyed Constitutional Immunity at the time of the Federal High Court Trial in **FHC/KD/144C/2004**. According to him, **Section 173 of the Evidence Act** relied on by the Prosecution deals with Res Judicata and not Issue Estoppel.

Now, S.T. Hon in Law of Evidence in Nigeria at Page 1189 stated that Issue Estoppel arises when or where an issue has been previously determined and one the parties to the previous litigation now seeks to introduce such issue for determination again in a subsequent litigation. Reference was made to the Supreme Court case **ADIGUN VS THE SECRETARY, IWO LOCAL GOVERNMENT (1999) 8 NWLR PART 613PAGE 30 PER BELGORE JSC (THEN CJN)**.

According to this Learned Author, for the plea of Issue Estoppel to succeed, however, the following conditions must be fulfilled, namely:

- a. The Parties must be the same in the Previous as well as in the Present Proceeding;
- b. The same Question that was decided in the Previous Action must arise in the Present Action in respect of the same Subject Matter; and
- c. A Court of Competent Jurisdiction must have determined the issue in a Final Manner.

He cited the case of **OMNIA NIGERIA LIMITED VS DYKTRADE LIMITED (2007) ALL FWLR PART 94 PAGE 201**, where also the Supreme Court had held that, a Party may be precluded from contending the contrary of any precise point which having once been distinctly put in issue, had been solemnly and with certainty determined against him. According to the Supreme Court, this is still the legal position even where the objects of the first and second actions are different, as a finding on a matter, which came directly in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive in the second action between the same parties and their privies. This principle, the Apex Court also held applies whether the point invoked in the earlier decision is one of fact or one of law or of mixed law and fact. It concluded that under all circumstances, the following conditions have to be satisfied before the doctrine can be applied:

- a. The Same Question or Subject-Matter was decided in both Proceedings;
- b. Parties or their Privies were the Same in both Proceedings;
- c. The Judicial Decision said to create the Estoppel was Final.

The Learned Author further cited the case of **OGBOGU VS UGWUEGBU (2003) FWLR PART 161 PAGE 1825**, where the Supreme Court held that where a piece of evidence is caught by the Rule of Issue Estoppel, the Court ought to stop or disallow such evidence from being admitted. However, the Learned Author made no mention on the applicability of Issue Estoppel in relation to Nigerian Criminal Cases.

Cross & Tapper on Evidence Twelfth Edition Page 92, in addition to the above stated that the Judicial Decision must be on the Merits.

The Supreme Court in **OSHOBOJA VS AMIDA (2009) 18 NWLR PART 1172 PAGE 188 AT PAGES, 204 209 PARAS E-H, PER MUKHTAR JSC** explained the Latin Maxim, "*nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa*", to say that, "There is a well-established Principle of Law which applies both in Civil and Criminal Cases, that no Man or One shall or should be or ought to be vexed twice on the same ground or for one and the Same Cause of Action or the Same Issues. Further, this principle was rooted in Public Policy. See the cases of **ARO VS FABOLUDE (1983) 1 SCNLR PAGE 58; OMOKHAFAE VS ESEKHOMO (1993) 3 NWLR PART 309 PAGE 58; ADOMBA VS ODIESE (1990) 1 NWLR PART 125 PAGE 165; NKANU VS ONUN (1977) 5 SC PAGE 13; IYAJI VS EYIGEBE (1987) 3 NWLR PART 61 PAGE 523; FADIORA VS GBADEBO (1978) 3 SC PAGE 219; FIDELITAS SHIPPING CO., LTD VS V/O EXPORTCHLEB (1966) 1 QB PAGE 630 AT PAGE 640; (1965) 2 ALL ER PAGE 4 AT PAGE 8, LORD DENNING M.R.** This was clearly analyzed by **STEYN J** in the case of **SPEEDLINK VANGUARD VS EUROPEAN GATEWAY (1987) QB PAGE 206; (1986) 3 ALL**

ER PAGE 554; TOWNSEND VS BISHOP (1939) 1 ALL ER PAGE 805 AND CARL ZEISS STIFTUNG VS RAYNER AND KEELER LIMITED (No 2) (1967) 1 AC PAGE 853

As regards the contention that Issue Estoppel applies to Criminal Trials, **SARKAR LAW OF EVIDENCE, SEVENTH EDITION, VOLUME 2** commented on Issue Estoppel out of a Criminal Verdict and stated that Issue Estoppel in a Criminal Matter has a different foundation to be looked at. The burden lies specifically on the Person who holds and who wants to take shelter of the Principle of Estoppel. The requirement is that both the Proceedings should necessarily be Criminal Proceedings. Even when the issues are identical, differences in the onus of proof may sometimes prevent an estoppel from arising, so Civil Proceedings are not necessarily estopped by an acquittal in respect of the same matter.

As regards, re-using of Evidential Material in Previous Decisions in Acquittal, is the case of **SAMBASIVAM VS PUBLIC PROSECUTOR OF MALAYA, FEDERATION OF MALAYA (1950) AC PAGE 458**, where the Prosecution relied on a Statement purporting to be the Defendant's but which the Defendant denied making, which contained an admission of the offence for which he was being tried for carrying a firearm and an admission of an offence of which he had, in different proceedings, been acquitted for possessing ammunition. The conviction was quashed because the Assessors who tried the case had not been told that the Prosecution could not ask the Court to accept a substantial and important part of what it said, namely that the Defendant had committed the offence of which he had previously been acquitted. **Lord McDermott** delivering the opinion of the Judicial Committee stated that, *"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the Person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between parties to the adjudication."*

The House of Lords reconsidered this principle of law enunciated in **Sambasivam's Case** in the case of **R VS Z (2000) 2 AC PAGE 483** and concluded that this above decision of **Lord McDermott** required qualification in order to confine its application to its proper context. The Principle of Double Jeopardy prevents a man, in the absence of Special Circumstances, from being prosecuted a second time on the same or substantially the same facts as have given rise to an Earlier Prosecution, which resulted either in his Acquittal or Conviction. An attempt to pursue a Prosecution in breach of this Principle of Double Jeopardy will justify a Plea of Autrefois Acquit or Autrefois Convict, or an Application to Stay the Proceedings as an Abuse Of Process. However, provided the Defendant is not placed in Double Jeopardy in this sense, evidence that is relevant to a Particular Charge is not rendered inadmissible simply because it shows that the Defendant was in fact, Guilty of an Offence of which he had previously been Acquitted. The Admission of such evidence would not infringe the Rule against Double Jeopardy because it would not put the Defendant in peril of Conviction in respect of the Charges of which he had been acquitted.

In the case of **CONNELLY VS DPP (1964) AC PAGE 1254, 1356f**, Three of the Law Lords expressed the opinion that Issue Estoppel would be applicable on appropriate facts in an English Criminal Case. **Lord Delvin** thought that this would be undesirable if only because of the difficulty of ascertaining what precise issues are determined in Criminal Proceedings in which there are no Pleadings, nothing but a General Verdict of a Jury and no reasoned Judgments. In **R VS HOGAN (1974) QB PAGE 398; 2 ALL ER PAGE 142**, a case in which it was possible to ascertain what issues had been determined by the Jury at the first trial. Hogan had unsuccessfully relied on self-defence in answer to a charge of causing grievous bodily harm with intent to produce that result. He was then charged with murder

after his victim had died. It was held that he was estopped from denying that he caused grievous bodily harm to the deceased without lawful excuse and with intent to do so. The result was that only issues as to whether the grievous bodily harm committed by Hogan and the availability of a plea of provocation could be treated as live issues, nonetheless, Hogan was acquitted.

However, **R VS HOGAN**, was overruled in **DIRECTOR OF PUBLIC PROSECUTIONS VS HUMPHRYS (1977) AC PAGE 1; (1976) 2 ALL ER PAGE 497**, where the House of Lords unanimously declared that Issue Estoppel does not apply in English Criminal Proceedings. Humphrys was acquitted on a charge of driving a motor vehicle on July 18, 1972 while disqualified from doing so. The only issue at the Trial was whether the Constable was correct in identifying him as the man he had stopped after seeing him drive a motorcycle on the day in question. He was subsequently charged with perjury with evidence tendered to show that he had driven his motorcycle at various times during 1972. After the Judge had overruled a submission that there was an Issue Estoppel, the same Constable gave the same evidence as that which he had given on the former occasion, identifying Humphrys as the driver he had stopped on the 18th of July 1972. Humphrys was convicted, his Appeal to the Court of Appeal was allowed on the ground that the Constable's evidence was precluded by Issue Estoppel, but the House of Lords restored his Conviction and held further that the facts disclosed neither a breach of Double Jeopardy nor an Abuse of Process. According to the House, even if Issue Estoppel does apply in English Criminal Law, it would have been inapplicable in Humphrys' case because no estoppel is created by a Judgment obtained by fraud (including wilfully false evidence).

According to **Archbold Criminal Pleading, Evidence and Practice 2008, PARA 4-157 PAGE 437**, the Civil Doctrine of Issue Estoppel, as distinct from that of Res Judicata, has **No Application to the Criminal Law**. In certain cases, an attempt to raise again an issue that has, in effect, been decided in a Previous Criminal Trial will amount to an Abuse of Process and may be stayed, even though it does not come within Principle of Res Judicata. The Doctrine of Res Judicata does apply to the Criminal Law in the form of the maxim *nemo debet bis vexari pro eadem causa or nemo debet bis puniri pro uno delicto*- "*no-one should be twice put in jeopardy of being convicted and punished for the same offence*" (*the Rule against Double Jeopardy*. The Pleas of Autrefois Convict and Acquit are founded on these Maxims.

In a Criminal Action, every Defendant must stand or fall on his own Merit and Representations and even the Representation of a Common Principal does not by itself, lead to Privity.

On the authority of **ALADE VS OLUKADE (1976) 2 SC AT 183 PER IDIGBE JSC AT PP 188-189**, it is clear that where a Judgment is admitted in evidence, a Trial Court is entitled to make use of every relevant fact contained in that Judgment.

It is therefore imperative to analyze this Issue of Estoppel in the light of the Judgments delivered on the 29th Day of July 2005 by my Learned Brother **Liman J.**, in **Suit N0: FHC/KD/144C/2004**, which was tendered into evidence as **Exhibit D21Bas well as** another Judgment by Liman J., delivered on the 26th of October 2006 in **Suit N0: FHC/KD/43C/2004**, which was tendered into evidence as **Exhibit Y**. This is because these Two Judgments centered on the Bankers of AllStates Trust Bank Plc.

In 2005, Six Bankers were charged with Conspiracy, Abetment and Two Offences under the **Miscellaneous Offences Decree As Amended** by the **Tribunals (Certain Consequential Amendment etc.,) Decree N0. 62 of 1999**, which were in regard to Aiding, Counselling, Procuring or Conspiring to commit an Offence under this Act and Fraudulently or Knowingly Altering, Forging,

Procuring, Accepting or Presenting to another Person, a Cheque knowing it to be false, forged, stolen or unlawfully procured.

It is from this Ruling on a No-Case Submission, that Learned Silk, Kanu Agabi SAN, evoked the Question of Issue Estoppel.

He specifically drew out the fact that my Learned Brother had held “that the Funds had not been misappropriated by the Defendant and that the disbursement of the Funds, was done pursuant to an Official Instruction given by the Government of Plateau State”, which he argued “constitutes a Gross Abuse of the Judicial Process to reopen and seek to re-litigate the very same Issue.” He stated that the Issue of Disbursement of these Funds was part of the allegations in that Case.

A careful read and an appreciation of facts in the Two Decisions of **Liman J.** would show that the Defendant was NOT a Participant at that Trial. Learned Silk representing the Prosecution had submitted that the Defendant’s Preliminary Objection centered on his Immunity, which was upheld and his name was struck off the Charge.

From **Liman J.’s** Ruling, one can see that Learned Counsel representing the 1st and 3rd Defendants, in his arguments on Count 2, submitted that the Prosecution woefully failed to prove that they accepted the Central Bank of Nigeria Cheque from Joshua Chibi Dariye, as all the Prosecution did, was to show that the Cheque was used in opening an Account.

As regards Count 4, he contended that the absence of a Principal Offender to be instigated, constituted no Offence of Abetment.

Learned Silk representing the 2nd Defendant submitted inter alia that “No evidence was laid by the Prosecution to establish that Exhibit A and A1 were unlawfully procured and further, that there was no evidence to show that the 2nd Defendant aided Chief J.C. Dariye to criminally misappropriate or dishonestly misappropriate to his own use or some other use, the Sum of N1, 161, 162, 900 in any way or manner whatsoever. And neither was there evidence to prove disbursement or authority to disburse the various Sums for the benefit or use of Chief J.C. Dariye.

Paul Erokoro SAN in his Submission regarding Count 4 of the Charge submitted that, “No iota of evidence was adduced to show that the Cheque was unlawfully procured”.

The Trial Judge Liman J. had pointed out in his Considered Ruling that Erokoro SAN appeared to have mixed up his Submissions with the facts in **Case NO: FHC/KD/143C/2004**, with the facts of the Case he was considering. He also questioned whether the Prosecution laid any evidence to prove any of the Counts of Offences and whether they laid any evidence to prove that the Cheque was unlawfully procured. He held that the Prosecution did not prove that the Bankers had direct knowledge that the Cheque was unlawfully procured and held that the failure of the Prosecution to prove this, was fatal to his case.

The Extract of His Lordship’s Ruling culled by Learned Silk representing the Defendant was accurate but this view was held in the light of **Exhibit E6**, which was the Written Authority to disburse the Funds. One thing that flows from this is that, **Exhibit E6**, (which is tendered before this Court as **Exhibit P4 Page 3**), is said to be the “formal authority by the Executive Governor Plateau State of Nigeria, Chief Joshua Chibi Dariye.” With this Exhibit, his Lordship found it difficult to say that the Authority to disburse was not the Official Act of Plateau State Government. He was also unable to see how this disbursement disclosed any Dishonest Misappropriation. In the Penultimate Paragraph of this Ruling in **Exhibit D21B**, His Lordship asked some very pertinent questions and it is better expressed in his own words, which are as follows:

“I am unable to see how this disbursement has disclosed any dishonest misappropriation. Did Joshua Dariye misappropriate it for himself, if yes, no such evidence was adduced; the Prosecution has not shown that all Payments made to the various Persons or Companies, were for a particular purpose, that (sic) for which the Monies were meant for Plateau State Government. The payment of N80, 000, 000. 00 in favour of the Union Savings and Loans Limited and the submission (sic) transactions made thereon add up to nothing as Joshua Dariye was not called to state why the payment was made and neither was Dan Elechi called to testify. It is my respectful view that at this stage, it is difficult to hold that the Prosecutor has made out a case of conspiracy and abetment under Counts 3 and 4 of the Charge...”

It is clear from the above, that the facts and evidence concerning Misappropriation by the Defendant was not brought to the fore by the Prosecution and so, no definite pronouncement could be made as concerning **SPECIFICALLY CHIEF JOSHUA CHIBI DARIYE**. In any event, the contention in that case, did not directly concern the Defendant because he could not abet himself, nor could he be charged with accepting a Cheque from himself.

It is also clear that the Bankers were facing Four Counts of Charges. The First Two Offences were brought under **Sections 85 and 97(1) of the Penal Code** for Abetment and Conspiracy. The Last Two Offences were brought under **Section 3(3) (a) of the Miscellaneous Offences Decree, As Amended** for Fraudulently or Knowingly Altering, Forging, Procuring, Accepting or Presenting a Cheque with the knowledge that it was false, forged, stolen or unlawfully procured; and **Section 10(6)** of the same Decree was in regard to Conspiracy for the Offence in **Section 3(3)**.

The Offence of Criminal Misappropriation arose because the Bankers were charged with aiding Chief Joshua Chibi Dariye to commit Criminal Misappropriation. The Prosecution failed to establish the fact that they AIDED, because the Bankers certainly could not be said to AID what was NOT established by evidence as well as the absence of the Principal Offender and this fact was recognised by the Judge. For the Bankers to be liable for Aiding the Misappropriation, it had to be established that there was a Criminal Synergy between them and Chief Joshua Chibi Dariye, who critically was not a Participant at the Trial, either as a Witness or as a Co-Accused.

It is not inconceivable to deduce that the Class or Type of Evidence needed to establish the Offence of Abetment etc., is not the Class or Type of Evidence needed to ground a Conviction for Criminal Breach of Trust and Criminal Misappropriation. One thing is for sure, the Elements or Ingredients for these Offences are materially different. It is noted further upon a close look at **Sections 3 and 10 of the Miscellaneous Offences Decree As Amended by the Tribunals (Certain Consequential Amendment etc.,) Decree**, there was no Prescription for the Offences of Criminal Breach of Trust or Criminal Misappropriation under **Sections 315 and 309 of the Penal Code Act** and neither were they elements to be established by the Prosecution in their regard.

There is also the fact that as at the **Year 2005**, when the Ruling in the **FHC/KD/144C/2004** was delivered, the Defendant was still serving as the Executive Governor of Plateau State and was enjoying the benefit of **Section 308 of the 1999 Constitution**, which placed a restriction on Legal Proceedings against certain Class of Public Officers, specified in **Section 308(3) of the 1999 Constitution**.

In **ABACHA VS FRN (2014) LPELR-22014 (SC), ONNOGHEN JSC (NOW CJN) AT PAGES 70, 71 PARA B**, held that, “the purpose of immunity is to allow the incumbent President or Head of State or

Vice- President, Governor or Deputy Governor, a complete freehand and mind to perform his or her duties and responsibilities while in Office; to protect the incumbent from harassment. The immunity, however, does not extend or cover the period immediately after leaving Office neither does it extend to include his family members during and after the period of his incumbency. It follows therefore that even if General Sani Abacha was to be alive, the immunity he enjoyed under the Law and Constitution is Personal to him and limited to his Period of Office as he can be proceeded against immediately he left Office for Offences committed while occupying the Office of Head of State.

In **ALAMIEYESEIGHA VS FRN (2006) 16 NWLR PART 1004 PAGE 41**, “it was held that, “It is certainly not the purport of that Provision for the beneficiaries of the said immunity to hide behind the Constitution and offend the Law. To the contrary, it is intended to protect the beneficiaries from the hindrance of frivolous Court Actions and from Litigation aimed at them for actions taken in Public Interest against any Individual Interest. It is to allow the Executives function without fear or favour in the discharge of their duties.” See also the cases of **MUSTAPHA VS SUNTAI & ORS (2013) LPELR-22109 (CA); AMAECHI VS INEC (2008) LPELR-446 (SC) PER ONNOGHEN JSC; GLOBAL EXCELLENCE COMMUNICATIONS LTD & ORS VS MR. DONALD DUKE (2007) 16 NWLR PART 1059, PAGE 22 AT PAGE 199 PARAS D-F; AND FAWEHINMI VS IGP (2002) 7 NWLR PART 767 PAGE 606 AT PAGES 699, 700 PER KALGO JSC.**

It is clear that whilst serving as Executive Governor of Plateau State, the Defendant could not be charged before any Court but as held by **Kalگو JSC**, the Immunity against full Criminal Investigation or Criminal Proceedings in respect of any Offence allegedly committed during the Tenure of his Office, is not forever.

Turning to **Exhibit Y**, the Second Judgment delivered by my Learned Brother, **Liman J.** on the 26th of October 2006, it is clear that the Complainant charged Three Persons in that Action and they were: Mr. Awe Odessa, the AllStates Trust Banker, who opened the Account for Ebenezer Retnan Ventures, the Bank itself and one Adonye Roberts, another Banker with AllStates Trust Bank Plc., an erstwhile Accounts Officer for Ebenezer Retnan Ventures. The Defendant was not a Party to this Action but he was the Trigger and Main Factor, that is, it was matters concerning the Defendant that provoked the Charges in **FHC/KD/43C/2004 the FEDERAL REPUBLIC OF NIGERIA VS AWE ODESSA, ALLSTATES TRUST BANK PLC AND ADONYE ROBERTS.**

The Charges were brought pursuant to the **Money Laundering Decree 1995** and were related to Conspiracy and Failure to Verify the Identity and Address of Ebenezer Retnan Ventures, a Customer of the Bank. At the Conclusion of the Case, Liman J., convicted the 1st and 2nd Defendants and revoked the Certificate of Incorporation of AllStates Trust Bank Plc., and ordered its Properties to be forfeited to the Federal Government, with consideration to the Depositors of the Bank.

This **Exhibit Y** goes to show the consequences of the Bank and of its Officials in diverting from Banking Norms and Practice.

The Second Challenge in regard to **Issue Estoppel** is that concerning the **Report of the Special Committee of Inquiry constituted by the Plateau State House of Assembly.**

Learned Silk, representing the Defendant, in his Written Address, submitted that Mr. Nuhu Ribadu, the then Chairman of the EFCC, wrote Two Letters addressed to the Speaker and the Plateau State House of Assembly dated the 21st and 30th day of November 2005. He reported the Defendant to the House of Assembly Plateau State in order for them to exercise their Powers in line with **Section 128**

of the 1999 Constitution. The Letter urged the House of Assembly to investigate and impeach the Defendant, who was then Governor of the State, on the allegations of Conspiracy, Abuse of Office, Official Corruption, Diversion of Public Funds, Stealing and Money Laundering perpetrated by the Defendant and others.

As a result of these Letters, a House Special Committee was set up by the Plateau State House of Assembly to investigate the allegations and subsequently a Report was produced.

At the Hearing before the House of Assembly, the State Commissioner for Finance testified that it was usual practice for the State to spend beforehand its own Funds in solving Ecological and other problems of the State. The Funds then spent will be refunded by the Federal Government and applied to other uses to meet the needs of the State as determined by the Governor and the State House of Assembly.

Learned Silk, representing the Defence submitted that after the Investigation of the Petition, the Plateau State House of Assembly produced **Exhibits D6 and D7** as the Special Committee's Main Reports.

The Report concluded that the Executive Powers of the Governor was vested in the Defendant, and he was acting in his Official Capacity using his Executive Discretion when disbursing States Funds. He was therefore not guilty of any wrongdoing. They confirmed that it was a disbursement sanctioned by the Government of Plateau State. There was also evidence on Record that the Interim Government, which took over from the Defendant when the State Government declared a State of Emergency, approved further payments of N100 Million to the same Pinnacle Communication Limited, on the same Contract.

According to Learned Silk, it was never established that Funds belonging to the Plateau State Government were paid into the Account of Ebenezer Retnan Ventures Ltd. He contended further that from **Exhibit P4 and the Report of Plateau State House of Assembly**, the Charge of Criminal Breach of Trust was not proved. PW1, in his evidence, confirmed that Pinnacle Communication Ltd admitted that it collected the Sum of N250 Million from the disbursement and was indeed a Contractor to Plateau State Government. The Accountant General of Plateau State at the time of the Investigation was Mathias Dafur, and he made a Statement to the EFCC where he enumerated the Banks in which Plateau State Government operated Accounts, and one of such Banks was AllStates Trust Bank Plc.

Learned Silk representing the Defence, further contended that EFCC arrived at its conclusions indicting the Defendant without first interviewing him.

Learned Silk further argued that the authority exercised by the House of Assembly was judicial, having regard to its authority to impeach the Defendant, if found guilty of the Charges brought against him by the EFCC. According to him, once the House of Assembly reached a decision exonerating the Defendant, the matter ought to have ended there under the Rules of Evidence. The Rules of Estoppel or Res Judicata operate to enjoin this Court to come to the same conclusion. Learned Silk urged the Court to hold that the Charge is speculative and fishy and it constitutes an Abuse of Judicial Process, since the Prosecution has been hunting for a Court that will agree with them to convict the Defendant.

Learned Silk, representing the Prosecution, on his own part, referred to the reliance by the Defence on the alleged testimonies of the Commissioner for Finance before the State Assembly in **Exhibit D6, particularly at Pages 39 and 42**, as well as other similar evidence adduced before the House of Assembly, and questioned whether these testimonies were applicable evidence before this Court.

He submitted as inappropriate the testimony of the Commissioner of Finance before the State Assembly, which was to the effect that the Defendant disbursed the Funds in his Official Capacity, as Governor of the State and also that no part of the Funds was stolen. These are not admissible evidence for this Trial to prove the truth of the Contents of those Statements.

By the Provision of **Section 46(1) of the Evidence Act**, evidence given by a Witness in a Judicial proceedings or before any Person authorized by Law to take it, is admissible for the purpose of proving, the truth of the fact which it states, in a Subsequent Judicial Proceedings or at the Latter Stage of the Same Judicial Proceedings, when the Witness cannot be called for any of the reasons specified in **Section 39 of the Evidence Act** or when the Witness is kept out of the way by the adverse Party provided that the Proceedings were between the same Parties or their Representative in Interest.

By **Section 39 of the Evidence Act**, it must be shown that the Witness is either dead or cannot be found or has become incapable of giving evidence. This provision was not complied with, as there was no foundation laid by the Defence satisfying, the requirement of **Section 39 and 46 of the Evidence Act**. The Prosecution was not given the opportunity to Cross-Examine the Commissioner of Finance before the House of Assembly. He cited and relied on the case of **AREMU CHUKWU (2012) 3 NWLR (PT 1288) 587 @620- 621**, where the Court of Appeal held that the evidence of DW1 at the Pre-Trial Proceedings was evidence given in a Previous Proceeding, which was only usable at the Present Proceedings for the purpose of Cross-Examination, but was inadmissible as the truth of its Content.

Therefore, he argued that Evidence given in a Previous Case is not admissible by the Court trying a Latter Case, except under **Section 46 of the Evidence Act**. The best use that can be made of such evidence is for Cross-Examination with the aim of discrediting a Witness called to testify in the Latter Case. Reliance was placed on the cases of **AYANWALE VS AYANDA (1988) 1NWLR (PT68) 22**, **SHONEKAN VS SMITH (1964) 1 ALL NLR 168**, **OGUNTAYO VS ADELAJA (2009) ALL FWLR 1626**. He urged the Court to disregard the reference made to the testimony of the Commissioner of Finance of Plateau State before the State House of Assembly.

The Prosecution further argued that the submission of the Defendant that the Plateau State House of Assembly had exonerated him of the Crime alleged in this Case is laughable. The Defence Witnesses gave evidence that there was no such clearance. DW2 Geoffrey Teme, was the Majority Leader of the House, who tendered **Exhibits D6 and D7**, and he admitted during Cross-Examination that the Committees of the House were not competent to try Crimes and were not Competent to clear the Defendant as to whether he is guilty of the Offence or not. He never claimed the Committee exonerated the Defendant nor did he state that monies were misappropriated.

Assuming without conceding that the House of Assembly found that the Defendant did not misappropriate the Funds, such Findings cannot ground a Plea of Issue Estoppel or a Plea of Double Jeopardy. The State House of Assembly is not Constitutionally empowered to try Crimes, and the Trial envisaged under **Section 36 (9) and 12 of the 1999 Constitution**, is a Trial before a Court of Competent Jurisdiction to try Crimes and he relied on the Case Law Authorities of **BABA VS NCATC (1991) 5 NWLR (PT 192) 388 @415**, **SOFEKUN VS AKINYEMI (1980) 5-7 SC 1**, **DENLOYE VS MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY COMMITTEE (1968) 1 ALL NLR 306**, **GARBA VS THE UNIVERSITY OF MAIDUGURI (1986) 1 NWLR (PT 18) 550 AND KALU VS FRN (2014) 1 NWLR (PT 1389) 479 @541**.

Finally, he submitted that the House of Assembly cannot determine the issue of Crimes and do not have the Competence to clear the Defendant of any Crime.

There was no Reply on Points of Law on this issue concerning the House of Assembly.

Now, it is initially important to note **Exhibits D6 and D7**, tendered by the Defence, which are the Compilation of Exhibits and the Report of the Special Committee of the Plateau State House of Assembly dated June 2006. This Special Committee was set up by the Plateau State House of Assembly to investigate allegations against the Defendant.

Exhibit D7, is the Main Report and from this Report, it is clear that the Committee was mandated to investigate allegations of Conspiracy, Abuse of Office, Official Corruption, Diversion of Public Funds, Stealing and Money Laundering perpetrated by Chief Joshua C. Dariye, the Executive Governor of Plateau State and Others by the Economic and Financial Crimes Commission. Eight out of Nine Members of the Special Committee signed this Report.

The Mandate of this Special Committee, as recognized by its Members in the Introductory Page, was **“TO INVESTIGATE ALLEGATIONS ONLY”**.

In **Paragraphs 6.3, 6.4 and 6.5 of Exhibit D7, The Report**, the Special Committee, accepted the Uncontroverted Evidence that Criminal Charges against the Defendant and Others, were pending before Two Competent Courts on the same Sets of Facts.

They recognized **Sections 6(1) and 6(6) of the 1999 Constitution**, which conferred Jurisdiction on a Court of Law, and stated that the Court’s Jurisdiction is not shared with the State House of Assembly.

They stated thus: -

“Once a Matter is shown to be before a Competent Court of Law, not only the PLHA, but indeed all other Authorities and Bodies must refrain from any interference with the Judicial Powers. This is in keeping with the Cardinal and accepted Constitutional Arrangement of Separation of Process (sic) between the Three Arms of Government: The Executive, the Legislature and the Judiciary. None should truncate the functions of the others. Each should work in corporation (sic) with the others.”

In **Paragraph 6.5 of the Report**, they stated: -

“Exhibits 6 and 7 are sufficient to oust the Competence of this Honourable House from proceeding further with this investigation. EFCC, nay, all concerned are hereby advised not only to wait the out-come of the Criminal Trials in Exhibits 6 and 7, but to abide by such out-come or appeal to the appropriate Court.”

In **Paragraph 6.7 of the Report**, the Committee inter alia, recognized that their Investigation was **not a Trial in a Judicial Sense but was only a Legislative Inquiry**.

In **Paragraph 7.0 of the Report**, it was stated that the Six Criminal Offences they were to investigate, were punishable under Several Enactments. They added: -

“However, we are not here concerned with a Criminal Offence or any Trial at all. The task of the Committee is to investigate the allegations of the Commission of these Offences by analyzing the evidence, both oral and documentary and determine whether there is a prima facie case against Chief Joshua Chibi Dariye. If there is such a case, the Special Committee will recommend that the

PLHA proceeds against Chief Joshua Dariye according to the Procedure laid down in the Constitution.”

In Paragraph 9.4 of the Report on Recommendations, the Special Committee realized that they were set up by the entire PLHA by virtue of **Section 103 of the Constitution** and therefore, **NO FINAL DECISION CAN BE TAKEN AT THIS STAGE. “The Committee was only to submit this Report to the entire House. It is the duty of this Committee therefore, to make recommendations based on the evidence adduced by the parties concerned.**

In the majority of **Paragraphs 9.5 (i) to (v)**, this Special Committee recognized that the events upon which the allegations were premised occurred PRIOR to the life of this current House of Assembly and therefore, OUTSIDE the Legislative Competence of the House. They then urged the allegations to be discountenanced. Further, the Report noted that the Tenure of Office of the Defendant had expired due to Effluxion of Time. Also noted was the fact that since the same set of facts are subject to adjudication by two Competent Superior Courts of Records, the Matter was therefore Res Judicata and the House of Assembly could not review by way of Legislative Investigation.

The Special Committee Members had in **Paragraph 9.5(iv)** urged the House of Assembly not to conduct Legislative Inquiry and had strangely in **Paragraph 9.5(v)**, found the allegations to be baseless, unsubstantiated and completely borne out of misconception or even deliberate malice and therefore, without merit.

Their Conclusion appears to be drawn from the air, because they declined throughout to make a finding on Sub-Judice Matters.

In the case of **MILITARY GOVERNOR OF IMO STATE & 1 OR VS CHIEF B.A.E. NWAUWA (1997) NSCQR PAGE 420; (1997) 2 NWLR PART 490 PAGE 675**, it was held as Settled Law that once a Person is accused of the commission of a Criminal Offence, he must only be tried by a Court of Law established under the Constitution, where the complaints of his Prosecutors can be ventilated in Public in accordance with the Law and where his Constitutional Right of Fair Hearing would be assured. No other Tribunal, Investigating Panel or Committee will do. Reference is also made to the cases of **DR. O.G. SOFEKUN VS CHIEF N.O.A. AKINYEMI AND OTHERS (1981) 2 NWLR PAGE 135; (1980) 5-7 SC PAGE 1 AT PAGE 18; DENLOYE VS MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY COMMITTEE (1968) 1 ALL NLR PAGE 306; FEDERAL CIVIL SERVICE COMMISSION VS J.O. LAOYE (1989) 2 NWLR PART 106 PAGE 652.**

Accordingly, the Panel was incompetent to “try”, as it were, the Respondent and to find him “Guilty” on any Criminal Charges. The determination of the guilt or innocence of any Person accused of the Commission of a Criminal Offence is within the Exclusive Jurisdiction of a Court of Law constituted in the manner prescribed under the **Constitution of the Federal Republic of Nigeria, 1979**. It seems to me that what the State Government should have done was to refer the Criminal Allegations of Misappropriation of Sundry Public Funds to the Nigeria Police for Investigation and Prosecution, if necessary, but not to vest the Panel with any authority to deal with the same.

In any event, a very careful read of the Reports will show that the Special Committee Members recognized the fact that they had no Judicial Competence and Jurisdiction to make findings on Criminal Matters, and yielded such authority to the Courts of law. They also recognized the fact that the matters in the allegation before them, were already before Two Competent Courts of Jurisdiction and they made absolutely **NO PRONOUNCEMENT** in regard to any of the Charges before this Court.

DW3, Mr. Geoffrey Teme, a Member of the Special Committee also maintained this Opinion under Cross-Examination.

It is amazing that Learned Silk for the Defence would argue on a pointless issue before the Court. There was therefore no issue that could possibly estop this Court from considering the live issues before it.

As regards, Learned Silk representing the Prosecution's Submissions on **Sections 39 and 46 of the Evidence Act**, this is a misplaced Submission for the simple reason that **Provisos to Section 46** refers to Proceedings between the Same Parties or their Representatives in Interest and the Right and Opportunity to Cross-Examine must be present. To discuss these Sections, is an invitation to go into the Merit of these Reports, which are for the purposes of this Trial, somewhat irrelevant. The Committee Members themselves acknowledged that they are not a Judicial Body, they acknowledged the Supremacy of the Court. They acknowledged that theirs was only to Investigate only to turnaround and claim that the events did not occur during the Tenure of the Defendant as Governor and acknowledged in **Paragraph 9.5(ii)** that the Defendant "*cannot be proceeded against under the Current Tenure, which is entirely a different mandate for a different Constitutional Tenure.*" So, the argument of **Sections 39 and 46 of the Evidence Act**, are pointless arguments made by the Prosecuting Silk.

Therefore, the Court finds that there is no Final Legitimate and Constitutional Verdict that binds this Court as an Issue Estoppel or Res Judicata, in the broader sense.

As regards the long drawn out argument on **CHARGES**, concerning the fact that **Counts 1,2,4,5,6,7,8,10,13,15,17,19,21 and 23** are defective and incompetent, Learned Silk representing the Defendant submitted that the Offence of Criminal Breach of Trust under **Section 315**, as defined in **Section 311 of the Penal Code** must contain the essential element that the Defendant acted "**dishonestly**". Once this element is omitted, the omission is fatal, as all the elements must not only be stated but must be proved. He relied on the cases of **YAKUBU IBRAHIM VS COP (2010) LPELR - CA/A/6C/2017 (CA) PP 17-18, PARAS E-B, THEOPHILLUS ONUOHA VS THE STATE (1988) NWLR (PT83) 460, IBRAHIM AND ORS V COP (2010) LPELR-8984 (CA) AND AKWULE V THE QUEEN (1963) NWLR PT 105**. Citing the case of **ALABI VS STATE (1993) NO 7 NWLR 307**, Learned Silk submitted that in this case at hand, the essential element of dishonestly had been omitted from all the Counts of Criminal Breach of Trust, and therefore, no Offence lies for which proof beyond reasonable doubt would arise. Once the essential element is omitted, the question of leading evidence-in-chief and utilizing any discredited evidence during Cross-Examination to prove dishonestly does not arise, as that which is not charged, cannot be said to have been proved. Reliance was placed on the case of **UBANATU VS COMMISSIONER OF POLICE (2002) 2 NWLR PT 643**.

Further, he argued that a Charge from which an essential element has been omitted, contravenes the Rule against Ambiguity. A Defendant must understand what he is charged with and he relied on **Section 36(6) (a) and 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria**, to say that it is improper to convict a Person for an Offence that is not known to Law. The Prosecution cannot claim to have proved an element that is not charged nor proved, where the Particulars of the Offence as stated in the Charge Sheet are not clearly and accurately stated and the Defendant cannot prepare for that, as a Vague Charge means an ambiguous or uncertain Charge. He cited the case of **OKEKE AND ORS VS THE POLICE (1965) 2 ALL NLR 81**.

According to him, before the Prosecution can secure a conviction for a Criminal Offence, it must look for the ingredients of the Offence and ascertain critically that the acts or omissions of the Defendant come within the confines of the Particulars of the Offence charged. See the case of **AMADI VS THE STATE (1993) 8 NWLR (PT 314) 644 REFERRED TO P.270, PARAS E-F, and G-H.**

In the case of **CAPTAIN ABIDOYE VS FRN (2013) 12 SC (PT1) 99 @ PG 119 PARAS 25-30**, the Supreme Court held that any mistake in the Particulars of an Offence in a Charge, shall result in any Conviction based on such Charge, liable to be quashed on Appeal. Reference was further made to the cases of **OKEKE VS IGP (1965) 2 ALL NLR 81 AND THE QUEEN VS GBADAMOSI (1959) 4 FSC 181.** The elements or ingredients, which constitute the Offence charged, must be explicit and not left to speculation or inference. This also implies that non-essential ingredients are excluded from the Particulars of the Offence with which any Person is charged. A Charge should be clear, the Particulars and Statement of Offence must contain the Offence as prescribed by any Written Law and must accord with the Section of the Law creating the Offence, otherwise failure to comply, would lead to an acquittal. See the cases of **COMMISSIONER OF POLICE (MW) VS AKPATA (1976) 1 ALL NLR 235@240 -241; TIMOTHY VS FRN (2008) ALL FWLR (402) 1136.**

In the case of **AMADI VS THE STATE (1993) 8 NWLR (PT 314) 644 @ 664 PARAS A-D**, the Supreme Court stressed that it was pertinent to adhere to the Words of the Statute, which the Prosecution failed to do in the present case. He cited also the cases of **LATIFU SALAMI VS CHAIRMAN L.E.D.B AND ORS (1989) 5 NWLR (PT 123) 539 @555-556, ALHAJI UMARU ABBA TUKUR VS GONGOLA STATE GOVERNMENT (1988) NWLR (PT 68) 39 (1988) 1SC 78@101.**

IN FRN VS USMAN (2012) 8 NWLR (PT 1301) 141 @ 156-157 PERRhodes-Vivour JSC, held 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 notice to the Defence of the case it is up against.

Further, Learned Silk submitted that the Rules of Judicial Discipline also known as the Rules of Precedence are binding on all Courts in Nigeria, and lack of Judicial Discipline, would incur the wrath of the Appellate Courts. On this contention, he cited the cases of **OSHO VS FOREIGN FINANCE CORPORATION (1991) 4 NWLR (PT 184) 157, UNIVERSITY OF LAGOS VS OLANIYAN AND 2ORS (1985) 1 NWLR (PT1) 156, DALHATU VS TURAKI AND 5ORS (2003) 15 NWLR (PT 843) 310 and ACTION CONGRESS VS JANG (2009) 4 NWLR (PT 1132) 336.**

The Doctrine of Precedence is to ensure stability, consistency, predictability, certainty and continuity and the cardinal importance of this Doctrine has been severally re-echoed by the Apex Court in the cases of **OSAKUE VS F.C.E. ASABA (2010) 10 NWLR (PT 1201) 1 @PG 35 PARAS B-D, ROSSEK AND 2ORS VS A.C.B. LTD AND 2ORS (1993) 8 NWLR (PT 312) 382, (1993) 10 SCNJ 20 @54, NEPA AND 6ORS VS MRS P.O. ONAH (1997) 1 SCNJ 220 @ 226, (1997) 1 NWLR (PT 484) 680, FARREL VA ALEXANDER (1977) A.C 59, DALHATU VS TURAKI AND 5ORS (2003) 7 SCNJ 1@ 12, (2003) 15 NWLR (PT 843) 310, HABILA TIMOTHY AND ERINFUN VS HON. IRATSI YOHANNA ADAKI AND 3ORS.**

In response Learned Silk, representing the Prosecution submitted that **Section 315 of the Penal Code**, and the cases of **ONUOHA VS STATE** as well as **AKWULE VS QUEEN(BOTH CITED SUPRA)** do not support the Defendant's contention. It is clear that the ingredients under **Section 315 of the Penal Code** were captured in the Charge in **AKWULE's case**. The Defendant cannot set a new

requirement outside the authoritative statement of the Supreme Court in numerous cases. It should be noted that the Third Ingredient of Criminal Breach of Trust, uses the technical words, “Committed a Criminal Breach of Trust”. Once the Court contains these technical words, it would be said to have taken into consideration that the act is dishonest as defined in **Section 311 of the Penal Code** in its entirety. By that definition, to commit Criminal Breach of Trust in respect of a Property, is to dishonestly misappropriate or convert or use or dispose off that Property. He argued that the case of **YAKUBU IBRAHIM VS COP (SUPRA)** could not avail the Defendant because in that case, the Defendant was charged under **Sections 311 and 312 and not Section 315 of the Penal Code**.

He referred the Court to the Notes on Penal Code Law by **S. S. RICHARDSON, 1987, 4th Edition at Page 243** where the Learned Author had in setting out the Ingredients under **Sections 311 and 312**, listed Dishonestly as an element, whereas when setting out the Ingredients under **Section 315**, he did not include dishonestly, but stated the need to establish that the Defendant committed Criminal Breach of Trust. The Author also set out a Precedent on how to formulate a Charge under **Sections 314 and 315** and noted that he did not bother to spell out what constitutes Criminal Breach of Trust as defined in **Section 311 of the Penal Code** because the technical words had already been covered in the Definition.

Learned Silk illustrated his point with the Sample of Charge in **AKWULE’S CASE (SUPRA)**, which captured the Charge of Criminal Breach of Trust. Further, the Supreme Court in the case of **ONOGWU VS THE STATE (1995) 6 NWLR PART 401 PAGES 276 AT 291** relied on and adopted **S. S. RICHARDSON** in this case.

Further, Learned Silk submitted that the Charge had sufficiently captured the Offence of Criminal Breach of Trust and had also sufficiently given Notice to the Defendant as to the Charge he is facing before this Court. The issue of “dishonestly” is already embedded in the technical words of “committed Criminal Breach of Trust” and therefore, the argument of the Defendant is spurious and cannot vitiate his Trial. According to him, the Prosecution adhered strictly to the words used under the Section and cannot be said to have omitted any ingredient, whether stipulated or envisaged under the Section.

He urged the Court to look at other Provisions in the Penal Code that defined Other Offences and used **Sections 286 and 287 of the Penal Code**, as examples of the Definitive and Prescriptive Style of Drafting Charges and this Style recommended by the Learned Author S. S. Richardson was accepted by the Courts in the case of **AJIBOYE VS FRN (2014) LPELR CA/IL/C51/2014**, as capturing all the ingredients of the Offences of Theft and Criminal Breach of Trust.

Finally on this point, Learned Silk for the Prosecution submitted that the Defendant did not state that he was misled by the alleged error, by stating what he presumed to be the omission in the Particulars of the Offence. He pleaded Not Guilty to the Charge, and had even appealed from the High Court through to the Supreme Court on Interlocutory Issues without stating he was misled by the manner in which the Charges were drafted before the Three Tiers of Courts. He submitted that the Prosecution used the wordings of **Section 315 of the Penal Code** under which the Defendant was charged and the Defendant cannot be right in contending that the Prosecution omitted the essential ingredients of the offence.

A Senior Advocate of Nigeria also represented the Defence and he did not show how he was misled. Many of the Offences of Criminal Breach of Trust and Offences under the Penal Code were copied directly from the **Indian Penal Code of 1860**. Though the Indian Penal Code has had various

Amendments, the Nigerian Penal Code and the Indian Penal Code are still virtually the same, and Nigerian Cases have followed the Precedent in India.

In Reply on Points of Law, Learned Silk representing the Defendant submitted that the Prosecution did not adequately respond to the Crux of their Submission on this issue but rather submitted that notwithstanding the Provision of **Section 311 of the Penal Code**, there is no need to expressly include the element of dishonestly in the Charge, as same has been subsumed in the technical words 'Criminal Breach of Trust'. The position of the Prosecution is contrary to all known Rules relating to Drafting of Charges as well as the Constitutional Provision that anyone charged with a Criminal Offence must be informed of the Offence in clear terms.

Referring to **Section 36 (6) (a)-(e) of the 1999 Constitution**, he told the Court that it is clear that Dishonestly is not only an essential element of the Offence under consideration, but the Law requires same to be expressly stated while framing the Charge. The Failure to do so leaves the Court with no other option than to declare those Counts invalid and same ought to be quashed.

Emphasis has always been on the ingredients of the Offence, as they exist in the Statute and not on the interpretation of what the Prosecution makes of the Element of the Offence. To buttress his point, he relied on the cases of **YAKUBU IBRAHIM VS COP (2010) LPELR-CA/A/6C/2017 (CA) PP 17-18 PARAS E-B; THEOPHILLUS ONUOHA VS THE STATE (1988) NWLR (PT 83) 460; IBRAHIM AND ORS VS COMMISSIONER OF POLICE (2010) LPELR 8984 (CA); AKWULE VS THE QUEEN (1963) NNLR PAGE 105; CAPTAIN ABIDOYE VS FRN (2013) 12 SC PART 1 PAGE 99 AT PAGE 119 PARAS 25-30.**

Learned Silk, argued that even the Prosecution agreed with their position, when he submitted that, once the Count contains the technical words, it would be said to have taken into consideration that the act is dishonest as defined in **Section 311 of the Penal Code** in its entirety, which is to say that from this definition, to commit Crime Breach of Trust meant to dishonestly misappropriate, convert, use or dispose off Property. According to him, it is not the intention of the Draftsman that the word "dishonesty" be hidden or subsumed under any technical word. He urged the Court to discountenance the arguments of the Prosecution on this issue and hold that the failure to state all the essential elements of the Offence in accordance with binding Judicial Authorities on this issue is fatal and therefore, **Counts 1,2,4,5,6,7,8,10,13,15,17,19,21 and 23** should be quashed.

In addition, Learned Silk also contended that there was no basis for the Prosecution to resort to the Indian Penal Code's definition of Criminal Breach of Trust, when there are well-covered definitions in Supreme Court decisions, which are followed by the Court of Appeal, and which decisions by Rules of Precedence also known as Rules of Judicial Discipline, are binding on Lower Courts. Moreover, it is assumed that the Apex Court knew of the provisions of the Indian Penal Code, when it prescribed that the elements of the Offence of Criminal Breach of Trust, including dishonesty were to be specified in the Charge. Therefore, reliance by the Prosecution on Indian Penal Code or decisions is a clear admission that the decisions of the Apex Courts do not support the contention of the Prosecution and he urged the Court not to look to foreign jurisdictions for guidance when there are Nigerian Case Law Authorities. Learned Silk argued as untrue the submission that Nigerian Case Law follow Indian Precedence, citing the **NUHU VS DSS KWARA STATE COMMAND (2017) LPELR-4235 (CA); OKON & ORS VS THE STATE (1988) 1 NWLR PART 69 PAGE 172; (1988) ALL NLR PAGE 173; (1988) 2 SC PAGE 140; ARAKA VS EGBUE (2003) 17 NWLR PART 848 PAGE 1; PFIZER SPECIALITIES LTD VS CHYZOB PHARMACY LTD (2008) ALL FWLR PART 414 PAGE 1455 AT PAGE 1489 PARAS E-G,** to say Foreign Legislations and Decisions are persuasive in nature, but they cannot supplant Nigerian

Case Law and by the Principles of Stare Decisis, Nigerian Authorities rank higher in priority and Applications and are binding on all Lower Courts.

Learned Silk, Kanu Agabi SAN also submitted that differences between Nigerian and Foreign Decision, including that of English Courts, had never suggested that the Nigerian Decision is *per incuriam* or wrong and the only recognizable circumstance where a foreign decision is preferred, is when Supreme Court finds its own decision on a Point of Law to be wrong, citing the case of **ARAKA VS EGBUE (SUPRA) AT PAGE 31 PARAS A-E PER TOBI JSC; CARRIBEAN TRADING & FIDELITY CORPORATION VS NNPC (1992) 7 NWLR PART 252 PAGE 161.**

Finally, Learned Silk representing the Defendant argued that the technical words conveyed in the phraseology “committed a Criminal Breach of Trust”, denotes a vague expression and its repetitious use by the Prosecution clearly showed that the element of dishonesty was not charged. This informed the Appellate Courts in their decisions to explicitly state that dishonesty, is an element for the Offence of Criminal Breach of Trust and had never approved the use of such words described as being technical, to suffice when stating out the elements of an Offence. Therefore, elements of an Offence should not be left to mere assumptions and speculations.

Now, the Court finds it clear that by the time the Original Charges were framed, the Governing Law was the **Criminal Procedure Code 1960** and not the newly promulgated **Administration of Criminal Justice Act 2015**. Following the Amendment of the Charges on the 9th of May 2016, the Drafting of Charges was fully governed by the **Administration of Criminal Justice Act 2015**.

In a newly delivered Judgment of the Supreme Court dated the 26th day of January 2018, **AKA’AHS JSC** in the case of **GABRIEL DAUDU VS FEDERAL REPUBLIC OF NIGERIA (2018) SUIT NO: SC.172/2017**, held inter alia that it is the Substantive Law in operation at the time an Offence is said to have been committed that has to be referred to, when a Person is being charged to Court but the Procedural Law to be used, would be the Current One. Thus, if the Evidence Act or the Criminal Procedure Law has been Amended or Replaced, and a new one is in place at the time of Trial, it is the Amended or Newly Enacted Evidence Act/ Criminal Procedure Code that will be used to guide the Trial, notwithstanding that the Offence was committed before the Promulgation of the new Procedural Law.

Therefore, this Court would, resort to the provisions of the **Administration of Criminal Justice Act 2015**.

Under **Section 195 of the Administration of Criminal Justice Act 2015**, which replaced **Chapter XIX AT Section 201 (5) of the Criminal Procedure Code**, it states that the fact that a Charge is made, is equivalent to a Statement that every legal condition required by Law to constitute the Offence charged was fulfilled in the particular case. This is a legal presumption.

Under Section 194(1) of the Administration of Criminal Justice Act 2015, a Charge shall state the Offence with which the Defendant is charged. It did not say that a Charge shall set out the Ingredients of the Offence and all it required is the Offence.

Section 194(2)(a) of the Administration of Criminal Justice Act 2015, formerly **Section 201 (2) of the Criminal Procedure Code**, states that “If the Law which creates the Offence gives it any Specific Name, the Offence may be described in the Charge by that Name Only. The Offence should be stated in its ordinary name and not in its technical name.

Under Section 194(3) of the Administration of Criminal Justice Act 2015, formerly **Section 201 (4) of the Criminal Procedure Code**, it states that the Law and Section of the Law against which the Offence is said to have been committed shall be mentioned in the Charge.

Section 196(1) of the Administration of Criminal Justice Act 2015, on its own part states, “The Charge shall contain such particulars as to the time and place of the alleged Offence and the Defendant, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the Defendant notice of the Offence with which he is charged.”

Section 200(1) of the Administration of Criminal Justice Act 2015, provides, “In a Charge, words used in describing the Offence are deemed to have been used in the sense attached to them, respectively, in the Law creating the Offence.”

The Author of the Criminal Procedure Code in the Northern States of Nigeria, Jeffrey Richard Jones, erstwhile Chief Judge of Kano State, analyzed this Section, stating that normally, it is the Punishment Section alone that is stated in the Charge, and it was a correct practice with regard to the Penal Code. See **Appendix B of the Criminal Procedure Code**. The Author further stated that where a Statute creates a number of offence in different Sections and then combines the punishments for two or more of them in a single separate Section, as in the Road Traffic Regulations, then it is better for the Charge to state both the Section creating the Offence and the Punishment Section. It is to be noted that the word “MAY” in Section 200 of the Criminal Procedure Code is discretionary and not mandatory. In setting out the essential ingredients for Breach of Trust, he also had used the word “Criminal Breach of Trust ” and had not specifically used the word “Dishonestly”. So also the Supreme Court in the case of **ONOGWU VS THE STATE (1995) 6 NWLR PT 401, 276 AT 291**, who had in this case, used the same phrase, without the word, “Dishonestly.”

It is advisable to employ the exact words used by the Particular Section of the Law, which created the Offence in the Counts. In **ADISA VS A-G, WESTERN NIGERIA (1965) 1 ALL NLR 412**, the accused was charged with murder, in an information at the High Court. The Statement of Offence stated that the accused “murdered” the deceased but the Particulars of Offence alleged that the accused “unlawfully killed” the deceased. During the trial, the Particulars of Offence was amended to read ‘murdered’ instead of ‘unlawfully killed’. The accused was convicted. On appeal, the Supreme Court held that the Charge as originally laid was defective because the Particulars ought to have stated that the accused murdered the deceased, and so the amendment was necessary.

However, a Count that uses words different from the exact words used by the Law is not unlawful. Provided that the accused Person is not misled by the different words used in the Count. See also the Cases of **ASUQUO VS THE STATE (1967) 1 ALL NLR 123; MGBEMENE VS INSPECTOR-GENERAL OF POLICE (1963) 2 SCNLR 261. IN OGBODU VS THE STATE (1987) 2 NWLR (PT. 54) 20**, on similar facts, the Supreme Court rejected the contention and held that although the Precedents in the Third Schedule to the Criminal Procedure Act employs the word ‘murdered’ instead of ‘unlawfully killed’ for its precedent charge for murder, nonetheless it is permissible to use the expression ‘Unlawfully Killed’ instead of ‘Murder’, because the former expression encompasses both Murder and Manslaughter by virtue of **Section 315 of the Criminal Code**. The Court concluded that the Charge was not defective and that the Appellant was not misled because he knew he was being tried for Murder and he defended a Charge of Murder. The Appeal was dismissed.

The Rule against Ambiguity states that Charges must be clear to the extent as to give a Defendant adequate notice of the Offence for which he is charged. It applies to Counts of alleged Offences and not

to the entire Charge Sheet. A Charge (that is, each Count) must therefore be free from ambiguity, must be certain and should contain as follows:

- The Offence for which the Defendant is Charged;
- The Written Law and the Section of the Written Law against which the Offence is said to have been committed;
- Particulars of the date and place where the Offence was allegedly committed;
- The Person against whom or thing, if any, in respect of which the Offence was committed; and
- The name of the Defendant.

The effect of an Ambiguous Charge will always depend on whether the Ambiguity was sufficient to mislead the Defendant, to the extent that he did not know the offence for which he is being tried, and the Defendant must know clearly why he is before the Court. This Rule unlike other Rules is rigid and inflexible, and admits of no exception. However, because the Purpose of the Rules is to give a Defendant adequate notice of the Charge against him, not all defects or ambiguities will nullify a Trial. Consequently, in cases where the errors or omissions are Minor or merely Technical, the Courts have refrained from nullifying the Charges only because of the said errors or omissions. In **OGBOMOR VS THE STATE (1985) 2 S. C 289; 1 NSCC PAGE 224 AT PAGES 233, 234**, the accused Person was charged before the Robbery and Firearms tribunal with armed robbery contrary to the Robbery and Firearms Act 1970. He was convicted. On appeal against conviction, it was contended that the accused was charged for an offence unknown to law because there is no Statute known as the Robbery and Firearms Act 1970. The Supreme Court held that mere misdescription of the Robbery and Firearms Act 1970 was minor and technical as the accused knew under which Statute he was being tried. Therefore the Defendant was not prejudiced by the defect in the Charge and the Appeal was dismissed.

Under no circumstances should a Charge be ambiguous. In the case of **OKEKE & ANOR VS INSPECTOR GENERAL OF POLICE (1965) 2 ALL NLR 81**, where the Defendant was charged with the Offences of Conspiracy and Stealing, the Trial Magistrate convicted him of both Offences and stated in the Judgment Book that the Defendant was charged under some Sections of the 'Criminal Acts'. On Appeal against Conviction, on the ground that the Charge was bad for ambiguity, it was held that as the Sections of the Enactment contravened by the Defendant were not stated in The Trial Magistrate's Judgment, and as there were no Enactments known as the 'Criminal Acts', the Charge contravened **Section 151(3) of the CPA**, which provides that the Written Law and the Section of the Written Law against which the Offence is alleged to have contravened shall be set out in the Charge. Thus, the Appeal was allowed. However, it is noted that the circumstances of this Case is different from the fact of an Omission of words in a Charge.

As the whole essence of this Rule is to give a Defendant notice of the Charge against him, some errors on the part of the Prosecution will not essentially invalidate the Charge or lead the Court to set aside any Conviction based on the Charge. Further reference is made to the cases of **DURU VS THE POLICE (1960) L.L.R 130; OGBOMOR VS THE STATE (1985) 1 NWLR 223; OGBUDU VS THE STATE (1987) 3 S.C. 497; SUGH VS THE STATE (1988) NWLR 475**.

It is also important to note that in a Trial by Information, the Prosecution has a Constitutional Duty under **Section 36(6)(a) and (b) and 12 of the 1999 Constitution (As Amended)** and a Statutory Duty under **Section 185(b) of the Criminal Procedure Code and Rules 3(2) and (4) of the Criminal Procedure (Application for Leave to Prefer a Charge in the High Court) Rules, 1970, which became operational on the 1st Day of April 1970**, to provide the Defendant, in advance of

his Trial, certain Materials, which sets out the evidence intended to be given in Trial against the Defendant, popularly referred to as the Proof of Evidence. This Proof of Evidence contains a Statement of the Charges, a Petition, if applicable, the List of the Witnesses the Prosecution proposes to call at the Trial, the Statement of the Evidence expected to be given by each Witness at the Trial, the Witness Statement(s), List of Exhibits to be introduced, including, if any, Further Witness Statement(s) and/or Further List of Exhibits. In **ABACHA VS THE STATE (2002), LPELR-16, SC, ONU JSC AT PARAS B-C** held that the purpose of serving Proof of Evidence upon an Accused, is to give him the opportunity of knowing what the Prosecution Witnesses will state in Court against him. See also the cases of **EDE VS THE STATE (1977) 1 FCA 95 AT 115; OYEKAN & ANOR VS AKINJIDE & ANOR (1965) 1 NMLR PAGE 200 AT PAGE 204; ARUNA VS THE STATE (1990) 6 NWLR PART 155 PAGE 125 AT PAGE 136.**

In **FARO VS IGP (1964) 1 ALL NLR PAGE 6**, a Charge of Obtaining by False Pretences, although the wording of the False Pretence might have been fuller or different, the Charge was held sufficient, if it conveys the substance of the False Pretence alleged, and the Conviction is not open to Objection if the substance of the False Pretence alleged does not differ from that of the Operative Pretence proved.

Now, **Section 220** of the **Administration of Criminal Justice Act 2015**, which is in pari materia with **Section 206** of **Criminal Procedure Code**, states thus: -

“An error in stating the Offence or the Particulars required to be stated in a Charge or an Omission to state the Offence or those Particulars, or any duplicity, misjoinder or non-joinder of the Particulars of the Offence shall not be regarded at any Stage of the Case as Material unless the Defendant was in fact misled by the error or omission.” Section 206 however added **“and it has occasioned a failure of justice.”**

Section 382 of the **Criminal Procedure Code**, on its own part states thus, **“Subject to the Provisions hereinbefore contained, no Findings, Sentence or Order passed by Court of Competent Jurisdiction shall be reversed or altered on Appeal or reviewed on account of an error, omission or irregularity in the Complaint, Summons, Warrant, Charge, Public Summons, Order, Judgment or other Proceeding before or during Trial or in an Inquiry or other Proceedings under this Code, unless the Appeal Court or Reviewing Authority thinks that a failure of justice has in fact been occasioned by the error, omission or irregularity.”**

In determining whether an error, omission or irregularity in a Proceeding under the Code has occasioned a failure of justice, the Court shall have regard to the fact whether the Objection could and should have been raised at an Earlier Stage in the Proceeding.

Also relevant are **Sections 222, 288 and 381** of the **Criminal Procedure Code**.

Further, **Section 221** of the **Administration of Criminal Justice Act 2015** states, **“Objections shall not be taken or entertained during Proceedings or Trial on the ground of an imperfect or erroneous Charge.”**

In the case of **ENAHORO VS THE QUEEN (1965) NMLR AT 125, IDIGBE JSC** dealt with the omission of the word “Corruptly” and the effect of that omission in a Charge of Bribery. His Lordship held, “Finally, there is the point that the word “Corruptly”, which occurs in Section 43(1) before the words “showing favour”, does not occur in the Particulars of the Charge. The Magistrate thought that the omission made the Charge bad; **Savage J.** thought that the word “bribe” in the Charge was sufficient to

connote corruption. We take the view that the Charge was good. In the language of the Law, the word "bribe" always means an unlawful gift or offer as a means of Corruption, the essence of which is that the gift or offer should operate on the mind of the Person to whom it is offered to make him do a certain act."

Section 203 of the Criminal Procedure Code, now Section 197 of the Administration of Criminal Justice Act 2015, in specific reference to the Charge of Criminal Breach of Trust or Criminal Misappropriation of Money and it stated thus: -

"When the Accused is charged with Criminal Breach of Trust or Criminal Misappropriation of Money, it shall be sufficient to specify the Gross Sum in respect of which the Offence is alleged to have been committed AND the dates between which the Offence is alleged to have been committed, without specifying particular items or exact dates, and the Charge so framed, shall be deemed to be a Charge of a Single Offence."

In the case of **ONUOHA VS THE STATE (1988) 3 NWLR PT 83, 460 AT 471, CRAIG JSC** stated the ingredients of the Offence of Criminal Breach of Trust, while referring to the case of **AKWULE VS THE QUEEN (1963) NNLR AT PAGE 105**, and Dishonestly was not among the ingredients listed out as an essential element. In his own list, the fact that the Defendant committed a Breach of Trust in respect of the Money either by Misappropriation, Conversion, Use or Disposal, and that he did so dishonestly, was sufficient.

In the case of **JOHN TIMOTHY VS THE FEDERAL REPUBLIC OF NIGERIA (2012) LPELR-9346 (SC)**, the Supreme Court agreed with the Court of Appeal on their adoption of **Section 166 of the Criminal Procedure Act** and held that no error in stating the Offence or the Particulars required to be stated in the Charge and no omission to state the Offence or those Particulars shall be regarded **AT ANY STAGE** of the case as **MATERIAL** unless the accused was in fact misled by such error or omission."

The hearing of the accusation of an Offence commences with the Proceedings leading to reading of the Charge to the Defendant and his pleading to it. The Proceedings against the Defendant commences with the filing of information. This is why any Objection to a formal defect in the Charge should be taken before the Plea; otherwise the Objection is taken as having been waived and lately raised. See **ADIO VS THE STATE (1986) 3 NWLR PART 13 PAGE 714 (SC)** and **OHWOVORIOLE VS FRN (2001) 13 NWLR PART 730 PAGE 428 AT PAGE 449 (CA)**. Any Objection to a Charge for any formal defect on the face thereof must be taken immediately after the Charge has been read over to the Defendant and not later. See **OBAKPOLOR VS THE STATE (1991) 1 NWLR PART 165 PAGE 113 AT PAGE 124 (SC)**. In the case of **GUDUF VS COMMISSIONER OF POLICE (1960) NRNLR PAGE 69** it was held that, "Where a Charge was defective, Objection was not taken at Trial because Counsel wished to reserve the Point for an Appeal, it was not Counsel's right at Trial nor his duty towards his Client to say nothing and to allow the case to run on and end, perhaps, on his Client's Conviction, in the hope of succeeding on the Point on Appeal. Reference is also made to the case of **INAJO VS THE STATE, FCA/K/42/79 DELIVERED ON THE 12TH JUNE 1980 PER KAZEEM, JCA**, His Lordship held that where the Appellants were represented by Counsel, who did not raise any Objection at the Trial or complain that the Appellants were misled, the Charge was in order and was neither defective nor erroneous, as the Appellants were arraigned at the Trial, the Charge was read and explained to them and each Appellant replied that he understood the Charge and pleaded Not Guilty. In such circumstances, **the failure to state the manner** in which the Appellant was alleged to have used the cutlass to cause the death of the deceased did not show that they were misled as to make applicable the Provision of **Section 206 of the Criminal Procedure Code**.

Where the Defence fails at the Commencement of a Trial, to make a Preliminary Objection to quash an Information because of a defect in the Procedure followed by the Magistrate, such Objection will not be entertained on Appeal: See the **QUEEN VS IJOMA (1962) 1 ALL NLR PAGE 402.**

In **OBAPOLOR VS THE STATE (1991) 1 NWLR, 113**, the Supreme Court held that Objection to a Defective Charge should be made immediately after the Charge is read over and explained to accused because pleading to such a Charge is a submission to jurisdiction, if the defect does not deprive the Court of its jurisdiction.

In **THE QUEEN VS MICHAEL ADEDAPO OMISADE & 17ORS DELIVERED ON 1ST JULY 1964 AND REPORTED IN LC VOLUME 1 2004 AT PAGE 412, ADEMOLA CJN** held in regard to Vagueness and an Omission in a Charge that it can be **inferred** that the Defendants understood the meaning of the Count and were not misled or embarrassed and no Miscarriage of Justice was held to have occurred. See also **A.V. MEYNCK & ANOR 21 CR. APP. RATIO 94**

Further, in the case of **JOHN TIMOTHY VS THE FEDERAL REPUBLIC OF NIGERIA (2012) 6 SCNJ PAGE 247**, it was held that where there is a defect in a Charge, an Objection must be raised immediately, otherwise the Defendant's Rights thereto is foreclosed and an Appeal would not avail him. The Omission in a Charge must have sufficiently misled and prejudiced the Defendant, before it can be said to have occasioned a Miscarriage of Justice. **ONNOGHEN, J.S.C. (now CJN)**, held thus: "It is very clear from the above provision that for an appellant to benefit from any defect in a charge, he (she) has the duty/burden to prove to the satisfaction of the Court, at any stage of the case, that the omission was material to the case and that the omission has misled the accused/appellant. If the above ingredients are not established, the omission will be regarded as an irregularity which is not fatal to the proceedings."

See also the case of **ELIJAH AMEH OKEWU VS THE FEDERAL REPUBLIC OF NIGERIA (2012) 2 SCNJ PAGE 126**, where it was held that the appropriate time to complain or respond to a Charge as framed, is at the time it is being read and before the Plea is taken.

A Conviction on a Charge, which states a known Offence with Incomplete Particulars, can be upheld where the Defence was not misled and no Substantial Miscarriage of Justice has occurred. See also case of **COMMISSIONER OF POLICE VS OKOYEN (1964) 1 ALL NLR PAGE 305**. Where the mistake or incomplete Particulars of a Charge for a known Offence neither Misleads the Defence nor occasion any Substantial Miscarriage of Justice, a Conviction based on such a Charge shall be upheld and not Set Aside: see the Case Law Authorities of **MEDICAL & DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL VS DR. JOHN OKONKWO (2001) 5 NSCQR PAGE 650 AT PAGE 678; POLICE VS OHOYEN (1964) 7 NSCC PAGE 217; R VS IYOMA (1962) 2 NSCC PAGE 295.**

There is also the fact that when the Plea of the Defendant was taken on his Arraignment and Re-Arraignment before this Court, he stated that he understood the nature of the Charges preferred against him and then proceeded to plead Not Guilty to all the Charges in both the Original Charges and the Amended Charges. At no time, before this Court, or before the Court of Appeal and even before the Apex Court, did he express any ignorance as to the Charges and their Nature, and had not uttered a single complaint that he did not understand the nature of the Charges he is facing before the Court throughout the conduct of the Trial, which spanned over a length of time.

More importantly, the Defendant, was represented throughout his Trial by not One But Four Senior Advocates of Nigeria and there were no Objections raised at any point. On the First Arraignment, a

Senior Advocate of Nigeria represented the Defendant, during the Trial, he engaged another Senior Advocate of Nigeria and at the tail end of the Trial, he changed his Legal Representation yet again and engaged Two Senior Advocates of Nigeria. Therefore, it is safe to presume that Ignorance was not a Factor.

As regards the issue of Judicial Precedents or Judicial discipline, I Fail to see where that comes into play in this case because the Doctrine of Precedents is tied to relevant facts and peculiar circumstances of each particular case. In any event, this Court, from all the Judgments cited by it, Acknowledged and Accepted the Supremacy of the Appellate Courts and abided with their Decisions.

Under this head, there was no referral by the Court to any Foreign Case Authority, and so Learned Silks' argument in regard to foreign authorities is discountenanced. However, it must be pointed out, that there is absolutely nothing wrong in citing Foreign Authorities, even though they are clearly of persuasive influence and where no pronouncement has been made by our own Court of Appeal and the Apex Court on an Issue, the citation of foreign authorities still remain of a persuasive nature. It is also important to note that to omit the word "Dishonesty from the Charge has not said that it does not have to be proved. The Prosecution is obligated to prove that the acts of Misappropriation, or Conversion, or Use or Disposal of the Monies were carried out dishonestly.

The Real Issue here is, whether on the Facts in the Charge the Defendant was misled. To be misled, the defect in stating the word "Dishonestly" must be fundamental and misleading.

It is clear that the Charge was not bad in Law, since it described a known Offence under the correct Cap 532 of the Penal Code, Laws of the Federation of Nigeria, 1990. When the Charge was read over to the Defendant, he stated unequivocally before the Court, to the hearing of all present, that he understood the nature of the Charges preferred against him, and pleaded not guilty. Furthermore, after, his Appeal to the Appellate Courts, and upon his return for Trial, he still made no Complaints and even after the Court received several Testimonies and Exhibits, there was still not a squeak of objection heard. The time to object to the Omission of "Dishonestly" in the Charge was again presented to him, when the Amended Charge was read over and his Plea was re-taken, but there was a very loud silence on this issue.

Therefore, this Court finds that the Omission of the word "Dishonestly" did not cause any prejudice to the Defendant and he was fully appraised of the case brought against him in Court. Also, the Court finds that the Prosecution did properly charge the Defendant according to the Law, according to Case law Authorities as well as notable Authors on the subject. The Objection is found to be misconceived and is accordingly dismissed.

As regards, the New Issue raised by the Defence that the Extra-Judicial Statement of the Defendant were obtained from during a **QUESTION AND ANSWER SESSION**, it is important to state that this New Issue was contained in his Reply on Points of Law. This New Issue centered on the Extra-Judicial Statements of the Defendant admitted as **Exhibits P13A to C**, which according to him were inadmissible for being a Product of Question and Answer Session with the Officials of the EFCC. He submitted that this fact was apparent in the Submissions of the Prosecution in their Written Address and he set out a few of such examples on Record. According to him, the Position of the Law is that, if found to be so, then such a Statement, cannot be regarded as free and voluntary. Reference was made to the case of **NAMSOH VS THE STATE (1993) 5 NWLR PT 292 SC 129 AT 144 AT PARAS C-E**, where he drew out the Dictum of the Apex Court thus: -

“Once a Police Officer decides to make a Complaint against an Accused Person, he must first of all caution the Accused Person in a Prescribed Form. If the Accused decides to volunteer a Statement, he may write it himself or the Police Officer may write it for him. **Where a Statement is the Product of a Question and Answer Session between the Accused and the Police, such a Statement cannot be regarded as free and voluntary and the Procedure would be against the Provision of Order 6 of the Criminal Procedure (Statement to Police Officer Rules (1960) Cap 30 of the Laws of Northern Nigeria 1963 (Judges Rules) hence the Statement would not be legal evidence and be inadmissible.**” (*Emphasis is that of Counsel*).

Now, the Court finds that **The Judges Rules were formulated in England in 1912. The Rules were revised in 1964 and they were reported in (1964) 1 WLR AT 152** as a Practice Direction. In Nigeria, the Rules are adopted as applicable to Police Officers, Prison Warders and Village Heads. Reference is made to the case of **R VS ANYA UGWUOGO (1943) 9 W.A.C.A. 73**. The purpose of the Rules is to ensure that Statements (or any piece of evidence, including taking the Photograph of the Suspect) taken by Police Officers interrogating Suspects are made voluntarily; so a Person in custody should not be questioned without the usual caution being first administered. The Caution administered by Police Officers to the Suspect is as follows:

“Do you wish to say anything in answer to the Charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.”

There should be no questioning before the Caution is administered. Also care must be taken to avoid any suggestion that Statements made by the Suspect can only be used “against him” as this may prevent an innocent Person making a Statement, which might assist to clear him of the Charge. A Suspect making a Voluntary Statement must not be cross-examined and no question should be put to him about it except for the purpose of removing an ambiguity in what he has actually said.

Judges Rules, being Rules of Practice, do not have the Force of Law, as they are mere Administrative Directions, designed to assist the Police Officers in obtaining Statements from a Defendant. Therefore, a breach of the Rules will NOT render an otherwise Voluntary Confessional Statement inadmissible. Further, **Order 6 of the Criminal Procedure (Statement to Police Officers) Rules, 1960, Cap 30 of the Laws of Northern Nigeria, 1963 Judge’s Rules**, provided as follows: -

“6. A Person against whom a Police Officer has decided to make a Complaint and who makes a Voluntary Statement, shall not be cross-examined and no questions shall be put to him about such Statements except for the purpose of removing ambiguity in what he has actually said”.

These Rules are somewhat similar to the Miranda Rights of the United States of America. Reference is made to the Dictum of **CHIEF JUSTICE WARREN, in MIRANDA VS ARIZONA (1966) 384 U.S. 436**. In the case of **STATE VS AHMED RABIU (2013) 8 NWLR AT 585**, it was held that the Statement must have been made voluntary and freely and without any inducement or threat of harm to the Accused. An Admission may be obtained from a Person by questions fairly and properly put to him by a Police Officer....

ALAGOA J.S.C. held inter alia that “It does happen and not too infrequently that an Accused Person left alone to write his Statement, without any form of guidance goes on a merry go round of sorts, leaving behind the crucial issues. The true test of the Voluntariness of a Confessional Statement should be whether an Accused Person in the course of writing his Statement was, if need be, properly guided to write what he actually wanted to write and not what he certainly did not want to write, and would not have written it, but for some form of threat of harm or inducement or whatever that would make his Statement involuntary. His Lordship further held that Questions, which would make the Statement coherent, could be permissible if not overdone. **KALGO J.S.C’s** Dictum in **SUNDAY**

IHUEBEKA VS THE STATE (2000) 7 NWLR PT 665, AT PARAS G-A, on Questions freely and fairly put by an IPO, was referred to by His Lordship and relied on. **GALADIMA J.S.C** in his contribution distinguished the facts of the case of **NAMSOH** with that under consideration, where he drew on the fact that in **NAMSOH**, the Police were putting Questions already prepared by his Superiors on a Sheet of Paper to the Defendant, while the answers were recorded. This, he held was a clear statement obtained as a result of questioned prepared and answer obtained from the defendant.

NGWUTA J.S.C. in his dissenting judgment held that though an IPO can question a suspect on the subject of investigation, once the suspect has been charged with a crime, he cannot be questioned without caution.

It appears flowing from this that it is generally recognized that questions may be put to a suspect as long as he is cautioned beforehand that he was not obligated to say anything etc.

In the case of **F.R.N. VS DAIRO (2015) 6 NWLR PT 1454, confirm 16 NWLR PT 1325 at 129; NWEZE J.S.C** found considerable merit in the proposition that if a witness is asked whether he voluntarily signed the statement and he answered that he did, then that is clearly an unequivocal admission that the signing was voluntary and further held that the admission that the defendant voluntarily signed his statement was tantamount to a confession.

The Court further held that “An investigator may adopt the approach of questions arising from investigation for clarification but it must be under an environment that is not encumbered by threat or promise. Where an approach of question and answers is adopted in obtaining a confessional statement, once there is doubt that it was truly voluntary, it should not be admitted.”

In **STATE VS JIMOH SALAWU (2011) 6-7 SC PT IV AT 147**, the Supreme Court held, whilst distinguishing **Namsoh’s** case that the police officer was armed with a sheet of paper, which contained selected questions already prepared by his superiors and designed to excite from him self-implicating answers. It was held that “there was no evidence of the specific questions asked by the police, in response to which the admissions in the exhibits under consideration were made. Nor was there evidence that the facts constituting the admissions in the said statements were prompted by questions from the police. This case emphasised the point that it is not a rule of our Criminal Procedure Law and the Law of Evidence that where in the course of recording the Statement of a Defendant, a Police Officer asks questions and records the answers by the accused therein; the statement automatically becomes involuntary and inadmissible in law. That was not the principle upon which **Namsoh’s** Case was decided by this Court. The questions were specially prepared and were oppressive of the defendant in the sense that they meant to sap and indeed sapped the freewill of the accused Person and thus rendered his ensuing statement involuntary”. His Lordship, Francis Fedode Tabai JSC held that the mere assertion by the police prosecutor that in the course of recording the statement of accused Person, he asked questions and recorded the answers, does not ipso facto render the statement involuntary.

The defence ought to have led evidence during the Trial and not in his Final Address, on the specific Questions that were put to the Defendant, in order to elicit Answers. It was imperative that this be set out for the Court to decide during Trial, whether or not the Statement was recorded, and for the Court to construe its wordings or how it was recorded. It is in this manner that the flow will reveal whether or not it was the Product an Oppressive Conduct.

The degree of prolonged questioning by the police or interrogators is always to be weighed against the Defendant’s Intelligence and Level of Education. **See R VS PARKER (1995) CRIM LR AT 233**

There must be evidence of the Questions put to the Defendant and the Answers given in response, which must be recorded, or set out by the defence to enable the Court determine how far the Statements were voluntarily made. The Questions must, not however, be of an inquisitorial nature, nor should Questions be asked to pin a Person down to certain Statements, nor, should there be any Leading Question. The Statement should be spontaneous and voluntary and free from false impressions or influence. It is difficult, if not impossible to have a set form of questioning, as it is clear that every Case will be different and would turn on its own Set of Peculiar Facts. The Form and Extent of Questions asked must of necessity vary with the facts of each Case.

Where there is nothing in the Statement to show that besides the usual and stereotyped questions, there were any prejudicial or leading question or craftily prepared questions asked of the Defendant, the voluntariness of that Statement ought to be accepted. A mere questioning of a defendant by a Police Officer resulting in a Voluntary Statement, which may turn out to be incriminatory, was found not to be obtained by compulsion in the Indian case of **S VS KATHI KALU, A 1961 SC 1808: 1962, 3 SCR 10**. In England, a confession will not be excluded merely because it has been obtained by questions put by the Police Officers before arrest, even though put to enable them to decide whether or not to arrest. It was held that a confession made to Police Officers does not become inadmissible merely because it was elicited in answers to questions put to the accused, and a confession in answer to questions put by the Police is in strict law admissible, PROVIDED THERE WAS NO PROMISE OR THREAT USED. See the cases of **R VS DOUGAL, 67 JP 325; R VS KERSHAW, 18 TLR AT 357; R VS BEST (1909) 1 KB 692; R VS LIEBLING 2 Cr APP R 315; R VS KNIGHT 20 COX 711; R VS BOOTH, 5 CR APP 711; AND LEWIS VS HARRIS, 110 LT AT 337**.

The Court's view of impropriety of the questioner's conduct and the general circumstances of the case is considered and the Court must be satisfied that no pressure of any kind was put on the Defendant. See the case of **IBRAHIM VS R (1914) AC 599; 18 CWN 705 PC: 155 AND R VS GARDNER (1915) 85 LJKB, 206, PHIP 8TH EDITION, AT PG 251**

In this case, when the Prosecution sought to tender the Three Statements of the Defendant, the Defence raised no Objection whatsoever, and they were admitted as **Exhibits P13 A; P13 B and P13 C**. The Defendant and his Legal Representation did, not express the issue of the Statement being obtained in the manner of this challenge, throughout the Trial.

The Court must find proof of such questions tending to be oppressively put to the defendant and it was expected that Learned Silk ought to have advanced this Objection during the Trial. It appears that Silk's reliance on the manner or mode, the Written Address of the Prosecution was couched, was what necessitated this objection. The Address of Counsel is not and has never been an avenue for facts gathering to contend an issue. The Objection, must be premised on solid facts adduced during the Trial, and without further ado, this line of contention is dismissed as misconceived.

As regards the **QUESTION OF DUMPING OF DOCUMENTS**, Learned Silk, Kanu Agabi SAN, representing the Defendant argued that the Documents tendered by **PW4**, Mrs. Mobolanle Folarami, the Assistant Director NDIC, and **PW6**, Mr. Celestine Idiaye, the Staff of Diamond Bank, where merely dumped on the Court, as the Makers of those Documents were not called to testify in regard to the Documents tendered through them.

It is trite that for Documents to have any probative value, the Person tendering the Document must tie them to a Particular Aspect of the Case. Reference is made to the case of **INIWA VS AKPABIO (2008) 17 NWLR PT 1116 PG 225 AT PG 299**. Further, the Court will follow the

Dictum in the Case of **SENATOR RASHIDI ADEWOLU LADOJA VS SENATOR ABIOLA ADEYEMI AJIMOBİ & 3 ORS SC.12/2016**, where **His Lordship Ogunbiyi JSC**, held that, "...the Law is settled on Documents tendered in Court, which purpose and worth must be demonstrated through a Witness. It is Settled also that the Duty lies on a Party who wants to rely on a Document in support of his Case, to Produce, Tender and Link or Demonstrate the Documents tendered to Specific Parts of his Case. The fact that a Document was tendered in the course of Proceedings does not relieve a Party from satisfying the Legal Duty placed on him to link his Document with his Case. See also the Cases of **C.P.C V. INEC (2011) 18 NWLR (Pt 1279) 493 at 546 – 547; NA'UMBA VS NAHUCHE (2010) ALL FWLR PART 506 PAGE 1963; AUDU VS INEC (NO.2) (2010) 12 NWLR PART 1212 PAGE 456; ANPP VS USMAN (2009) ALL FWLR PART 463 PAGES 1292, 1337; AMACHREE VS GOODHEAD (2009) ALL FWLR PART 461 PAGES 911, 940.**

Now, **PW4**, Mrs. Bolanle Folaranmi, testified that upon a Request by the EFCC, her Institution the NDIC had in their Custody, the Statement of Account with the Defunct AllStates Trust Bank Plc., and she did not only tender these Documents, she explained the Process in which they were obtained in great detail. It is clear that she was NOT the Person who made the Entries in the Statement, as she was only validating its Objectivity. These Documents, particularly the Statement of Account of Ebenezer Retnan Ventures, were adequately demonstrated through Witnesses such as Mr. Adonye Roberts and the IPOs on Record.

As regards the Issue of **PW6**, Mr. Celestine Idiaye, he was a Banker who also explained the Process, the Documents he tendered were accessed, confirmed and verified by his Institution, the Diamond Bank Plc., the Successor of Lion Bank Plc.

It is not necessary for the Attendance of the Actual Banker who placed the Entries into the Statements of Account to appear before the Court and in any event, all he could do was to demonstrate the Process. The Prosecution upon receipt of these Statements adequately demonstrated these Documents through Witnesses, both in Chief and under Cross-Examination, who need not be in possession of the Document in order to speak to it. All the Prosecution had to do, was to relate the Documents to Specific Aspect of his Case. See **NWEZE JCA (AS HE THEN WAS NOW JSC) in OLAWUYI R. TUNJI & ANOR VS ELDER DAVID BAMIDELE & ORS (2012) 12 NWLR PART 1315 PAGE 477 AT PAGES 491, 492.**

Further, it is trite that where the Interest of a Maker is merely official and there is no Direct Personal Interest as a Servant or Agent of a Party, the Document so made and sought to be tendered is admissible for all purposes. **Reference is made to the Cases of MARITIME SERVICES LTD VS FIRST BANK (1991) 1 NWLR PT 167 PAGE 290 AT 307; WEST MINISTER DREDGING VS OGAN OYIBO (1992) 5 NWLR PT 239 PAGE 77 SUSANO PHARMACEUTICALS VS SOL PHARMACEUTICALS AND SECTION 93 (I) EVIDENCE ACT.**

Therefore, without further ado, the Court finds the Documents were not dumped and the finds the Argument to be misguided.

Before delving into the Substantive Offences, it is important to finally determine the Question *raised under Issue 11 formulated by the Defence, which was in regard to the fact that Ebenezer Retnan Ventures was an Unregistered Company, which could not own Property and whether this Venture needed to be a Party to this Action in order to be heard.*

The Name Ebenezer Retnan Ventures was mentioned in **Counts 1, 2, 3, 8, 9, 10 and 11** of the Amended Charge Sheet and so it is important to determine its Status and the Nexus of this Venture to the Defendant and further determine whether it needed to be joined as a Party and whether it could own Property.

Learned Silk, representing the Defendant, contended that it was not an Offence for the Defendant to operate a Bank Account in the name of Ebenezer Retnan Ventures, and it was immaterial that the Plateau State Government also operated an Account in the same Bank. Further, he contended that Ebenezer Retnan Ventures was an Unregistered Company, which could not have Ownership over Property. He submitted further that there is nothing known to Law as an Unregistered Company as Charged in **Counts 2, 3, 8, 9, 10 and 11**. In the light of that fact, the attribution of the ownership of Ebenezer Retnan Ventures, a non-existent entity, to the Defendant, does not disclose any Offence, in that an Unregistered Company cannot have Ownership.

The Prosecution, on the other hand, disputed the correctness of the opening of the Account stating that there were so many irregularities in the Account Opening Documentation. PW3, a Member of the Investigating Team stated that Wrong Account Opening Documentation were used, with wrong information provided by the Account Officer as well as by the Defendant, in order to hide the Identity of the Real Owner of the Account. According to Learned Silk, an Individual Current Account Form was used to open an Account for Ebenezer Retnan Ventures, with the Date of Birth of the Account Holder given as 27th July 1957. According to him, Ebenezer Retnan Ventures, as a Company, cannot have either a Date of Birth or Nationality and cannot also be a Businessman or Self-Employed as stated in the Account Opening Documentation, bearing a Fictitious Address on it. The Account was not opened as a Private Banking Account, which, in any case, still requires the Identity of the Account Holder.

Further, under Cross-Examination, PW3 insisted that the Defendant had requested for a Waiver of the Documents so that his Identity would not be revealed. The Investigative Team discovered that Ebenezer Retnan Ventures was not in Existence, was not Registered with the Corporate Affairs Commission and did not have a Physical Address. The investigation further revealed that the Real Owner of the Account was the Defendant, who was the Governor of Plateau State, and his Address was Government House and not Kilometer 87, as stated. Further, they discovered that various Cheques had been written out in the name of AllStates Trust Bank Plc. paid into Ebenezer Retnan Ventures. Those Cheques were raised from the Account of Plateau State Government in the name of AllStates Trust Bank Plc. and were lodged and cleared into Ebenezer Retnan Ventures.

In the Reply on Points of Law, Learned Silk representing the Defendant submitted that the Charge had alleged that Ebenezer Retnan Ventures is an Unregistered Company, for which the Prosecution was expected to lead evidence consistent with the Charge. However, the Prosecution called PW1, whose testimony was to the effect that Ebenezer Retnan Ventures was a Registered Company based on the Response Letter from the Corporate Affairs Commission. According to Learned Silk, this testimony rendered by PW1 was a material contradiction, in that the Corporate Affairs Commission does not keep Records of Unregistered Companies, which contradiction, ought to be resolved in favour of the Defendant.

Apart from that, Learned Silk, Agabi SAN argued that virtually all the Counts mentioned Ebenezer Retnan Ventures as being the Channel through which the Defendant misappropriated the Sum of N1, 161, 162, 900, implying that this Venture received Proceeds of Crime.

According to him, the Prosecution had referred to the Venture as a Separate Legal Entity distinct from the Defendant, but added that Ebenezer Retnan Ventures was not made a Party and was not Charged in this Criminal Charge, inspite of the seriousness of the allegations levied against it in the various Counts, and therefore did not afford the Venture, the opportunity to explain why various Sums were received and the purpose of the receipt.

Therefore, Learned Silk submitted that this Court cannot reasonably do Justice without first affording Ebenezer Retnan Ventures an opportunity to be heard, and any decision reached would infringe on their right to be heard, thus offending the Provision of **Section 36 of the 1999 Constitution** and he relied on the case of **DIBIA VS THE STATE (2017) 12 NWLR PART 1579 PAGE 196 AT PAGE 223, PARA H.**

Now, PW1, Detective Musa Sunday, testified that the EFCC forwarded a Letter to the Corporate Affairs Commission (hereinafter referred to as the "CAC"), which was acknowledged, seeking the Registration Status of Ebenezer Retnan Ventures as a Company/ Business Name and this Letter was admitted without Objection as **Exhibit P9**. The Reply Letter from the CAC dated the 10th of December 2004, admitted as **Exhibit P10**, stated that there was no evidence in their System that Ebenezer Retnan Ventures was registered with them. His Team's investigations revealed that the Defendant owned Ebenezer Retnan Ventures, however, they could not obtain any Certificate of Registration of Ebenezer Retnan Ventures both from the CAC and the AllStates Trust Bank Plc., where the Account was opened and the Defendant did not produce the Certificate of Incorporation.

At the Closing Paragraph of **Exhibit P10**, the Court notes that the Registrar-General of the Commission had requested from the EFCC, a Copy of the Registration Certificate of Ebenezer Retnan Ventures for further Search, which is suggestive of the fact that there is no Certificate of Incorporation anywhere. Therefore, it is clear that, Ebenezer Retnan Ventures, on the authority of the Response Letter from the Corporate Affairs Commission, admitted as **Exhibit P10**, is NOT an Incorporated Company or even a Registered Business Name, and the Court recognizes this Commission to be the ONLY Official Body known to Law to validate the Legal Existence of a Non-Natural Person.

Further, there is the Judgment delivered by my Learned Brother, Liman J. in **FEDERAL REPUBLIC OF NIGERIA VS AWE ODESSA& 2 ORS (2006) FHC/KD/43c/2004 REPORTED IN ECLR VOLUME 1 AT PAGE 101 AT PAGE 121**, which was not appealed against, therefore, his Pronouncements and Findings made therein are still extant and informs **Exhibit Y** before this Court.

A close look at **Exhibit Y tendered on the 17th of June 2016**, by the Prosecution will show that His Lordship found inter alia these undisputed facts: -

1. That Ebenezer Retnan Ventures was neither registered as a Business Name nor was it incorporated as a Limited Liability Company; and
2. That the Person who opened and had been operating the Account was Chief Joshua Chibi Dariye, and the Names on the Mandate Card were those of Ebenezer Retnan Ventures and Daniel Haruna, but the Signatories were that of Daniel Haruna and Chief Joshua Dariye.

Any Witnesses' Testimony to the contrary, will not change the fact or confer any Legal Identity on it. The only Proof of the Juristic Personality of a Non-Human Juristic Person is the Production of its Certificate of Incorporation or Registration under the Relevant Laws. Reference is made to the cases of **APOSTOLIC CHURCH ILESHA VS A. G. MID WEST (1972) 4SC 150, ABAKALIKI LGC VS ABAKALIKI RMO (1990) 6 NWLR PT. 155, at Page 1 & 2 and IYKE MED MERCH VS PFIZER (2001) 10 NWLR PT 722 AT PAGE 540; AGBONMAGBE BANK VS G.M.G.B. OLLIVANT (1961) 1**

AUNLR 116; FAWEHINMI VS NBA NO 2 (1989) 2 NWLR PT 105 PAGE 558 AT PAGE 632; MR. ADEOYE MAGBAGBEOLA VS MR. TEMITOPE SANNI (2005) NSCQR VOLUME 22 AT PAGE 147 (SC) PER KATSINA-ALU JSC; J.K. RANDLE VS KWARA BREWERIES LIMITED (1986) 6 SC PAGE 1; ABUBAKAR& ORS VS YAR'ADUA (2008) LPELR-51(SC) Per TOBI, J.S.C PAGES 137-138 PARAS G-B.

As regards the Nexus of the Defendant to Ebenezer Retnan Ventures, PW1, Detective Musa Sunday, had referred to the Mutual Legal Assistance Request from the Metropolitan Police in the United Kingdom, which specifically named some Banking Institutions, the Accounts involved and the Names of Individuals who had a relationship with the Defendant. Amongst the Names of the Banks mentioned were AllStates Trust Bank Plc., Lion Bank Plc. and Diamond Bank Plc. and the Companies mentioned included, Ebenezer Retnan Ventures. From the Metropolitan Police Request, it was stated that Money was moved from Ebenezer Retnan Ventures' Account to the National Westminster Bank in the United Kingdom and some of the evidence gathered in Nigeria, were sent to the United Kingdom.

The Metropolitan Police Request from the British Government together with the Attorney General of the Federation's Letter to the Chairman of the EFCC was admitted without Objection as **Exhibit P1**.

PW9, Detective Peter Clark, an Investigator from the United Kingdom, had testified that there were a total of Nine (9) Bank Accounts with Barclays Bank as well as a Barclays Credit Card, and he noted from the Statements of Account, that Monies were transferred into these Accounts from Ebenezer Retnan Ventures' Bank Account at the AllStates Trust Bank Plc. in Nigeria. There were also a Number of Electronic Transfers directly from the Defendant Personally and from memory, he could recall that one of the transfers came from Lion Bank Plc.

He had also testified that during his interview with Chief Joshua Chibi Dariye in the United Kingdom where he was arrested, he had admitted sending Monies from Ebenezer Retnan Ventures in Nigeria and had confirmed to them that, "Ebenezer", was the name of one of his Sons.

PW1's Team Investigation started off the AllStates Trust Bank Plc., where the Operations Manager provided the Account Details as well as the Account Opening Documents of Ebenezer Retnan Ventures and its Mandate Card, which informs **Exhibit P3**.

From these Documents, the Team observed that the Name of the Signatory on the Mandate Card was Haruna Dariye but the Signature belonged to the Defendant and the Account Officer, Mr. Awe Odessa, who marketed the said Account to the Defendant, confirmed this fact. Upon Mr. Odessa's arrest, he could not prove who Haruna Dariye was and the circumstances surrounding the opening of the Account was found suspicious because there was no Photograph on the Mandate Card. Mr. Odessa confirmed that a Waiver not to use his Passport Photograph on the Mandate Card was given to the Defendant when he opened the Account.

He acknowledged that the Account Opening Documentation emanated from the AllStates Trust Bank Plc., and observed that the Defendant's Signature appeared in four places on Ebenezer Retnan Ventures' Account Opening Forms. PW1 was aware of the Waivers granted by the Bank but the Bank's Written Approval conveying the Waiver did not form part of the Account Opening Documents. Through PW1, a Memo written by the Deputy General Manager, (Northern Operations), Mr. Odessa to an Executive Director of the AllStates Trust Bank Plc., requesting a Waiver of Requirements, was tendered as **Exhibit D1**.

PW1, also found out through his investigation that the Waiver granted by the Bank was Improper, even though the Bank had Provisions for Private Banking Services for certain categories of High Profile Individuals.

Further investigations continued to the then Lion Bank Plc. (now Diamond Bank Nigeria Plc.) due to heavy inflows of Funds to Ebenezer Retnan Ventures from Lion Bank. The Team discovered that Cheques in different amounts were paid from Plateau State Government Accounts domiciled in the then Lion Bank into Ebenezer Retnan Ventures' Account.

PW1 analysed the Statement of Account, wrote down the transactions captured and requested Diamond Bank Plc. to furnish him with the Instruments, that is, the Cheques of the Monies relating to the then Lion Bank. They complied and forwarded the Cheques. The Cheques were admitted into evidence as **Exhibit P11**. PW1 then analysed **Exhibit P11**, and discovered that the Lion Bank Cheques, were initially paid into the AllStates Trust Bank Plc., but subsequently paid into Ebenezer Retnan Ventures' Account and he demonstrated before this Court, the inflows into this Account. The Data on those Cheques were perused and the Managing Director of Lion Bank, Mr. Mike Abdul, made Statements to the EFCC and forwarded Documents.

Based on the Waiver given to the Defendant by the AllStates Trust Bank Plc., the EFCC charged the Bank, Mr. Odessa, the Marketer and one Other to the Federal High Court in Kaduna, where the Bank and the Marketer were convicted for their actions.

According to PW1, the Account Opening Documents including the Mandate Card were sent to the Forensic Examination Unit for further investigations and the Unit confirmed that the Signature on the Mandate Card belonged to Chief Joshua Chibi Dariye as seen in **Exhibit P2**.

PW7, Mr. Dabi Gideon Dashong, the Forensic Document Examiner with the EFCC Forensic Science Laboratory in Abuja, testified that in 2007, the Head of the Economic Governance at the EFCC requested for an Examination Comparison and Report on Two (2) Sets of Documents, namely: - the Account Opening Package of AllStates Trust Bank Plc. in respect of Ebenezer Retnan Ventures, the Disputed Documents **X-X4**; and the Specimen Signatures of the Defendant on documents marked **A-A5**. Subsequently, an Additional Specimen was forwarded to his Unit for Analysis. He explained in very great detail the Three Methodologies he employed and applied Three Principles of Handwriting Identification. Based on this combined method, he came up with a Report, which had Demonstrative Charts, indicating his opinion based on the analysis he conducted and forwarded his Report to the Requesting Team. He identified each and every Set of Documents in **Exhibit P2**.

Under Cross-Examination by the Defence, he stated that when the initial request for analysis was made in 2007, he was not working with the Forensic Unit. On the 10th of December 2015, he received a Letter of Reminder from the EFCC referencing their earlier Letter dated the 24th of June 2007 and he issued his Report dated the 14th of December 2015. The Defence tendered the Letter of Reminder through this Witness, with no objection raised by the Prosecution, which was admitted as **Exhibit Q**. The Author of the first Request Letter for Forensic Analysis was the now Current Acting Chairman of the EFCC. Explaining the initial delay of Eight and a Half (8 ½) Years in issuing a Report, this Witness stated that the then Head of the Forensic Unit, Mr. Mu'azu Abdullahi died in 2010 and that the documents were registered according to Standard Operating Procedures.

The Court, upon a careful perusal of **Exhibits P2 and Q**, can see that the Letter of Reminder is dated the 10th of December 2015 and conveyed further Documentation for Analysis. On the 14th of December 2015, the Forensic Unit replied on the Examination and Comparison of the Signature on the

Account Opening Documentation of Ebenezer Retnan Ventures confirming the Signatures to be the same as that of known Specimen Signatures of the Defendant.

The tardiness in producing the Report can only be attributed to administrative laxity and not to the Competence and Integrity of the Forensic Report. The only evidence that could possibly challenge the Reliability of this Report is that of another Forensic Report produced by an Expert from the Defence. But there was NO Contrary and Challenging Report before the Court.

Further, the Court observes the Testimony of PW3, Mr. Bamanga Bello, an Investigator, now presently the Head of Special Control Unit Against Money Laundering at the EFCC. He was part of the Investigating Team in 2004 and the focus of his investigation was in regard to the Account Opening Documentation of Ebenezer Retnan Ventures. The Account was opened in 1999, with the Application made on the 12th of December 1999. He went through the Disparities in the Account Opening Forms and Details.

He analyzed and discovered many Irregularities in the Opening of this Account. Proper documentation was not made, Wrong Account Opening Documents were used with Wrong Information provided by the Account Officer in a bid to hide the Identity of the True Owner of the Account. The Account Opening Form used was for an Individual Current Account as opposed to a Corporate Account Opening Form. Ebenezer Retnan Ventures is not an Individual but a Corporate Entity. He also noted that the Date of Birth as written was 27th of July 1957, which was strange as Ebenezer Retnan Ventures is not an Individual and therefore could not have a Date of Birth. It also could not have the Nationality of "Nigeria" with an Occupation set out as a "Businessman". As at the time of the Account Opening, the Real Account Holder was the then Governor of Plateau State, a Public Servant, who certainly was not a Self-Employed Businessman.

Mr. Bamanga Bello further testified that the Signature on the Account Opening Form, which was confirmed by the Forensic Laboratory, belonged to Chief Joshua Dariye, who filled the Account Opening Form and the Signature Specimen Cards and gave a fictitious and untraceable Address for the Company. Despite the fact that a Physical Address of a Company is required to be stated on the Form, the Office Address of Ebenezer Retnan Ventures was not written and the Name of one of the Operators/Signatories was fictitious. He could not establish the Identity of Daniel Haruna, the Second Signatory of the Account, as he was nowhere to be found during the investigation.

Other Discrepancies were that there were No Passport Size Photographs of the Signatories, No Means of Identification and there was No Visitation Report to confirm the Physical Address of the Company. The only Address on it was Kilometre 87 Rock Falls. As at December 1999, Ebenezer Retnan Ventures was a Non-Existing Entity with the Corporate Affairs Commission, so that could not have been its Address. An attempt by the Officers of the EFCC to verify this Address was frustrated due to physical attacks on their Person in Jos. He stated that the Bank and the Officials involved in the Account Opening were charged and convicted before the Federal High Court in Kaduna.

In reaction to the Request for Waiver made via Memo by the then Deputy General Manager (Northern Operations) Mr. Awe Odessa, to the Executive Director Northern Banking Group, in regard to the Account Opening Documents of Ebenezer Retnan Ventures, which was approved, Mr. Bamanga Bello stated that the Bank had no such authority to waive the requirements of the Law. He stated that Private Banking did not mean that the Identity of the Account Holder should be concealed, as **the Money Laundering Decree of 1995** mandates that the Identity of an Account Holder must be established before an Account is opened or any form of Banking Relationship is engaged upon.

It was his view based on his experience that where Fictitious Accounts are opened without the Real Identity disclosed, there is a high probability that there is an attempt to hide the Proceeds of Crime. He compared the Date of Birth as stated for Ebenezer Retnan Ventures in **Exhibit P3** to the Statement of the Defendant in **Exhibit P13A**, and discovered that only the Month and Year tallied.

PW3, Mr. Bamanga Bello, under Cross-Examination, agreed with the Defence that the Policy, Purpose and Services for Private Banking varies from Bank to Bank but emphasized that all these must not contravene the Requirements of the Law. To that extent, the Identity of the Customer must be established not only to the satisfaction of the Bank, but also the Law and he added that the Bank has the responsibility to refuse opening the Account in the event of Non-Disclosure of Identity.

According to him, AllStates Trust Bank Plc. negligently went ahead in opening Ebenezer Retnan Ventures' Account and acted in contravention of the Law by acceding to the Waiver.

The Defendant's Request for a Waiver not to reveal his True Identity was also illegal and he noted that the Defendant could not have written or signed the Waiver Communication, as it was an Internal Memo of the Bank. Mr. Awe Odessa had also revealed during investigation that the Real Owner of the Account was Chief Joshua Dariye.

In the course of the investigation, PW3 confirmed seeing the Central Bank of Nigeria Crossed Cheque of N1, 161, 162, 900 made payable to the Plateau State Government. This Cheque was not paid into the Plateau State Government Account but into the Transit Account, a Special Clearing Account of the AllStates Trust Bank Plc., where the Defendant through Written and Typed Instructions, addressed to the Manager of the AllStates Trust Bank Plc., Abuja Branch, dictated the manner of disbursements of the funds into various Accounts including Ebenezer Retnan Ventures Account. He stated that without the existing relationship between Ebenezer Retnan Ventures and the AllStates Trust Bank Plc., the Bank would not have cleared this Crossed Cheque. He also saw various Cheques raised from the Account of the Plateau State Government in the Name of AllStates Trust Bank Plc., which Cheques were lodged and cleared into Ebenezer Retnan Ventures Account.

In this Hand Written Note, there was No mention of Ebenezer Retnan Venture's Account, nor any amount allocated to it but in the Typed Written Note, written on the Letterhead Paper of the Plateau State Government, the Defendant, in his capacity as the Executive Governor, addressed the Managing Director/Chief Executive Officer of the Bank, through the Abuja Branch Bank Manager. In this Letter there were Six Beneficiaries listed, of which Ebenezer Retnan Ventures was one, and the Sum of N176, 862, 900 was meant for its benefit. PW3, Mr. Bamanga Bello, however could not say if this exact amount was actually credited.

He reiterated the fact that the AllStates Trust Bank Plc. had a Private Banking Relationship with Ebenezer Retnan Ventures as seen by the fact that Official Due Process was not followed in the Clearing Process. Ebenezer Retnan Ventures is one and the same as Chief Joshua Dariye, who personally collected the Cheque, presented it for Clearing and gave Disbursement Instructions.

The Court would now turn to the Testimony rendered by the Defence Witnesses in regard to the Status, Nexus and Ownership of Property by Ebenezer Retnan Ventures. **DW1**, Adonye Roberts, formerly a Banker with AllStates Trust Bank Plc., whose License was revoked sometime between 2006 and 2007, testified that he was once an Account Officer, managing the Account of Ebenezer Retnan Ventures, and had dealt with the Defendant both in his Official Capacity as Governor in regard to the Cheque, and in his Personal Capacity as a Customer. He identified **Exhibit P3** relating to the

Account Opening Documents of Ebenezer Retnan Ventures and could tell that not all the Account Opening Documents required were presented.

He further stated that Ebenezer Retnan Ventures Account is a Corporate Account since it is a Venture, and it enjoyed Private Banking Privileges reserved for High Net Worth Customers, which are pre-determined and approved by his Bank. In **Exhibit P3**, DW1 admitted that he could not see any Bank Approvals for the Account, but the Form was signed in the presence of Mr. Awe Odessa, the Regional Manager (North), who later became Deputy General Manager Internal Affairs, Lagos. He was also aware that the Bank Executives for Ebenezer Retnan Ventures' Account waived certain requirements.

During his Testimony, he explained the Procedure in Opening a Personal Account to be the Provision of Means of Identification and a Signed Mandate. For Opening a Corporate Account, the Customer was required to submit Corporate Affairs Commission Registration Certificate, Means of Identification, the Signed Mandate Card and the Company's Board Resolution. He understood the term "Know Your Customer" (KYC) to mean the Bank would know their Customers by their Identification such as Driving Licence, International Passport, Work ID, Photographs, Signature, Address, Nature and Location of the Business and by the filled out Reference Forms.

When shown the Account Opening Documents in **Exhibit P3**, he identified the Account Holder to be Ebenezer Retnan Ventures, and stated that it is a Corporate Account for which he had expected to see a Board Resolution. Also, he identified the Signature Specimen on **Exhibit P3** to belong to Ebenezer Retnan Ventures and Daniel Haruna, and noted that Ebenezer Retnan Ventures is not an Individual. The Person who signed for Daniel Haruna did so in his absence as he was not the one who opened the Account. He positively identified the Signature of the Defendant, and added being aware that High Net Worth Individuals can hide through their Accounts.

When asked whether the Defendant's purpose was to hide his Identity, DW1 dissociated himself from the Opening of this Account, and so therefore could not account for the purpose. He did not know Daniel Haruna, but knew Haruna Dariye, the Defendant's brother. He could not make any meaning out of the Address stated on the Mandate Card nor the Telephone Number and further, could not trace the Address of Ebenezer Retnan Ventures in Jos. He noted that the Passport Photographs for Ebenezer Retnan Ventures were not affixed to **Exhibit P3**.

Mr. Adonye Roberts stated that the Defendant operated the Account and the instructions he received from him were either through Letters or Cheques. He agreed with the Prosecution in regard to Exhibit P3, the Account Opening Form, that the information supplied such as the Occupation, Address and Type of Account was inappropriate, and the Referee Requirements were Incomplete. Ebenezer Retnan Ventures could not qualify as an Individual Current Account and cannot be a Businessman. This Venture must relate to a Company or Corporate Entity.

Further, he punched holes into the Defendant's Case by stating that in the Column for Occupation, the word "Businessman" was written and the Employer was stated to be "Self". He noted that there was no Physical Address but a Mailing Address. He knew that the Defendant was not Self Employed but was a Governor and he also knew that a Governor could not be a Businessman. More telling, he knew his Address was not Kilometer 87 Rock Falls.

Apart from the Defendant's Signature which he identified, he confirmed there is nowhere the Defendant's name was mentioned in the Account Opening Documentation. At the time the Account was opened on the 16th of December 1999, the Defendant was the Governor of Plateau State. He confirmed the Defendant signed the Terms and Conditions of the Account Opening Forms, to

demonstrate compliance. However, the Bank did not fill-in the Nature of Identification provided, as none was given, the Waiver for Reference Requirement was also not stated as well as other Items. Also, the Account Opening Approval Column and the Name of the Account Opening Officer were left blank.

According to DW1, his boss Mr. A. A. Odessa who introduced him to the Defendant, witnessed the Letter of Set-Off signed by the Defendant. Subsequently, Mr. A. A. Odessa and AllStates Trust Bank Plc. were prosecuted and convicted because of their involvement in the Opening of the Account of Ebenezer Retnan Ventures.

DW3, John Michael Abdul, did not know Ebenezer Retnan Ventures prior to the date of his testimony, and stated that Ebenezer Retnan Ventures did not have an Account with Lion Bank.

Now, it is clear that an Unincorporated Company has no Legal Personality, it cannot therefore Contract, Sue or be Sued in its Name unless such is authorized by Statute or by Rules of Court. However, a Contract, as in this case, between Ebenezer Retnan Ventures and AllStates Trust Bank Plc., which may be classified as Customer-Banker Contractual Relationship, may not necessarily be held as Invalid. The Person or Persons who actually entered into this Relationship may be held to have contracted personally and be personally liable on this Contractual Relationship. See the cases of **BRADLEY EGG FARM LIMITED VS CLIFFORD (1943) 2 ALL ER PAGE 379; ARTISTIC UPHOLSTERY LIMITED VS ART FORMA (FURNITURE) LIMITED (1999) 4 ALL ER PAGE 277.**

Further, under the Rules of Agency, the Defendant may even be held to have contracted on behalf of Ebenezer Retnan Ventures and any Action against the Ventures may be brought against the Defendant as representing the Ventures. See the cases of **IDEAL FILMS LIMITED VS RICHARDS (1927) 1 KB AT PAGE 374; NEWS GROUP NEWSPAPERS LIMITED VS SOGAT 1982 (1986) ICR AT PAGE 716.**

The Account Officer, Mr. Awe Odessa, in **Exhibit Y**, and the Testimony of **DW1**, Mr. Adonye Roberts, all goes to show that the Wrong Account Opening Forms were used, the Details inserted in the Forms were wrong or at best misleading, and Waivers were obtained, all in a bid to conceal the True Identity of the Defendant.

PW1, Detective Musa Sunday and PW3, Mr. Bamanga Bello, both testified that Haruna Dariye could not be located and Mr. Adonye Roberts had witnessed the Defendant signing for Haruna Dariye. In **Exhibit P13A**, the Defendant's EFCC Witness Statement, dated the 12th of June 2007, he had stated that, "**On the Opening Mandate Haruna Dariye was put in event of death but never part of the Signatory.**"

Therefore, the Question of whether Ebenezer Retnan Ventures should be a Party to this Action, is answered by yet another Question, "**Who is the Face behind the Mask?**"

It is imperative to carefully peruse the Exhibits tendered in relation to Ebenezer Retnan Ventures, particularly with regard to the Opening of the Account at the AllStates Trust Bank Plc. **Exhibits P3** is the Account Opening Package and it states that it is a Private Account for Ebenezer Retnan Ventures. The Application was in respect of an "Individual Current Account" and not a "Corporate Account". The Forensic Analysis and the Testimonies of **PW1, PW3, PW9, DW1 and DW3**, all point in one Direction, which is a Straight Path to the Defendant. It is also in evidence that Mr. Awe Odessa, the AllStates Trust Plc., Banker and the Account Opening Officer had applied for a Waiver from the Executive

Director of the Bank, as regards all other Opening Account Requirements, which was granted and the Account was opened without meeting those requirements.

From the above Testimonies of both Prosecution and Defence Witnesses, it is easy to decipher that there was an attempt to shield the True Owner of the Account opened for Ebenezer Retnan Ventures. In the case of **IYKE MEDICAL MERCHANDISE VS PFIZER INC & ANOR (2001) LPELR-1579 (SC)**, Per **UWAIFO J.S.C AT PAGE 18 PARAS C-G**, held thus: "It could happen that a Person may carry on business in a name other than his name, but may fail to Register it as required under **Part B - Business Names** - of the **Companies and Allied Matters Act, 1990**... Such Persons undoubtedly come within those who conceal their names. ... If it happens that the Business Name had not in fact been Registered, that would be a contravention of **Section 667 of the Act** and there are Penalties provided. That does not provide Immunity against being sued in that Name, whatever its Status..." In the Recent Case of **INTERDRILL (NIG) LTD & ANOR VS UBA PLC (2017) LPELR-41907**, it was held that a Company involved in a Transaction, acts through Natural Persons, who are competent and compellable Witnesses in a Court of Law, where the Transaction becomes a Subject of Litigation.

Learned Silk representing the Defence, had also not specifically debunked the notion that the Defendant owned and operated Ebenezer Retnan Ventures. In the Recent Case of **JUBRIL VS FEDERAL REPUBLIC OF NIGERIA (2018) LPELR-43993 (CA)**, it was held that the Law forbids a Person to hide under and use his Company to perpetrate Criminal Acts like the Offences of Obtaining Money by False Pretences, Forgery and Uttering. See also **AKINWUMI ALADE VS ALICE (NIG) LIMITED & ANOR (2010) 12 SC PART II AT PAGE 59**; AND the Dictum of **FABIYI JSC** in the Case of **OYEBANJI VS THE STATE (2015) LPELR- 2475(SC)** was referred to, wherein His Lordship stated that, *"the Appellant qualifies as the "Alter Ego" of Baminco Nigeria Ltd. "Alter Ego" is said to mean 'second self'. Under the Doctrine of Alter Ego, the Court merely disregards the Corporate Entity and holds the Individual responsible for the Act, knowingly and intentionally done in the name of the Corporation. His Lordship referred to the Case of IVY VS PLYLER 246 CAL. APP 2d 548, and further stated that to establish the Doctrine, it must be shown that the Individual disregard the Entity of the Corporation and made it a Mere Conduit for the Transaction of his own Private Business. The Doctrine simply fastens liability on the Individual who uses the Corporation merely as an Instrumentality in conducting his own Personal Business.... There is no shred of doubt that the Fraudulent Acts of the Appellant called for the Lifting of the Veil of his Company, which opened him up for Prosecution before the Trial Court."*

From all the above, it is plain to see that Ebenezer Retnan Ventures is not an Incorporated or Registered Company known to Law and therefore, by the Natural Order of things, should not own Property. However, it is clear from the evidence adduced, that the Defendant is the Owner and Sole Authority of the Account opened in the name of Ebenezer Retnan Ventures. Therefore, the Defendant who irregularly opened the Account, transacted on the Account, received Monetary Property into the Account and expended Monies from the Account, cannot now turnaround to argue that Ebenezer Retnan Ventures being Unincorporated and Unregistered, could not own Property.

The Activities seen in **Exhibit P15C**, the Bank Statement of Ebenezer Retnan Ventures, tendered by **PW4**, Mrs Mobolanle Folaranmi, the Assistant Director of the NDIC, blatantly showed that the Ventures did in fact owned Property under the Absolute Control of the Defendant. Therefore, the Contention of the Defence cannot hold water that Ebenezer Retnan Ventures could not own Property, as there is ample evidence indicating Payments made **INTO** the Account for the benefit of the Defendant, and Payments made **OUT** from the Account by the Defendant personally. There were also several undeniable inflows of funds into the Account of Ebenezer Retnan Ventures from the Plateau

State Government Account with the Lion Bank Plc. The Prosecution Witness, Mr. Cyril Tsenyil, the Accountant General, testified that Ebenezer Retnan Ventures was not a Contractor or known by any Relationship with the Plateau State Government. Therefore, it cannot be said that the Monies from Plateau State into Ebenezer Retnan Ventures' Account had anything to do with deserved benefit, either by way of Contract or Consultancy.

It is important to recall that the Defendant had also before the London Metropolitan Police acknowledged that the Name "Ebenezer" was that of his Son, and he further confirmed this fact in his EFCC Witness Statement admitted as **Exhibit P13A** dated the 12th of June 2007. There was also evidence through the Barclays Bank Statements of Chief Joshua Chibi Dariye, of Transfers of Monies from Ebenezer Retnan Ventures' Account in Nigeria to his Account at Barclays Bank in the United Kingdom.

The Defendant himself, in **Exhibit P13A**, stated that Ebenezer Retnan Ventures was one of his Enterprises. He also stated that *"the name Haruna Daniel was written in the Opening Mandate in the event of death, and he was never part of the Signatory. It is a Private Account and it was Mr. Awe Odessa, who opened the Account for me. All through (sic) Haruna never signed a single cheque. Mr. Awe Odessa was DGM Operations with AllStates Trust Bank. Since it was a Private Banking arrangement there was no request for Passport Photograph."*

In deference to Chief Joshua Chibi Dariye's Person and Position as Governor, the AllStates Trust Bank Plc. bypassed all Legal Process and Documentation, necessary to open a Corporate Account in their Bank. The fact that Due Diligence and Proper Processes were not employed by the Bank in Opening the Account is evident by the consequences they suffered by this bypass, when they had their Licence and Certificate of Incorporation Revoked by the Federal High Court and when the Officials of the Bank were either Imprisoned or Fined.

As a Public Officer, the Defendant is not entitled to maintain an Overseas Account but this is not the patent issue before this Court.

In view of all the above, the Court is satisfied that Ebenezer Retnan Ventures and Chief Joshua Chibi Dariye, are one and the same Person and Chief Joshua Chibi Dariye is found Competent and directly responsible as a Customer for the Account of Ebenezer Retnan Ventures, who need not be made a Party to this Charge, either as a Witness or a Co-Defendant. The Defendant is Fully Capable of Answering any Charges against Ebenezer Retnan Ventures and its Activities.

The **Third Issue** raised by the Court for determination is: -

Whether, the Prosecution successfully discharged the Criminal Burden of Proof establishing Criminal Breach of Trust against the Defendant in Counts 1, 2, 4, 5, 6, 7, 8, 10, 13, 15, 17, 19, 21 and 23 and the arguments across the divide will be initially examined.

Learned Silk, Kanu Agabi SAN, representing the Defendant, submitted that the Defendant was at all material times the Governor of Plateau State, and as such was vested with all Executive Powers under **Section 5(2) of the 1999 Constitution (As Amended)**. It was the exercise of this Executive Powers that gave rise to these Charges. The Central Bank of Nigeria issued a Cheque in the Sum of N1, 161, 162, 900 in favour of the Government of Plateau State Government through the Ecological Funds

Office in Abuja. The Cheque was signed for and collected by Mr. Victor Dilang, who delivered same to one of Plateau State Government's Bankers, the AllStates Trust Bank Plc., which cleared the Cheque through its own Suspense Account and then proceeded to apply the proceeds thereof, to meet the needs of the Government of Plateau State as directed by the Defendant.

He analyzed the evidence of the Ten Prosecution Witnesses stressing that it was instructive that neither the Federal Government nor the Plateau State Government had found anything wrong with the conduct of the Defendant until the Federal Government of Nigeria received a Petition from the London Metropolitan Police, who incidentally did not see it fit to charge the Defendant with any Offence. Further, Plateau State Government had not complained of any loss of Funds and neither did the Ecological Funds Office ever complain of Misappropriation or Criminal Breach of Trust. The evidence recited by PW1, Mr. Musa Sunday and PW3, Mr. Bamanga Bello, both EFCC Investigators in this Court, were the same as that rendered before the Kaduna Federal High Court and therefore, this Court cannot reach a different Decision on the same evidence.

Learned Silk submitted that the evidence of PW7, Mr. Dabi Gideon Dashong, the Handwriting Expert from the EFCC, did not prove any wrongdoing as there were no disputes as to Signature or Handwriting and noted that, even though the Documents were sent for analysis to the Forensic Laboratory in 2007, it was only in 2015 that the Report was eventually received. The evidence of PW9, Mr. Peter Clark, a Retired Police Officer from the London Metropolitan Police, had little relevance to the Charges before the Court, as his testimony was devoted to allegations of Money Laundering in London.

As regards the evidence of PW10, Mr. Mohammed Kawu Mohammed, concerning Asset Forfeiture, he stated that no reasons were given as to why the Defendant's Assets were forfeited even before the Trial began and stated that several of the Assets forfeited, had been wrongly ascribed to the Defendant.

Learned Silk then defined Criminal Breach of Trust under **Section 311 of the Penal Code** and submitted that the Defendant was charged with the Offences of Criminal Breach of Trust in **Counts 1, 2, 4, 5, 6, 7, 8, 10, 13, 15, 17, 19, 21 and 23** and punishable under **Section 315 of the Penal Code**. According to him, that the Defendant acted "Dishonestly", is an essential element of the Offence of Criminal Breach of Trust as defined in **Section 311**, which word was twice mentioned in that Section, to mean that the Defendant dishonestly misappropriated or converted to his own use or dishonestly used or disposed of that Property. He relied on the cases of **YAKUBU IBRAHIM VS COP (2010) LPELR- CA/A/6C/2017 (CA) PARAS E-B PER ODILI JCA (AS HE THEN WAS); THEOPHILIUS ONUOHA VS THE STATE (1988) NWLR PART 83 PAGE 460; IBRAHIM & ORS VS COP (2010) LPELR-8984 (CA); AKWULE VS THE QUEEN (1963) NCLR PAGE 105.**

To constitute an Offence under **Section 315**, it was imperative that **all** the ingredients of the Offence be stated and proved, beyond reasonable doubt, otherwise an omission of any element was fatal to the Charge, citing the cases of **CAPTAIN ABIDOYE VS FRN (2013) 12 SC PART 1 PAGE 99 AT PAGE 119 PARAS 25-30; ALABI VS THE STATE (1993) 7 NWLR PART 307 PER ONU JSC; COP (MW) VS AKPATA (1976) 1 ALL NLR PAGE 235 AT PAGES 240, 241 PER ADEMOLA CJN; TIMOTHY VS FRN (2008) ALL FWLR PART 402 PAGE 1136 PER OMOLEYE JCA.**

Learned Silk, analogized the fact that once the Element of Dishonesty is omitted from the Charge, it was fatal to the case of the Prosecution, rendering the Counts defective and incompetent and therefore, the question of leading evidence to prove this element would not arise, since what is not

charged, cannot be said to have been proved. He referred to the Judgment, particularly at **Pages 30 and 31**, in the case of **FRN VS AWE ODESSA (SUPRA)**, where the Trial Judge had held that the Funds, which are charged in this present case, were not misappropriated. The question of Dishonesty cannot arise when there is no evidence of Misappropriation.

Learned Silk submitted that the Finding in that Judgment has not been appealed against and same was binding on the Prosecution. This Finding was consistent with the uncontradicted testimony of the Plateau State Commissioner of Finance in **Exhibit D6 Page 39**, the House Report, where the Commissioner testified that no part of the proceeds of the Cheque was stolen or paid into a Private Account. The Commissioner had added that Virement, as per the Financial Regulations, was a proper practice and as such, did not amount to either diversion or theft of the Money. According to the Commissioner, ecological problems were matters of emergency for which the Government need not wait for Funds from the Federal Government or its Agencies, but when the Funds are subsequently received, it may be used for other purposes, in the overall interest of the State. He contended that the EFCC, who initiated the investigation, did not contradict this fact. Further, in the Report, it was never established before the House that the Funds of Plateau State Government were paid into the Ebenezer Retnan Ventures' Account.

Learned Silk referred to the testimony under Cross-Examination of PW1, Detective Musa Sunday, who identified **Page 2 of Exhibit P4**, as a Copy of Instructions to disburse the Funds dated the 19th of July 2001, given by the Defendant in his Capacity as Governor of Plateau State as well as **Exhibit D6**, the House Report, to argue that the Charge of Criminal Breach of Trust was not proved. PW1 had admitted that the Defendant acted in his Official Capacity as Governor of Plateau State, and the Federal High Court confirmed that **Exhibit P4** was a valid and official instruction. PW1 also admitted he was aware that the House Report exonerated the Defendant but gave no reason as to why the Prosecution ignored the Findings of the House.

Further, PW1 had confirmed that Pinnacle Communications Limited was a Contractor to the Plateau State Government and had collected the Sum of N250Million from the disbursements in issue.

The Defence referred to the uncontroverted testimony of its Witness, DW11, Prof. Danladi Atu, who stated that the Defendant took steps to address ecological problems of the State. DW11 had described the enormous work done by the Defendant in the area of erosion control in his Local Government Area and the repairs of damages done to the environment through mining activities, which had caused several mining ponds in the area, making some villages inaccessible from the City. The testimony of this Witness was consistent with that of the Commissioner of Finance rendered before the House of Assembly as well as consistent with the Findings of the Federal High Court, to the effect that no Funds were misappropriated.

Learned Silk Kanu Agabi SAN further submitted that every Breach of Trust in the absence of Mens Rea indicates no crime. The gist of Criminal Breach of Trust is Dishonest Misappropriation or Conversion to one's own use of another's Property. In order to constitute this Offence, it is not enough to establish that the Money has not been accounted for or mismanaged. It has to be established that the Defendant dishonestly put the Property to his own use or to some unauthorized use. Dishonest Intention to Misappropriate is therefore the required Mens Rea and a crucial fact to be proved to bring home the Charge of Criminal Breach of Trust. Unless it is alleged in the Charge, the Offence cannot be said to be proved, as the Defendant cannot be expected to prepare his defence on an allegation not stated in a Vague Charge and the question of discrediting evidence through Cross-Examination would not arise,

and the Court is not required to look at the evidence and reference was made to the case of **UBANATU VS COP (2002) NWLR PART 643**.

According to Learned Silk, the proof of Dishonest Intention is relevant for the purposes of determining whether the state of mind of the Defendant renders it possible or likely to have entertained Dishonest Intention when he dealt with the monies entrusted to him.

Further, it is the mental act of fraudulent misappropriation that distinguishes Embezzlement, amounting to a Civil Wrong or Tort from that of Criminal Breach of Trust and it is only when there is evidence of the mental act of fraudulent misappropriation of any Sum of Money, that it becomes a Penal Offence punishable as Criminal Breach of Trust.

On the element of Entrustment, Learned Silk submitted that “to entrust” and “to have dominion” were stated disjunctively in the Penal Code and he drew out their distinctions. He submitted that to entrust means to assign responsibility for doing something to someone and also means to put something into someone’s care or protection. Dominion, on the other hand, meant Sovereignty, Control over the Property and the Power or Right of Governing or Controlling that Property. It also means Sovereign Authority, Rule or Domination and Learned Silk pointed out that the Charge, in question, failed to specify the nature, limit or extent of the Sovereignty.

According to Learned Silk, the Charge was also bad for failing to state the Terms of the Entrustment and how they were breached. The Offence of Criminal Breach of Trust is committed when a Person who is entrusted in any manner with Property or with dominion over it, dishonestly misappropriates it, or converts it to his own use, or dishonestly uses it or disposes of it in violation of any direction of Law prescribing the mode in which the Trust is to be discharged, or of any Legal Contract, express or implied, made by him touching such discharge, or wilfully suffers any other Person so to do. He recognized the fact that the word “or” was used Six (6) times in the Section.

Further, the Charge failed to specify the Person who entrusted the Cheque to the Defendant thereby rendering the Charge, yet again, bad and vague. It connotes that the Defendant held the “Property” for and on behalf of the Person offering it to him. The Person handing over the Property must have confidence in the Person taking the Property so as to create a fiduciary relationship between them. According to Learned Silk, the implication of the word Entrustment is that the Person handing over the Property continues to be the owner of the Property. This was not the situation in this case, as the Cheque allegedly entrusted to the Defendant, did not remain the Property of either the Federal Government or of the Ecological Funds Office.

Therefore, it was imperative that the identity of the Person entrusting the Property to the Defendant be stated in the Charge. He submitted that the Counts only made reference to the “Place” where the Cheque was collected and it is clear, that neither a Place nor an Office can entrust but only by a Person. From the evidence adduced, it was PW2, Mr. Adewusi, who delivered the Cheque to Victor Dilang. Victor Dilang was the Person entrusted with the Cheque, he was a material Witness but was not called nor his Witness Statement obtained, and failure to do both, were fatal to the case of the Prosecution. Reference was made to the cases of **OGUONZE VS THE STATE (1998) 4 SC PAGE 110 AT PAGE 155, 156 PARAS 40-5; EDOHO VS THE STATE (2004) 5 NWLR PART 865 PAGE 17 AT PAGE 51 PARAS A-C; NNOLIM VS THE STATE (1993) 3 NWLR PART 283 PAGE 569 AT PAGE 581 PARA B**.

From the above submission, Learned Silk contended that PW2, Mr. Adewusi's evidence was the only evidence on this issue and his testimony was inconsistent with the allegation that the Defendant was entrusted with the Cheque. Learned Silk recalled that the Cheque was entrusted to Victor Dilang, which evidence was also consistent with the Findings of **Liman J** in the case of **FRN VS AWE ODESSA (CITED SUPRA)** admitted into evidence as **Exhibit D21B**. In that case, there was an allegation that the Cheque was unlawfully procured, and the AllStates Trust Bank Plc. and some of its Staff were charged with aiding and facilitating the Defendant to misappropriate the Funds. This Decision was not appealed against and therefore, estops the Prosecution from contending the contrary. Further, the Plateau State House of Assembly had also come to the same conclusion pursuant to their powers under **Section 128 of the 1999 Constitution (As Amended)**.

Therefore, a gross material contradiction arose, as to whether the Defendant was entrusted with the Cheque. He contended that these contrasting positions, demonstrate bad faith and lack of interest of justice on the part of the Prosecution for which no conviction can be sustained against the Defendant.

Furthermore, the Prosecution had the onus to call the Staff of the AllStates Trust Bank Plc., who participated in the events leading up to this Charge, and who could explain why they paid the Cheque into the Account of Ebenezer Retnan Ventures. It cannot be assumed that the actions of the Bank were unjustified or that they acted on the instruction of the Defendant. According to Silk, these Bankers were unjustifiably charged with suspicion and subsequently discharged and acquitted, which would explain why they were not called as Witnesses. In all, the failure to call these material Witnesses presupposes the withholding of evidence by the Prosecution as provided in **Section 167 of the Evidence Act** and the cases of **SAM ONYEJIUWA CHINEKWE VS ANTHONY AKUBUEZE CHINEKWE (2010) 12 NWLR PART 1208 PAGE 226 AT PAGE 231; CHUKWUKA OGUDO VS THE STATE (2011) LPELR-SC 341/2010 PAGES 28, 29 PARAS F-A PER RHODES VIVOUR JSC**.

He then referred to the testimony of DW1, Adonye Roberts, a former Senior Manager and Staff of the AllStates Trust Bank Plc., where he stated that the Account of a Venture is classified as Private Banking and the existence of this Class of Accounts is not evidence of fraud. Further, he had stated that it was quite normal for a Bank to waive certain requirements for opening and maintaining an Account and in this case, the Bank Executives did the waiver.

This Witness had identified **Exhibit P6**, the Central Bank Cheque, which he stated was cleared into a Suspense Account, owned by the Bank. He was emphatic that the Cheque was not cleared into the Account of Ebenezer Retnan Ventures and found nothing wrong with the Cheque being cleared through a Suspense Account. According to Learned Silk, the misconception or error of the Prosecution in stating that the Cheque was cleared through Ebenezer Retnan Ventures led to the Charges before this Court and he concluded that with this gross and fundamental contradiction alone, the Defendant is entitled to be acquitted. DW1 had earlier been charged on this misconception and was subsequently discharged and acquitted and he then urged the Court to come to the same conclusion.

Further, he submitted that Mr. Timi Ebibomo, the Acting Managing Director and Chief Executive Officer of the AllStates Trust Bank Plc. as well as DW1, Mr. Adonye Roberts, acknowledged that Plateau State Government maintained an Account with All States Trust Bank Plc. This was also confirmed in **Exhibit D6**, by Mr. Emmanuel James Agati, the Commissioner of Finance, who went further to state that the Money was cleared by AllStates Trust Bank Plc. through its Suspense Account but not into the Account of the Defendant or Ebenezer Retnan Ventures.

The Prosecution had alleged that the Defendant was entrusted with dominion over the Cheque. According to him, even if the Cheque was not handed over to the Defendant, and if the proceeds of the Cheque were not misappropriated, then it is immaterial that he was Governor of Plateau State at the time. Even if the proceeds of the Cheque were misappropriated, it would not constitute Criminal Breach of Trust if it were not done dishonestly. This was why the Law required that all the elements of the Offence created in the Statute, must be charged and proved.

On the assumption that the Defendant was a Public Officer, there is no element in Count 1 showing he converted the Funds to his Personal use and the Prosecution did not even furnish any evidence in this regard. It was not necessary in every case to prove the precise manner the Defendant had dealt with or appropriated the Funds, as alleged. The Prosecution must be able to establish exactly how the Funds were misappropriated and to what the Funds were exactly used for.

Furthermore, it was not an Offence for the Defendant to operate an Account in the name of Ebenezer Retnan Ventures in the same Bank where the Cheque was cleared, as mere operating an Account in a Bank was not an Offence. It was also not an Offence if the Defendant operated that Account in a Bank used by the State in which he was Governor. The Defendant, as Governor, delivered the Cheque of Plateau State Government to the Government's Banker, who received, cleared the Cheque and applied the Funds therein, as directed by the Defendant. It was from the same Account that monies were paid to other Beneficiaries including the Government and Contractors of Plateau State. He surmised that if the payments from the said Account to the Government of Plateau State and its Contractors were legitimate, and not subject to punishment, then the mere delivery of the Cheque to AllStates Trust Bank Plc., cannot constitute Criminal Breach of Trust. There is no evidence on the basis of which the Court can come to the conclusion that the payments made to the Contractors of Plateau State Government, differed in any way from those, which are alleged in this Trial to constitute Criminal Breach of Trust.

Apart from the above, another element not indicated in the Charge, is the Breach of the Law, Directive or Regulation, shown to have been violated, concerning the payment of the Cheque from one Particular Account to another. There was also no Breach of Terms through which the entrustment was said to have occurred. There was also the fact that the Defendant failed to pay the Cheque into the Account of the Plateau State Government and Learned Silk argued that the mere delivery of the Cheque to AllStates Trust Bank cannot constitute the Offence of Criminal Breach of Trust or any other Offence, even on the assumption that AllStates Trust Bank Plc. was the Defendant's Banker. The evidence led revealed that the Plateau State Government maintained an Account with AllStates Trust Bank Plc., which could be seen from **Exhibit D6**, the House Report, and particularly from the testimonies of the Accountant General of the Plateau State as well as that of DW1, Adonye Roberts.

According to him, if the Governor of a State delivers a Cheque belonging to the State to a Bank, who received and applied its proceeds to meet the needs of the State, as directed by that Governor, there was no Offence. Going by the evidence of PW1, there was no evidence or Documents showing that the Cheque was paid into an Account other than an Account belonging to Plateau State Government. Therefore, no Offence could be said to have been committed, and this, yet again made the Charge bad for failing to state the Terms of the Entrustment.

Learned Silk further submitted that from the House Reports in **Exhibits D6 and D7**, it was concluded that the Cheque and the circumstances of its release in **Exhibit G**, demonstrated that the Cheque was a Grant to the Plateau State Government, who, as opposed to the Federal Government, had absolute

control over the Cheque. As far as State Funds were concerned, **Sections 120 – 129 of the 1999 Constitution** conferred control of Public Funds on the State House of Assembly and not the Federal Government or its Agencies.

Finally, Learned Silk submitted that the Executive Powers vested in the Defendant as Governor of Plateau State allows for Executive Discretion. PW1, Detective Musa Sunday, confirmed that the Defendant was acting in his Official Capacity, and therefore this lends credence to the fact that it was a disbursement sanctioned by the Government of Plateau State. There was also evidence on Record that the Interim Government during the Period of State of Emergency declared by the State Government, approved a further payment of N100Million to the same Pinnacle Communications Limited and on the same Contract.

From the above submissions, Learned Silk injected the question of circumstantial evidence and he cautioned the Court to tread cautiously, as the Court is duty bound to give critical examination when applying such evidence. Its application for the purposes of conviction must irresistibly point to the guilt of the Defendant, as suspicion however strong, or rumours or hunches, ought not to substitute Legal Proof. He cited the cases of **ADIE VS THE STATE (1980) 1-2 SC PAGE 73; AHMED VS THE STATE (1999) 7 NWLR PART 613; ONAH VS THE STATE (1985) 3 NWLR PART 12 PAGE 236 PAGE 244.**

Learned Silk, Rotimi Jacobs SAN, representing the Prosecution submitted that the Defendant as Governor of Plateau State, signed a Petition written on behalf of the people of Plateau State, which Petition was admitted into evidence as **Exhibit P14**.

In the Petition, Five (5) selected dangerous abandoned Mine Ponds were identified as a result of past mining activities in Plateau State. The Defendant had appealed to the Federal Government for financial assistance in the Sum of N3. 197 Billion to address these ecological problems through reclamation. Following a discussion between the then Vice- President of Nigeria, Alhaji Atiku Abubakar, the then Minister of Special Duties, Mr. Yomi Edu and the Defendant himself, areas requiring reclamation were prioritized, which narrowed the claim down to N1.5Billion. On the 25th of June 2001, the President of Nigeria approved the Sum of Nine Hundred and Fifty-Six Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N956, 162, 900.00) for the reclamation.

The Defendant as Governor, made yet another application wherein he sought another financial assistance for Flood Channelization, and again the President of Nigeria approved this Request in the Sum of Two Hundred, and Five Million Naira (N205, 000, 000.00) only.

The total approved Sums for both the Reclamation and Channelization was One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900), payable from the Secretary to the Government of the Federation's Ecological Funds Account.

As informed by **Exhibit P14 Page 1**, the Approval of the Grants was then communicated to the Defendant as the Executive Governor of Plateau State.

On the 12th of July 2001, a Voucher, with Plateau State Government as Payee, was prepared in the Office of the Secretary to the Government of Federation for the release of the approved Sum of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900. 00). According to Learned Silk, the Defendant, instead of allowing Officials of Plateau State Government, that is, the Permanent Secretary, Ministry of Finance or the Accountant General of the State, to collect the Cheque, Personally went to the Ecological Funds Offices in Abuja,

where he sought for the release of the Cheque from the Permanent Secretary. Through the testimony of PW2, Mr. Adewusi, who described the normal process for releasing Cheques, it can be seen that the Permanent Secretary hurried him into preparing and confirming the Cheque with the Central Bank of Nigeria, as the Defendant was waiting for its collection. Learned Silk referred to the Minute of the Permanent Secretary as seen in **Exhibit P14 at Page 24**, to corroborate the testimony of PW2 on the fact that the Defendant was Personally waiting to receive the Cheque in the Office of the Permanent Secretary.

PW2 also stated that the Cheque was released to the Defendant, who directed his Orderly DW15, Victor Dilang, to sign for its collection. According to Learned Silk, DW15 under Cross-Examination had stated that it was not within his Schedule of Duty to sign for Cheques written out for the benefit of Plateau State Government. DW15 had also confirmed the fact that the Cheque was written out in the name of Plateau State Government, and he signed for the Cheque and handed it over to the Person, which was the Defendant, who had instructed him to sign for it.

Learned Silk submitted that the Cheque written in the name of Plateau State Government, was not an Open Cheque that could be cashed over the Counter. The Federal Government released the Money to the Defendant to enable the Cheque to be cleared into the Plateau State Government's Account, in whose name the Cheque was written. The Cheque was required to be lodged into the Treasury Account of Plateau State Government, as stated by PW2, and this piece of evidence was not contradicted under Cross-Examination but further corroborated by the Defence's Witnesses, such as DW2, DW8 and DW10.

Learned Silk for the Prosecution then referred to the testimony of PW5, Mr. Cyril, the Accountant General of Plateau State, who had stated that the disbursement of the Funds in the Cheque was meant to be carried out by the Permanent Secretary of the Ministry or Head of Parastatal upon an Approval from the Governor and it was for the Accountant General of Plateau State, to release the Funds of the State. According to Silk, the Defendant had a fraudulent motive by failing to release the Cheque to the Government of Plateau of State and decided to keep the Cheque to himself. The Defendant lodged the Cheque with the Branch Manager of AllStates Trust Bank, Abuja Branch, where his Private Account with Ebenezer Retnan Ventures was maintained but not where the Plateau State Government Account was domiciled. Having cleared the Cheque through the Sundry Account of the Bank, the Cheque could not be returned in its original form to Plateau State Government.

According to Learned Silk, this act demonstrated that the Defendant intended to divert the Funds from the purposes for which it was released and referred the Court to the case of **STATE OF H.P. VS WAZIR RAM (1986) CR. LJ PAGE 995 (HP) OR ILR (1985) HP PAGE 339.**

Further, the deposit of the Cheque with the AllStates Trust Bank Plc. by the Defendant, whose Banker used their Sundry Account to clear the Cheque, showed that the Defendant fraudulently disposed off the Cheque in a manner contrary to the Mandate/Directive on the Cheque. The Defendant knew that had he paid the Cheque into the Account of Plateau State Government in line with the instructions on the face of the Cheque, it would have been difficult for him to disburse the Funds as per his Handwritten Directive to the Bank. Also, the Cheque would then have to follow Due Process for Approval by way of Raising Vouchers from the relevant Ministries, Parastatals and Agencies and Obtaining Approval from the Accountant General of the State as well as Approval from the Governor.

Learned Silk, Rotimi Jacobs SAN, then set out the Section of the Law to be **Section 315 of the Penal Code**, as well as set out in detail, the ingredients necessary to sustain the Offences of Criminal Breach of Trust and relied on the following cases: **ONUOHA VS THE STATE (1988) 3 NWLR PART 83 PAGE 460 AT PAGE 471; AKWULE VS THE QUEEN (1963) NSCC PAGE 157; FRN VS MARTINS (2012) 14 NWLR PART 1320 PAGE 287 AT PAGE 318; UZOAGBE VS COP (2014) 8 NWLR PART 1401 PAGE 441 AT PAGE 456 AND 463; AND MATA VS THE STATE (2013) 3 NWLR PART 1342 PAGE 607 AT PAGE 619 AND 620.**

Learned Silk comprehensively analyzed the evidence proffered by all the Witnesses from the Prosecution and Defence, and by way of response to the question of the omission of the word “dishonestly” in the Counts for Criminal Breach of Trust, Learned Silk contended that the arguments as put forward by the Defence were spurious and unsupported by either **Section 315 of the Penal Code** or the Case Law in **AKWULE VS QUEEN (SUPRA)** and such arguments cannot vitiate the Defendant’s Trial. According to him, **Craig JSC**, in the case of **ONUOHA VS THE STATE (SUPRA) AT PAGE 470** had authoritatively set out the ingredients for this Offence for which the Defence cannot, by way of submission, set out a new requirement. According to Learned Silk, **ONUOHA’S** Case, used the technical words, “committed a Criminal Breach of Trust”, and he argued that once this phrase is contained in a Count, it is said to have embedded or taken into consideration the fact that the act was dishonest, as well as taken into account, other definitions contained in **Section 311 of the Code**.

Further, the case of **YAKUBU IBRAHIM VS COP (SUPRA)**, as cited by the Defence would not avail him because the Defendant in the above cited case, was charged under **Sections 311 and 312 of the Code**, while in this instance, the Defendant is charged under **Section 315**.

To demonstrate his point on what needed to be proved and on how to Draft a Charge for this Class of Offence, he referred to **AKWULE’S** Case and **S.S. Richardson’s Note on Penal Code Fourth Edition at Page 243** and stated that even, the Supreme Court had relied and adopted the ingredients as set forth in Richardson in the case of **ONOGWU VS THE STATE (1995) 6 NWLR PART 401 PAGE 276 AT PAGE 291**. The Court of Appeal also adopted the above in the case of **AJIBOYE VS FRN (2014) LPELR CA/IL/C.51/2014**, which was a case of Theft under Section 289 of the Code, where the expression “committed theft” in the Charge was used, without stating out its ingredients as contained in Section 286 of the Code and where the Prosecution, had also framed the Offence of Criminal Breach of Trust in the same manner as couched in this present case.

In addition, Nigerian Cases had faithfully been following Indian Precedence and **Sections 405 and 409 of the Indian Penal Code** is synonymous with **Sections 311 and 315 of the Penal Code**. The Leading Indian Authors, **Ratanlal and Dhirajlal**, in their Book, **The Indian Penal Code, 31st Edition, 2006**, had couched the Charge for this form of Offence in a similar manner. Further, commenting on Section 409, these Authors had stated that dishonesty may be inferred from the surrounding circumstances.

Learned Silk therefore submitted that the Charge was framed in compliance with the requirements of the Law, and the Prosecution is expected to adhere strictly to the language used in **Section 315 of the Penal Code** and to prove dishonesty, which element is embedded in the phrase, “committed Criminal Breach of Trust”. According to him, the argument of the Defence was misconceived and cannot be right.

Apart from that, the Defendant had not stated that he was misled as to the nature of the Charge he was facing, for he had pleaded Not Guilty to both the Original Charge and the Amended Charge. By

Section 220 of the Administration of Criminal Justice Act 2015, the Defendant was expected not only to show there was error in the Particulars of the Offence, but that he was misled by the error or omission. The Defendant was ably represented by a Senior Advocate of Nigeria, and had even appealed through the Three Tiers of Courts on Interlocutory Issues without mentioning the fact that he was misled by reason of the manner the charges were drafted. Further, Learned Silk submitted that the Prosecution, as recommended in the case of **AMADI VS THE STATE (1993) 8 NWLR PART 314 PAGE 644 AT PAGE 664 PARAS A-D**, (which incidentally was referred to by the Defence), actually used the Language or the wordings of **Section 315 of the Penal Code** and the Defendant cannot be right in contending that the Prosecution omitted an essential ingredient of this Offence. According to him, all the ingredients in Section 315 were clearly captured in all the Counts relating to Criminal Breach of Trust.

Learned Silk then drew out each Count of Offences in regard to Specific Transactions relating to Specific Properties or Funds, to show that the Prosecution had proved its case beyond reasonable doubt.

His analysis would be discussed when the Court is determining the Counts of Offences relating to Criminal Breach of Trust.

In the **Defendant's Reply on Points of Law** dated and filed on the 28th day of February 2018, Learned Silk, set out certain issues, which he felt was not specifically addressed by the Prosecution. For the purposes of now, his Reply will be confined to his submissions on Criminal Breach of Trust.

As regards to the omission of the word dishonestly, Learned Silk for the Defence, replied stating that the Prosecution's position is contrary to all known Rules relating to the Drafting of Charges as well as the Constitutional Provision requiring the Defendant to be informed of the Offence in clear terms. He re-emphasised **Sections 311 of the Penal Code** and **Section 36(6)(a)- (e) of the 1999 Constitution (As Amended)** and re-stated his earlier submission that dishonesty was not only essential, but the Law required the word to be expressly stated when framing the Charge. He re-stated yet again the earlier cases cited by him, emphasising that the elements constituting the Offence must be explicit and not left to speculation or inference. It is not the intention of the Draftsman to hide or subsume the word "dishonesty" under any technical word, because "dishonestly" was mentioned twice in **Section 311 of the Penal Code**.

Further, he argued that there was no reason to resort to the Indian Penal Code's definition of Criminal Breach of Trust, when both the Court of Appeal and the Supreme Court in Nigeria had adequately defined it. He argued that the Phrase, "Technical Words" is a vague expression, not defined in our Laws or Courts and none of the Appellate Courts had ever approved technical words as sufficient in stating the elements of an Offence. The elements of an Offence cannot be left to mere assumptions and speculations.

Learned Silk rehashed all the Case Law Authorities and Submissions earlier made in his Written Address and there is little point in re-stating them here again.

Learned Silk submitted that a Written Address is not an avenue for the Prosecution to give evidence. The fact that the Central Bank of Nigeria's Cheque was cleared timeously is not one of the elements of Criminal Breach of Trust or Misappropriation and the Prosecution did not lead evidence to show the Authority that is vested with special powers to collect Cheques on behalf of State Governments in Nigeria, nor did it proffer any Law that disqualifies the Defendant, as Executive Governor of Plateau State, from doing so. No Witness stated this fact.

Relying on the cases of **INAKOJU VS ADELEKE (2007) 1 SC PART 1 PAGE 299; OJO VS AGORORO (2006) 25 NSCQR PAGE 712 AT PAGE 753; AND OYEBANJI VS STATE; MOHAMMED VS THE STATE; AYENI VS THE STATE; AND MUKORO VS THE STATE**, Learned Silk submitted that sentiments have no place in judicial deliberations, and the Prosecution must limit itself to the Charge alone and not try to whip up sentiments.

The Prosecution failed to state the Law constituting Criminal Breach of Trust, which asserts or criminalizes the act of the Defendant in merely taking the Cheque to AllStates Trust Bank Plc. This is because guilt, as provided by the Constitution, is founded on the Breach of a Law and not on the wishful thinking of the Prosecution. The Prosecution by not quoting any Law or Direction missed the point when it argued that the Cheque issued in favour of Plateau State Government and paid into AllStates Trust Bank, ought to have been paid into the Account of the Accountant General of Plateau State. The Prosecution had canvassed no argument as to whether the purpose for which the payment was made, had been achieved.

It is important at the onset to set out the Narration/Origin/History of Events through the Initial Key Testifying Witnesses, who started the Investigations and from their Testimony, how and where it all began, will be set out to show how the Defendant was apprehended in the first place. Thereafter, a Short Summary/Introduction of the Other Testifying Witnesses, will be set out and the Essence of their Testimonies will be seen in the Court's Determination of the Substantive Issues.

The Narration started from **PW9**, Mr. Peter Clark, who is Detective Constable, now Retired from the New Scotland Yard formally of the Metropolitan Police in London, United Kingdom, where he served for Ten Years working with the Proceeds of Crime Unit. This Unit, responsible for tackling Politically Exposed Persons (PEPS), was directly involved in the Investigations of Dariye, Alamiyeseigha and Ibori. He also was responsible for supporting other Units of the Metropolitan Police with Financial Enquiries.

In January 2004, Officers from the Northeast Crimes Squad involved in Crime Card Fraud, requested for his input. The facts as narrated by him were that Officers were searching a House at 127 Chiltern House, London, when one Christopher Mekwunye, who had a key to the house, let himself in. The Officers searched Mekwunye's Apartment and discovered a Briefcase containing **Eleven Thousand, Five Hundred Pounds (£ 11, 500)**, which Sum he initially claimed belonged to him. He was arrested for Credit Card Fraud and then taken to the Forest Gate Police Station. At the Police Station, Mr. Peter Clark was shown a Barclays Bank Account Statement having a Balance of **Eight Hundred and Sixteen Thousand Pounds (£816, 000)** belonging to the Defendant with the Address registered to the Account, listed as Flat 28, Regent Plaza Apartments in NW8. At this said Apartment, a Search revealed a number of items including a Campaign Poster, Seven (7) Pairs of Designer Shoes from Louis Vuitton estimating about **£700** per pair, a very nice Mont Blanc Pen Presentation Box, which the Defendant purchased for **£7000** and High Class In-flight Purchases.

On his return to the Police Station, he interviewed Mr. Mekwunye on Tape and under caution, whereupon he claimed that he worked at the Marriot Hotel Edgware Road, London and was sponsored for a Degree Programme in the United Kingdom by his Boss, Chief Joshua Dariye, who

incidentally owned the Money in the Briefcase. He also stated that anytime the Defendant was in London, he usually assisted him. Mr. Dariye had asked him to pay into his Bank Account **the Sum of Eleven Thousand, Five Hundred Pounds (£ 11, 500)** but he did not have the time to do so. He revealed to Mr. Peter Clark that the Defendant was a Politician and a Governor of a State in Nigeria. Mr. Clark then made certain enquiries with Barclays Bank, who informed him that the Defendant was their Customer but noted that his Account was being operated in a suspicious manner, and he was advised to obtain a Court Order to access the Accounts.

Mr. Clark then realised he needed more information and therefore met with a Diplomat working in the Nigerian Embassy in London, Mr. Ayo Oki. This Diplomat informed him that Nigerian Laws forbade the Defendant from operating a Foreign Bank Account. This information supported his Application for a Court Order to gain access to the Defendant's Bank Account with Barclays Bank. Aside of the Bank Statement received, there was also a Personal Customer Profile containing information supplied by the Defendant at the Account Opening. At the first Opening of the Account with Barclays in 1995, the information was that he was a Manager with the Benue Cement Company on a Yearly Salary of **Five Hundred Thousand Pounds (£500, 000)**.

In all, there were a total of Nine (9) Bank Accounts with Barclays, as well as a Barclays Credit Card, and all these Accounts were registered to the Apartment at Regent Plaza, with some being Dormant and some being High Interest Yielding Accounts, which confirmed the Balance of **Eight Hundred and Sixteen Thousand Pounds (£816, 000)**. He noted from the Statement of Account, that Monies were transferred into the Account from Ebenezer Retnan Ventures' Bank Account with the AllStates Trust Bank Plc. in Nigeria. There were also a number of Electronic Transfers directly from the Defendant Personally and from memory, he could recall that one of the Transfers came from Lion Bank.

He further enquired about the repayment of Interest on the Credit Card and was informed that a Lady called Joyce Oyebanjo wrote Cheques from her Account every Month to pay-off the Barclays Card. He then asked Barclays Bank for details of her Bank Accounts, which were provided, as well as the Cheques she had written from NatWest Bank. He then contacted NatWest Bank, who confirmed Joyce Oyebanjo as their Customer, as well as the Defendant and his wife, Valentina Dariye. Upon the obtaining of a Court Order, NatWest Bank provided all the details and he discovered that Joyce Oyebanjo's Account in October 2003 received over **One Million Pounds (£1, 000, 000. 00)** from Nigerian Companies, such as: - Al-Dawood, Dangote, and Summit Finance.

Further investigations revealed that Joyce Oyebanjo was paying all the bills for the Regent Apartment, and School Fees in the Sum of **Two Hundred and Seventeen Thousand Pounds (£217, 000)** at Dean Close School in Cheltenham, a Private School, for three of his children's education. Dean's School was contacted and the School confirmed this fact. They also discovered that she had used the Sum of **£165, 000** as deposit for the purchase of another Property for the Defendant at 18 Cambridge Square, London West. During the course of the interview with the Defendant and Joyce Oyebanjo, they had both stated that the Sale fell through.

Since Nigeria and the United Kingdom were Signatories to the United Nations Convention, he required evidence regarding Ebenezer Retnan Venture's Account from the Nigerian Authorities, and in March 2004, the Crown Prosecution Service sent a Letter seeking Nigeria's assistance under Mutual Legal Assistance and in June of the Same Year, he came to Nigeria, where he met the Attorney General of the Federation, who appointed Officers of the State Security Service (SSS) and later Officers of the Economic and Financial Crimes Commission (EFCC) to assist. The EFCC gave him a Copy of the

Defendant's Code of Conduct Declaration Form, where he had made no Declaration of any of those Funds regarding the operation of any of the Foreign Bank Accounts.

He returned to London and continued his investigation, and in July 2004, Joyce Oyebanjo was arrested at her residence and later granted bail. She was interviewed, cautioned in the company of a Solicitor whereby she admitted knowing the Defendant and further stated that all the Funds sent to her from Nigeria were from the Defendant for the upkeep of his Children and Maintenance of his Property at Flat 28 Regent Plaza Apartment. She was paying Utility and Gas Bills and he suspected that the Flat belonged to the Defendant based on the Family Portrait he saw hanging on the wall, the Defendant's Clothing hanging in the Wardrobe, and Large Quantities of Documents in the Defendant's name. He contacted the Land Registry, who provided him with the name of the Law Firm of Rowberry Morris, which did the Legal Paperwork to purchase the house for the Sum of **£395, 000 in September 2001** and the Property was registered in the name of one Joseph Dagwan, whose name he believed, was false.

He was given a Copy of the Ledger that showed an initial deposit of **£300** paid by Grow Court Homes, a Company owned by one Samson Okeke, a Relative of one Babatunde Lucky Omonuwa who owns Pinnacle Communications Limited. The Ledger from the Solicitors' Firm also showed Two Payments of Fees in the Sum of **£34,000 and £315,000, approximately totalling £395,000**. He contacted Barclays Bank who confirmed Pinnacle Communications Limited to be their Customer, who maintained a US Dollar Account at their Knightsbridge Bank in London, and from whose Account the Money was paid to the Solicitors.

Mr. Okeke informed him that Mr. Lucky had a driver named Wagdi Mikhail, who Mr. Clark later arrested and interviewed. He got to know from Wagdi Mikhail, the driver, that on a certain day, he drove the Defendant and Lucky Omonuwa to view Flat 28 Regent Plaza, when it was put up for sale. Mr. Lucky Omonuwa was then arrested at the Heathrow Airport on his way to Nigeria and during his interview under caution, Mr. Clark put it to him that the purchase of Regent Plaza was part of a kickback for the Award of a Large Contract to install Televisions in Plateau State. Mr. Lucky Omonuwa denied this, but admitted purchasing 28 Regent Plaza on behalf of the Defendant, stating that the Defendant gave him the Naira equivalent of **£395,000**.

Sometime in September 2004, Mr. Clark received information that the Defendant was at the Marriot Hotel, George Street, off Edgware Road, London. On the 2nd of September 2004, he and two Officers went to Room 1208, which was occupied by the Defendant, where he was informed that his Bank Accounts, being investigated, were suspected to domicile Stolen Funds. The Defendant's Room was searched and the Sum of **£43,000** in Cash was found. As a result, the Defendant was arrested and cautioned on Money Laundering Charges. He was asked if he travelled alone to which he replied that he did.

However, Mr. Peter Clark had earlier received contrary information from the Hotel, that the Defendant had also booked Room 1220 for his Personal Assistant, Christabel Bentu. She was also searched and found to be in possession of the Defendant's Passport, Flight Tickets and **£50,000** in Cash. She was also arrested on suspicion of Money Laundering. From the Defendant's Bank Accounts and International Passport, it could be seen that the Defendant had travelled all around the World.

The Monies recovered from the Defendant in different Denominations of Pounds, Euros and Scottish Bank Notes, were bagged and signed by the Defendant, which Mr. Clark later photocopied. The Defendant was taken to the Marylebone Police Station and his Personal Assistant was taken to West-

End Central. The Defendant requested for a Solicitor, and was interviewed for Two Hours on Tape by Mr. Clark under caution.

During the interview, the Defendant admitted sending Monies from Ebenezer Retnan Ventures and informed him that 'Ebenezer' was the name of one of his sons. His Personal Assistant, Christabel Bentu had stated during her interview that of the **£50,000**, the Sum of **£10,000** belonged to her, whilst the Remainder **£40,000** was given to her by the Defendant before they left Nigeria. The Defendant was told that if he transferred any more Money, he would be committing further Money Laundering Offences.

Whilst Mr. Peter Clark was in Nigeria and investigations were on going, in September 2004, his Colleagues searched the Defendant's Regent Plaza Apartment with a Search Warrant, and the Defendant was present and had with him the Sum of **Eleven Thousand, Nine Hundred and Ninety-Five Pounds (£11, 995)**, which was seized. Also seized were **Three (3)** Barclays Bank Cheques in the sum of **Fifty- Seven Thousand Pounds (£57,000)** each.

Due to lack of evidence at the time, the Defendant was granted bail and Mr. Clark, believing that the Defendant was a religious man, sought his assurance that he would return on the 14th of December 2004 to answer his Bail. He then signed a Form agreeing to the Terms, but Chief Joshua Dariye, never returned to the United Kingdom. Mr. Peter Clark stated that had there been evidence from the EFCC tainting any of these above Sums, the Defendant would have been charged with a Criminal Offence in London in December 2004. He noted that Christabel Bentu, who was bailed on the same day, also failed to show up.

Immediately, after the Defendant failed to answer his bail, he secured a Warrant of Arrest from Bow Street Magistrate Court, which Warrant is still valid. The Defendant was circulated on their Computer System as being Wanted and he remains Wanted as of today.

According to Mr. Clark, the Defendant was not extradited because at the time, he was a Serving Governor enjoying Immunity and when he vacated Office in May 2007, the EFCC had already arrested and commenced Criminal Prosecution against him, and Domestic Trial took precedence over a Foreign Trial.

The Defendant, through his Solicitors was informed of the Court Proceedings for the forfeiture of Funds suspected to have come from Nigeria and the Bank Accounts of Joyce Oyebanjo and the Defendant's wife were all frozen, with the Apartment sealed by a High Court Order. He also applied to have the Cash seized from the Defendant and Bentu forfeited. But the Defendant instructed his Solicitors in London to challenge this on the basis of Diplomatic Immunity. Mr. Clark then liaised with the London Foreign Office, who provided him Two (2) Certificates showing that the Defendant was not entitled to such Immunity.

Further, Mr. Peter Clark stated that he met and explained to the Nigerian High Commissioner in London, the Provisions of the **Proceeds of Crime Act (POCA) 2002**, allowing Third Parties to join the Proceedings, which he obliged by applying as a Third-Party.

Eventually, the recovered monies were forfeited by an Order of Court and repatriated to the Office of the Attorney General of the Federation in Nigeria. The Attorney General of the Federation then instructed a Law Firm in London to recover the Defendant's Frozen Assets. A High Court Action was commenced and from the evidence he had accumulated, which were presented, the Court ordered that the Defendant's Properties were to be sold and the proceeds sent to Nigeria.

Joyce Oyeбанjo, who had approximately **£200, 000** in her Bank Account, had her Account frozen, and subsequently confiscated through a Court Order and then the Monies were repatriated to Nigeria. She was then prosecuted for Money Laundering Offences, convicted and imprisoned for Three and a Half (3^{1/2}) Years.

Other Documents obtained by Mr. Peter Clark included, Payment Instructions to Barclays Bank, evidence of Telegraphic Transfers from Metropolitan Bank, showing Monies received into his Solicitor's Account for the purchase the N0.18 Cambridge Square, London West Property.

The Prosecution then tendered through this Witness, the following Documents, namely: -

- Four Number Set of Diplomatic Privileges admitted without Objection as **Exhibit R**;
- Documents emanating from Barclays Bank admitted without Objection as **Exhibit S**;
- The Defence on the basis of Lack of Evidentiary Foundation and Absence of Certification objected to three Sets of Photographic Albums of Currency. The Objections were overruled and provisionally admitted with emphasis placed as to weight as **Exhibits T1 and T2**;
- Notice on Persons subjected to Financial Investigation admitted without Objection as **Exhibit U**;
- Copies of Three Cheques the Defendant was running whilst he was Governor admitted as **Exhibits V1-V3**;
- Tellers of Six Statements of Account belonging to Joyce Oyeбанjo admitted as **Exhibits V4-V9**;
- Two Bank Tellers admitted as Exhibits **V10-V11**;
- The Original of the Bank Draft provisionally admitted as **Exhibit V12** with directions for

Address at the Conclusion of the Case.

Mr. Peter Clark demonstrated **Exhibits S and V**, the details of Pinnacles Communications transfer of Funds in regard to the purchase of the London Apartment, and transfer payments made to NatWest Bank.

According to him, Pinnacles Communications Ltd made a Transfer of **£34, 000** to the Solicitors, Rowberry Morris, which Sum represented Part of the Purchase Price for the Apartment and which had the Value Date stated as 13th September 2001. In **Page 4 of Exhibit S**, relating to the Sum of **£369, 424. 63**, this Sum was from Pinnacle Communications Ltd to the same Solicitors effected on the 19th of September 2001.

In **Page 4 of Exhibit V**, a Credit for the Sum of **£50, 000** was paid in by Pinnacle Communications Ltd on the 12th of December 2001 and credited into the NatWest Account Number 79703941, operated by Joshua Dariye. He did not know why the Sum of **£50, 000** was paid but surmised that it was to credit the Account and not used towards the Apartment.

Under **Cross-Examination** by the Defence, Mr. Peter Clark stated that he retired on the 9th of March 2015 and prior to his retirement, was a Detective Constable with the Metropolitan Police, which position he held till his retirement. In 2002, he took an examination, which qualified him to become a Financial Investigator. His Supervisor was Mr. Robert Ingram but he Personally was responsible for the investigation. After his retirement, the Files he was investigating on, were transferred to a Unit now called National Crimes Agency. At the time of his retirement, he had concluded his investigation on the Defendant, which included the Arrest Warrant and Forfeiture.

When asked whether if it was Senator Nasiru Mantu, who informed him that the Defendant was in the United Kingdom, Mr. Clark answered in the negative stating the source of his information to be the

result of the Monitoring Court Order from Barclays Bank, who, on the Defendant's use of his Visa Card to pay for his Lodgment at the Marriot Hotel, alerted him of the Defendant's arrival into the United Kingdom.

He stated that prior to his retirement, his relationship with the EFCC was Official, and he had visited Nigeria over Thirty-Five (35) times to give evidence. Presently, he is not under the instruction of the National Crimes Agency but of his freewill, he is in Nigeria to help. In 2004, he started this investigation in London and like any good Police Officer, he wanted to see it through to the end and maintained that he had no Personal interest.

Mr. Peter Clark further testified that he had appeared before an Impeachment Investigation Panel constituted to impeach the Defendant in 2006 but was never confronted with any Court Order or such Order restraining the Panel in Jos, Plateau State from Sitting. According to him, the Panel Proceedings were unproductive for investigations because of the Protracted Arguments on Admissibility of Evidence, the fact that he was never asked questions relating to his evidence and as a result, never got the chance to conclude his evidence.

According to him, the Trial was deliberately stalled bearing in mind that the Panel was aware of his time constraints in Nigeria. However, he was aware that the Panel eventually impeached the Defendant but that both the Court of Appeal and Supreme Court set aside his Impeachment.

Mr. Peter Clark stated that after the Defendant was released on Bail, he signed an Undertaking, and was given Three (3) Months to report back to the Metropolitan Police in the United Kingdom, but the Defendant did not Personally contact him. The Defendant through his Lawyer, Mr. Nwabueze, had written explaining why his Client, the Defendant would not be able to return. Therefore, he had breached the **Bail Act of 1976**. It was only Christabel Bentu, who had written back to him, stating her inability to return to London.

Upon the Defence Counsel's representation justifying the Defendant breaching his Bail Terms, on the Grounds of a State of Emergency in Plateau State, and the Defendant's eventual return into Office, Mr. Clark replied not being aware and would likely have given another date for return, had he been notified.

The genesis of investigating the Defendant was never as a result of an Official Complaint but seizure of cash from Mr. Mekwunye, who revealed to him that the owner of the Money was the Defendant.

He noted that Joyce Oyebanjo, who did not own the Money in her Bank Account, was prosecuted and convicted on account that the Money belonged to the Defendant but he was not aware whether Mr. Mekwunye (which fraud was entirely different from the cash found in his possession) was prosecuted for the Credit Card Fraud. Mr. Clark's singular interest was to know where the cash had come from, because he suspected it to be as a result of Money Laundering.

He agreed coming to Nigeria on the invitation of the EFCC and stated that the National Crimes Agency was fully aware of his presence in Nigeria and had paid for his flight and accommodation, although there was no written evidence of this.

Shown **Exhibits V1-V3**, the Cheques dated 21st September 2004, he could only tell that the Defendant had opened a Barclays Account in 1995 and had Nine (9) different Accounts with the Bank. However, he could not tell when the Account from which the Three Cheques emanated from, were opened by

the Defendant. The payment on the Cheques was stopped because the Bank refused to clear them. The Cheques were seized and the cash of **£11, 995** recovered from Regent Plaza was paid into the Metropolitan Police Account. Also seized was the sum of **£11, 560**.

Mr. Clark testified that in the Proceeds Of Crime Act, United Kingdom Legislation, there was Provision, permitting investigations to decipher the Origin of Suspicious Money and in this case, Mr. Mekwunye revealed the Source to be the Defendant.

When questioned whether **Exhibit V12**, a Bank Draft of **£100, 000** had anything to show that it emanated from the Defendant, he replied that he had enquired from the Bank, who told him that the Defendant had ordered for it. He explained that Customers, who requested for a Draft, would sign a Request Form and **Exhibits V10-V11**, were the Request Forms used for **Exhibit V12**. This Draft of **£100, 000** was ordered to debit the Defendant's Account, but he could not tell which of the Two Forms were used. He denied knowing if the Draft emanated from the Account that was opened by the Defendant in 1995, stating that there was little activity on the Account until May 1999, when the Account took off.

In conclusion Mr. Peter Clark stated that based on the Order of the Attorney General of the Federation, the Property in Flat 28 Regent Plaza was sold off, and he explained that the non-conviction of the Defendant in the UK Courts was as a result of the fact that the Defendant jumped bail.

No further questions were asked and there was no Re-Examination.

After his testimony, the Prosecution Amended the Charge and the Defendant's Plea was Retaken, wherein he pleaded Not Guilty to all the Counts in the Charge.

The Nigerian Investigations started with **PW1**, Detective Musa Sunday, who, after being cautioned on **Section 206 of the Evidence Act 2011 (As Amended)**, testified on Oath initially describing his Schedule of Duties at the Economic and Financial Crimes Commission (hereinafter referred to as the EFCC) and stated that sometime in September 2004, there was a Mutual Legal Assistance Treaty Request from the London Metropolitan Police which was directed to the Office of the Attorney General of the Federation. The Lead Investigating Officer in the United Kingdom is Mr. Peter Clark, who conducted the investigation into the Foreign Transfer of Funds to the United Kingdom. From their investigation, the Team discovered that the Defendant was arrested by the Metropolitan Police in the United Kingdom, investigated, released on bail, where he jumped the bail and came back to Nigeria.

Their request was for the assistance of the Nigerian Government to investigate and interview some Parties and Companies involving the Defendant. Upon receipt of this Request, the Office of the Attorney General of the Federation, on a Covering Letter, forwarded the Request to the Chairman of the EFCC for investigation. Both the Petitions from the Attorney General of the Federation and the Metropolitan Police in London were referred to his Team for investigation.

The Mutual Legal Assistance Treaty Request from the British Government together with the Attorney General's Letter to the Chairman of the EFCC was admitted into evidence without Objection as **Exhibit P1**. From the Mutual Legal Assistance Request by the Metropolitan Police in the United Kingdom, it was stated that Money was moved from Ebenezer Retnan Ventures' Account to the National Westminster (NatWest) Bank in the United Kingdom and some of the evidence they gathered here in Nigeria, were sent to the United Kingdom.

The Team's investigation started off with the Named Banks, with the first port-of-call being the AllStates Trust Bank Plc., where the Operations Manager provided the Account Details as well as Account Opening Documents of Ebenezer Retnan Ventures and the Mandate Card. The Account Opening Documents including the Mandate Card were sent to the Forensic Examination Unit for further investigations and the Unit confirmed that the Signature on the Mandate Card belonged to Chief Joshua Chibi Dariye.

A Bundle of Report from the Forensic Unit was admitted with emphasis placed as to weight as **Exhibit P2**, after the Objection raised by Learned Silk representing the Defence was overruled. The Account Opening Documents were admitted without any Objection as **Exhibit P3**.

Upon a careful observation, the Team noted a lot of financial inflows of Money from the Plateau State Government Account into Ebenezer Retnan Ventures Account, including Monies relating to the Ecological Funds of the State. AllStates Trust Bank Plc. was approached again and the Bank Manager availed them with a Photocopy of a Handwritten Document, where the Defendant split the Sum of about One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900. 00) only.

Upon further enquiry as to the Source of this Money, since it did not emanate from the Plateau State Government, the Manager made available to them a Photocopy of the Central Bank of Nigeria Cheque covering the said amount as well as an Additional Typed Disbursement Letter written on the Official Letterhead Paper of the Defendant, as Governor, to the Branch Manager of the AllStates Trust Bank Plc.

The Source of the Central Bank of Nigeria's Cheque was traced to the Ecological Funds Office under the Presidency, located at the Federal Secretariat, where one Mr. Adewusi was interviewed. He revealed that the Plateau State Government had earlier applied through the normal process for Funds for Ecological Projects in the State and Approval was given in the Sum of **One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900. 00)**.

Mr. Adewusi had told them that before the preparation of the Cheque, a Payment Voucher covering the said amount, which had annexed Documents, were prepared and audited.

According to Detective Musa Sunday, the Defendant, together with his Orderly, Sergeant Victor Dilang, visited the Ecological Funds Office, where Sergeant Victor Dilang signed for the Cheque in the Movement Register and collected the Cheque on the instruction of the Defendant. The Cheque was then taken to the AllStates Trust Bank Plc., Abuja Branch by the Defendant and while in the Office of the Branch Manager, the Defendant instructed the Bank on how the Money would be disbursed to Individuals and Companies. The Branch Manager actually complied with the Defendant's Instructions and instead of paying the Money into Plateau State Government's Account for clearance, the Bank used their own Bank Account to clear the said Cheque of **One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900. 00)** and disbursed the Monies to the Individuals and Companies as directed by the Defendant.

The Covering Letter, the Handwritten Instructions as well as the Typed instructions were admitted into evidence without Objections as **Exhibit P4**, where he identified the handwriting of the Defendant at **Page 2**. He also identified the Certified True Copy of a Page in the Movement Register, which was admitted into evidence as **Exhibit P5**.

Detective Musa Sunday also recovered the Central Bank of Nigeria's Cheque, certified by Mr. J.O. Adewusi, dated the 21st day of July 2001, which was then tendered into evidence as **Exhibit P6**. Some Documents regarding the disbursement of these Sums of Money were forwarded to the Commission

together with Cheques and the Covering Letter. The Objection raised in this regard was overruled, with the Documents admitted into evidence as **Exhibit P7**.

The Handwritten Instruction to Union Home Savings and Loans as well as the Mandate Card of Mr. Nkumah was tendered without Objection as **Exhibit P8**.

Tendered as **Exhibits 9 and 10**, were Correspondences between the EFCC and the Corporate Affairs Commission (CAC), regarding the Registration Status of Ebenezer Retnan Ventures as a Company/ Business Name. He also tendered into Evidence, **Exhibit P11**, the Itemized List of Lion Bank Cheques, and **Exhibit P12**, the Certified True Copy of the Diamond Bank Plc.'s Letter dated the 24th of November 2004, together with the Attached Statement of Account, which included the Request for a Bank Draft and a Photocopy of a Cheque.

The Defendant volunteered his Statement at the Commission and made some Additional Statements, after the Administrative Cautionary Words were read to him, whereupon he read and signed under the Cautionary Words, making his Statement in his own handwriting. He signed the Pages of his Statements and he, Detective Musa Sunday, countersigned as Witness to these Pages. These Statements were made on the 12th of June 2007, the 13th of June 2007 and the 15th of June 2007 and were all tendered into evidence with No Objection raised by the Defence as **Exhibits P13A, P13B and P13C** respectively.

He finally stated that his investigations revealed that the Salary of a Sitting Governor as at 2007 was the Sum of **Two Hundred and Fifty Thousand Naira (N250, 000)** Monthly.

Under **Cross-Examination** by the Defence, he stated that the Team comprised of about Five Members and he listed out their names. He explained the ranking of Ibrahim Magu, who was the Team Leader and identified Mallam Nuhu Ribadu as the then Chairman of the EFCC.

He was not aware of any complaint from Plateau State Government over Loss of Funds. The Petition emanated from the Crown Prosecution Service in the United Kingdom and is still pending before the Investigative Unit of the Metropolitan Police, United Kingdom. He was not aware of any prosecution initiated in the United Kingdom, reiterating the fact that the Defendant jumped the Administrative Bail granted to him by the Metropolitan Police. He did not see the Bail Bond nor had any Personal knowledge of the Bail, explaining that it was when Police Detective Constable, Peter Clark, came to Nigeria, he got the information about the Bail Breach. He stated that Sergeant Peter Ingram was the most Senior Officer that came to Nigeria for assistance and he met both of them, who along with himself gave evidence at the Plateau State Impeachment Panel set up by the Chief Judge of Plateau State.

He stated that the Crown Prosecution Service did not give him any Report about the outcome of their investigations. He described the job of the EFCC Forensic Laboratory Service, which is staffed by EFCC employees and he stated that a Formal Letter was written to the Forensic Laboratory with an attached Copy of the Disputed Signature Writings.

When shown **Exhibit P2**, he stated that there was nothing special about the Handwriting Analysis. The Document was sent to the Laboratory on the 24th of June 2007 and a Reminder Letter was also sent on the 10th of December 2015. He agreed that as at the 10th of December 2015, Eight (8) Years after the Initial Request for Forensic Analysis was sent, no reply was received, and added that the Reply was only received on the 14th of December 2015, when Ibrahim Magu the Team Leader had been elevated to the position of Chairman of the EFCC. He did not count this as strange that the Author of the Forensic Report was an EFCC Employee answerable to the Chairman of the EFCC, and

further did not count it as strange that the Report was produced Three (3) Days after the Reminder Letter dated the 10th of December 2015. He denied that the Report would not have been made but for the Reminder Letter and agreed that Mr. Gideon Dashong would be in a position to explain the accuracy of the Forensic Report, as he, the Investigating Police Officer, is a Lay Forensic Analyst.

Detective Musa Sunday acknowledged that the AllStates Trust Bank Plc. owned the Account Opening Forms and tendered this as **Exhibit D1**, a Memo written by the Deputy General Manager, (Northern Operations), Mr. Odessa to an Executive Director of the AllStates Trust Bank Plc., requesting a Waiver of Requirements and **Exhibit D2**, the Statement of Mr. Adonye Roberts another Staff of the Bank.

PW1 further stated that it was not to his knowledge that the Bank/Banker granted Private Banking Services to the Defendant, even though he acknowledged that it is the Bank's discretion to grant the privilege to Deserving Customers.

In answer to the question of whether the Money on the face of **Exhibit P4**, i.e., the Handwritten Note, was disbursed to Ebenezer Retnan Ventures, he replied that the Sum of **One Hundred, and Sixty Million Naira (N160, 000, 000)** was cleared from the Bank's Sundry Account into Ebenezer Retnan Ventures' Account.

PW1 explained that the Defendant's Directive at **Page 3 of Exhibit P4** was carried out but not that of **Directive Number 4**, which had stated that the Sum of N176, 862, 900 was to be paid into Ebenezer Retnan Ventures' Account. The reason for not obeying **Directive Number 4** was because it was only the Sum of N160, 000, 000 that could be and eventually was paid into the Account. The Defendant had in his Statement, fully explained how the balance of N16, 862, 900 was disbursed to individuals.

PW1, Detective Musa Sunday, stated that the Ecological Fund is a Special Intervention Fund administered directly by the Office of the President to solve Ecological Problems. The Members and the activities of the Fund Administrators are overseen with the Meetings chaired by the Vice-President, who at that time was Alhaji Atiku Abubakar. He did not know the conditions attached to the disbursements of the Ecological Funds, but could tell that it was not only for States, as there were only Three (3) States out of Twenty-Seven (27) Beneficiary Entities.

Through his investigation, he confirmed that Pinnacle Communications Ltd was indeed a Contractor of Plateau State Government but did not go on further to investigate, as he was not part of the EFCC Team who focused on the Sum paid to Pinnacle Communications Ltd. Further, he stated that the Sum of N550, 000, 000 was paid to the Plateau State Government.

According to him, the Sum of N80, 000, 000 from Union Home Savings and Loans, recovered from Dr. Kingsley Nkumah, was in Bank Draft registered and kept with the EFCC Exhibit Keeper.

The Defendant did not tell him that there were Conditions attached to him receiving the Money but in his Statement, he made it clear that the N100, 000, 000 paid to the PDP South-West, was different from the N100, 000, 000 he gave to Marine Float Ltd, which belonged to the then Vice-President, Alhaji Atiku Abubakar.

He was asked whether the Conditions attached to the Defendant being granted the Ecological Funds were that the Sum of N80, 000, 000 would go to the Permanent Secretary and N100, 000, 000 to the Chairman. He was also asked, whether Obasanjo as President of the Federal Republic of Nigeria returned the Sum of N100, 000, 000 in 2004 allocated to the PDP South-West and PW1, replied that he did not participate in these Aspects.

He agreed with the Defence Counsel that if N100, 000, 000 was given to PDP South-West, another N100, 000, 000 given to Marine Float Ltd and N80, 000, 000 given to the Permanent Secretary, the total would be N280, 000, 000 that was the Amount deducted from the Ecological Funds released to Plateau State. He then explained that the Disbursements as set out by the Defendant in his Extra-Judicial Statement were each investigated by different Team Members, which included investigations into the N100, 000, 000 given to Marine Float Ltd owned by the Former Vice-President, Alhaji Atiku Abubakar, the N80, 000, 000 given to Union Homes, and the fact that he gave Senator Nasiru Mantu, the Former Deputy Senate-President of Nigeria, the Sum of **Ten Million Naira (N10, 000, 000.00)**, the fact that the PDP Plateau State received the Sums of N6Million or N66Million for 274 Units.

G.S. Pwul SAN, the then Counsel to the Defence, questioned whether the Sum of N10, 000, 000 given to Senator Nasiru Mantu, was another Condition for the release of the Ecological Funds. If so, it was now Condition Number 4. Further, the N66Million meant for distribution to 274 Wards of the PDP, which is less than N200, 000 per Ward, was Condition Number 6 and the PW1, responded that he did not know that there were Conditions for the release of the Ecological Funds.

He was referred to the **First Paragraph of Page 11 of Exhibit P13**, where the Defendant had stated that the N100, 000, 000 allocated to the PDP South-West was Personally collected by Mr. Yomi Edu, the then Minister of Special Duties and the remaining N100, 000, 000 assigned to Marine Float was given to the Vice-President of Nigeria, Alhaji Atiku Abubakar. Of all the names featured in the evidence, Vice-President Atiku Abubakar, Dr. Kingsley Nkumah, Senator Nasiru Mantu, Mr. Yomi Edu and Chief Joshua Dariye, it was only the Defendant who was charged to Court in respect of the Sums alleged in the Charge but stated that investigations were still going on since 2007.

The Defence Silk, posed several suppositions to this Witness such as, the likely Political Vendetta by President Obasanjo for the Defendant's failure to support his Third-Term Bid, the fact of Bias by the EFCC in supplying Documents to the Plateau State House of Assembly Special Committee, on moves to impeach the Defendant, and also the fact that only Fifteen (15) Members of the House of Assembly supporting the Defendant were arrested during the political upheaval among Members of the Plateau State House of Assembly. This Witness stated that he was not aware of all the above suppositions, stating that they were not correct.

He only knew that a State of Emergency was imposed in Plateau State because of the Crisis and he and Ibrahim Lamorde, the then Director of Operations of the EFCC, testified before the Panel on Impeachment. He was also not aware that the basis of the Defendant's Impeachment was on the Allegations of the Funds for Ecological Purposes.

When questioned about the Central Bank of Nigeria Cheque **Exhibit P6**, he replied that the Cheque was cleared into the AllStates Trust Bank Plc.'s Call Account and disbursed according the Defendant's handwritten and typed instructions, when acting in his Official Capacity.

As regards **Exhibit P7** dated 4th of February 2005, PW1 responded that this Document, did not specifically show where the Defendant benefitted Personally, but they observed from the Handwritten Note, that the Sum of N176, 862, 900 was paid directly into the Defendant's Company, Ebenezer Retnan Ventures' Account and so, the Payment was Bank to Bank.

Further, PW1 stated that **Exhibits P13A, P13B and P13C**, were Voluntary Statements made without duress and under freewill conditions and therefore he did not consider them as Confessional, otherwise the Defendant would have been taken them before a Superior Officer for Endorsement, adding that from his experience, Confessional Statements were voluntary.

He stated that they could not obtain any Certificate of Registration of the Company, Ebenezer Retnan Ventures from the Bank, where the Account was opened or from the Defendant.

Detective Musa Sunday agreed that he mentioned the Transfer of Funds into Foreign Accounts and in the course of his investigation, he took Several Statements including that of Mr. Francis Amazon in Lagos. The Witness Statement of Mr. Bola Labinjo was tendered through him, without Objection and admitted as **Exhibit D4**.

He agreed he referred to Detective Constable Peter Clark, who had addressed a Letter to Mr. Lamorde, then Director of Operations, on this matter and this Letter was admitted, without Objection, as **Exhibit D5**.

With this Piece of Evidence, the Defence concluded their Cross-Examination and there was no Re-Examination.

PW2, Mr. James Olanrewaju Adewusi, a Civil Servant from the 7th of January 1991 testified on Oath and after the Caution under **Section 206 of the Evidence Act 2011 (As Amended)** was administered, stated that in the Years 2000 and 2001, he was in the Presidency-Office of the Secretary to the Federal Government of Nigeria, as a Principal Accountant.

He was in charge of the Central Pay Office, which controlled all the Processing for the Payment of Ecological Matters handled by the Ecological Funds Office, to the Point of Approval. After the Approval is obtained, the File is sent to the Finance and Account Department Office for Processing the Payment. The Approval would then be sent to the Charges Section for them to raise the Payment Voucher. After raising the Voucher attaching relevant Documents, they would then pass it on to the Checking Section for them to check that necessary Documents are attached. Once the Checked Documents are in order, this Section will schedule the Payment Voucher to the Internal Audit Unit, which will check and confirm that Due Process has been followed in raising the Voucher. Once the Unit is satisfied that due process was followed, they would schedule the Payment Voucher to the Central Pay Office.

As Principal Accountant, he would go through the Payment Voucher and all the attached Documents to ensure that the payments had been approved, and once convinced of that, he would pass on the Payment Voucher to the Cheque Writer to write the Cheque for the payment. The Cheque Writer would then take the Cheque to the Authorized Signatories to sign. There are two Categories of Signatories, namely Signatory A and Signatory B. Each had three Signatories under each Category and he is one of the Signatories under Category A. Any Member, each of the Two Categories can sign any Cheque to make it valid and after signing, any Member that signed could take it to the Central Bank of Nigeria for Confirmation. Once the Cheque has been confirmed, it is ready for delivery to any Representative of the Beneficiary.

To deliver a Cheque meant for Payment under the Ecological Funds Office, the Permanent Secretary would either give a Verbal or Written Directive and would Minute on the Letter of Request, which must contain the Name of the Representative of the Beneficiary, who had been assigned to collect the Cheque, and then send this Endorsed Request to the Central Pay Office for Collection.

According to him, the Plateau State Government had an Approval for Payment under the Ecological Funds Office to the tune of One Billion Naira (N1, 000, 000, 000) Plus, and he was one of the Signatories that signed. The Second Signatory, Mr. Topah Ukanah, who signed under Category B, is now deceased.

PW2, took the Cheque to the Central Bank of Nigeria for Confirmation and on his return, he received a telephone call from the Secretary of the Permanent Secretary of Ecological Services that he should come of the Office of the Permanent Secretary, Dr. Kingsley Nkumah with both the Cheque and the Cheque Delivery Register. On getting there, he was directed to release the Cheque to the then Executive Governor of Plateau State, Chief Joshua Dariye, whom he meet in his Office. One of the Aides to the then Executive Governor, signed for the Cheque after completing the Delivery Register and he released the Cheque to him.

It is his evidence that before he prepared the Cheque, part of the Documents he saw were: -

- a. The Approval
- b. Credit Advice
- c. The Request from the State Government

He identified the Payment Voucher with all the Documents annexed, in particular the Payment Voucher, the Credit Advice, the Request Letter from Plateau State Government, where the Vice-President minuted onto the Minister Special Duties (Ecology), Mr. Yomi Edu, another Request Letter from the Minister of Special Duties to the President, and all other Minuted Documents, which were admitted without Objection as **Exhibit P14**.

He noted that the total amount sought for by Plateau State Government, was Three Billion Naira (N3, 000, 000, 000) but only One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900) was approved.

Mr. Adewusi stated that the Approval for the Funds was given on the 12th of July 2001 and the Cheque was written on the same date, with the Governor collecting the Cheque on the same day. Mr. Adewusi had gone to the Central Bank of Nigeria on the 12th of July 2001 for Confirmation and had released the Cheque on the same date to the Defendant, as Governor.

He noted that the Cheque was written out in the Name of Plateau State Government and was supposed to be paid into the Plateau State Government Account.

Mr. Adewusi stated further, that Dr. Nkumah was dismissed from Service as a result of this issue and from his experience, this was the first time, he would witness a Governor coming Personally to collect a Cheque.

Under **Cross-Examination**, he reiterated the Processes involved in obtaining the Cheque, adding that he did not know what transpired between the Key Parties involved in the Approval of the Ecological Funds.

When asked by the Defence Silk, G.S. Pwul, Mr. Adewusi could not answer whether the Permanent Secretary, Dr. Kingsley Nkumah, the Minister of Special Duties, Mr. Yomi Edu, and the then Vice-President of the Federal Republic of Nigeria, Alhaji Atiku Abubakar, were working in close tandem with each other. He was not a Member of their Staff nor worked in their Offices and so, could not explain why the Governor's Request for Ecological Funds, the Approval of his Request, the Confirmation, the Directive to release the Cheque and the fact that the Executive Governor of Plateau State was Personally waiting to collect the Cheque, ALL HAPPENED on the 12th of July 2001.

As regards the Dismissal of the Permanent Secretary, Dr. Kingsley Nkumah, Mr. Adewusi stated that he heard that it was because of his N80 Million Cheque involvement and he considered it pitiful that

this Sum belonging to Plateau State Government, a State of over Three Million People, was given to one individual.

As regards, the payments of N100, 000, 000 each paid to the Minister of Special Duties and the then Vice- President of the Federal Republic of Nigeria, he was hearing about it for first time in the Court and he considered it pitiable that the total sum of N280 Million (N280, 000, 000) was shared from the Award Sum by Three (3) Individuals. He also stated that he received no payments and had performed his official duties diligently.

There was no Re-Examination of this Witness.

PW3, Mr. Bamanga Bello, a Public Servant working with the EFCC, then as an Investigator and presently the Head of Special Control Unit Against Money Laundering, gave sworn testimony to the effect that he was part of the Investigating Team in 2004 and the focus of his investigation was in regard to the Account Opening Documentation of Ebenezer Retnan Ventures.

He gave a historical account of his Personal experience in the Banking Sector, where he had worked in the Banking Industry for over Ten Years and was actively involved in virtually every Department of the Bank including: Credit and Marketing; Opening of Accounts; Customer Service and was the Money Laundering Compliance Officer in the Branch. All these were while he worked with Habib Nigeria Bank Limited from 1993 to 2001, till when he left as Assistant Manager. Thereafter, he became the Branch Manager at the Standard Trust Bank, both at Yola and the National Assembly Branch Abuja.

Under **Cross-Examination** by the Defence, PW3 stated that he joined the Economic and Financial Crimes Commission in 2003 and was co-opted into investigations dealing with Document Analysis and Banking Transactions. As regards the Issues in this Trial, when questioned specifically whether there was any Cheque, particularly the Central Bank of Nigeria Cheque raised in the Name of the Plateau State Government that was paid into Ebenezer Retnan Ventures' Account, he could not accurately remember because the investigation was over Ten Years ago.

Finally, he also stated that he did not investigate the sum of N250 Million paid to Pinnacle Communications Limited and could not remember if there were other Documents emanating from the Defendant regarding the Clearance of the Above Sum. According to him, there was nowhere in the Handwritten Instruction where the Defendant had stated that the Cheque should be cleared into the Account of Ebenezer Retnan Ventures.

PW4, Mrs. Mobolanle Folaranmi, a Public Servant and Assistant Director with the Claims Resolution Department of the Nigeria Deposit Insurance Corporation, (hereinafter referred to as NDIC) gave sworn testimony that her schedule of duties included attending to claims from the Depositors of Closed Insured Financial Institutions in Nigeria and these Closed Financial Institutions are Banks that have their License revoked by the Central Bank of Nigeria. The NDIC was made a Liquidator of the Banks in 1994 and in 1998. The core essence of her testimony was to tender into evidence the Statement of Account with AllStates Trust Bank Plc. requested by the EFCC.

As AllStates Trust Bank Plc.'s Liquidator, they had in their Custody the Bank's Computer Server from which all the Entries contained in the Statement of Account were printed and a Certificate of Identification was issued. She testified as to the Reliability and Veracity of the Process of Extracting the Statement of Account from the Server.

After a protracted argument on the Admissibility of the Statement of Account, the NDIC's Reply, as well as the said Certificate, the Objection raised by Learned Silk for the Defence was overruled and the Documents were admitted as follows: -

- a. The Reply admitted as **Exhibit P15A**.
- b. The Certificate of Identification admitted as **Exhibit P15B**.
- c. The Statement of Account was admitted as **Exhibit P15C**.

Under **Cross Examination**, she testified as to the length of her working experience at the NDIC and stated that the AllStates Trust Bank Plc.'s License was revoked in January 2006 due to their Financial Incapacity to Recapitalize. She stated that it was impossible to tamper with the figures contained in the Statement of Account because there are Security Codes for all Closed Banks, which debar any Person from tampering or altering the figures contained in the Statement. She did not know of any Staff in the then AllStates Trust Bank Plc. who put in the information.

PW4 expatiated that the retrieved Server of a Closed Bank is maintained by NDIC and it is this Server that the NDIC generates its Deposit Register to pay out Insured Sums to all the Depositors.

As to any possibility of Alterations, she dispelled this notion stating that the Customer would have objected in writing if he believed that his Statement had been altered in any form during the course of business when AllStates Trust Bank Plc. was still a going concern. In any event, during the annual visitation jointly conducted by the NDIC and the Central Bank of Nigeria to examine the Banks Books, any Discrepancies in any Statement of Account of any Customer would have been pointed out to them. Therefore there is an assumption that at the date of Closure of a Bank, the information in the Statements of Accounts was Authentic.

There was no Re-Examination of this Witness.

PW5, Mr. Cyril Tsenyil, the Accountant General of Plateau State testified under Oath that from the Year 2000, he was the Personal Assistant to the Speaker of the House of Assembly of Plateau State. He was invited by the EFCC on the 2nd of June 2015 through a Letter, which contained a List of Account Numbers evidencing transactions dating back to the Year 2000. A Search was conducted but the Documents could not be found. The bulk of his evidence will be analyzed under Funds emanating from Plateau State/Accountant-General's Accounts.

PW6, Mr. Celestine Idiaye, a Banker working with Diamond Bank, Central Area Abuja is the Designated Cloister Control Manager in the Internal Control Unit of the Bank. Through his evidence, **Exhibits P16, P17 AND P18**, Statements of Accounts were tendered into evidence and the analysis of his evidence is best situated when considering the Plateau State/Accountant-General's Accounts. All the above were admitted without any Objections raised by the Defence. There was **no Cross-Examination** of this Witness by the Defence.

PW7, Mr. Dabi Gideon Dashong, a Forensic Document Examiner with the EFCC Forensic Science Laboratory in Abuja testified under Oath as to his Qualification and tendered into evidence a Report, which he identified as **Exhibit P2**.

Under **Cross-Examination by the Defence**, the Defence tendered the Letter of Reminder through this Witness, with no Objection raised by the Prosecution and it was admitted as **Exhibit Q**. The

Author of the First Request Letter for Forensic Analysis was the now Current Acting Chairman of the EFCC.

He stated he analyzed the Signatures only and not the other Writings based on the Letter of Request and never had the opportunity of examining more than one Person or Specimen. He was questioned whether between the Writings, the other inscriptions in the Documents, which were not analyzed and the Signature he analyzed, he could tell which one was written first, and his response was that, that was not part of the Request made to the Forensic Unit to determine whether the handwritings or inscriptions came first and if it had been part of the Request, he would have known. He also would have known who wrote the other inscriptions if it had been requested for.

There was no **Re-Examination** of this Witness.

PW8, Mr. Mohammed Alkali Kwairanga, a Police Officer seconded to the EFCC testified as to his Schedule of Duties and stated that he was part of the Team, who visited Jos-Plateau State in 2008/2009 to ascertain Properties owned by the Defendant within and outside the State. He could not recall the names of the places the Team visited, but stated that Houses, Plots, Lands and Hotels were shown to the Team Investigators. From there, the Team went to the Ministry of Lands and Survey Plateau State, to confirm if the Properties belonged to the Defendant. It was at this Ministry that they discovered Several of these Properties shown to them, did not belong to the Defendant and Statements were taken from Neighbours around the Property. The Case File for Forfeiture was handed over to the Veto Unit Section and the Legal Prosecution Unit for continuation of investigation.

Under **Cross-Examination**, he stated that the Team discovered that not all the Properties belonged to the Defendant. There was no Re-Examination of this Witness.

PW10, Mr. Mohammed Kawu, an Operative of the EFCC posted to the Asset Forfeiture and Recovery Section, testified to the effect that his Unit received a Court Order for Interim Forfeiture in respect to the Defendant, whilst other Properties were found in Jos, only one of the Properties was based in Abuja. Armed with the Order, he proceeded to Jos for inspection of the Eleven Properties contained in the Forfeiture Order.

The Properties in Jos were traced but he could not take over possession of the Properties due to security challenges. However, periodic visitations were made to the Properties by the EFCC. In regard to the Abuja Property located in Asokoro, this Property is currently being managed by the Asset Managers of the EFCC and so far, has generated as Rent, a Total Sum of Sixty-Seven Million Naira (N67, 000, 000. 00).

The Court Forfeiture Order was tendered as **Exhibit W**.

Under **Cross Examination** he testified that he was not part of the Team that compiled the List of Properties belonging to the Defendant in 2007, and had never been part of the investigation. According to him, his role was only to execute the Court Order. He did not inspect the Property, Crest Hotel due to a Pending Litigation over it, and as regards the Yelwa Club, they could not access the Premises because they were being trailed and eventually confronted by unknown men. To avoid a confrontation, he ordered his men to pull back.

The Sum of Sixty-Seven Million Naira (N67, 000, 000. 00) recovered as Rent was deposited into Recovery Account.

There was no Re-Examination and with his evidence, the Prosecution closed its case.

Learned Silk, G.S. Pwul SAN, then representing the Defendant, notified the Court of his intention to file a **No- Case Submission**. However, by the next date of adjournment, the Defence retracted his intention to file a No-Case Submission, electing rather to enter into his Defence.

DW1, Mr. Adonye Roberts, formerly a Banker with AllStates Trust Bank Plc. commenced the Case for the **Defence** with the presentation of evidence that the Bank's Licence was revoked sometime between the Years 2006 and 2007. He testified that he was once an Account Officer, managing the Account of Ebenezer Retnan Ventures, and dealt with the Defendant both in his Official Capacity as Governor in regard to the Cheque, and in his Personal Capacity as Customer. He was not of the opinion that his Bank's Licence was revoked because of this Case, but believed it was because of the Share Capital. He identified **Exhibit P3** relating to the Account Opening Documents of Ebenezer Retnan Ventures and could tell that not all the Account Opening Documents required were presented.

He acknowledged that the deposit of the Central Bank of Nigeria's Cheque as informed in **Exhibit P6**, was written out in favour of Plateau State Government, which was cleared into the Bank's Suspense Account and not into the Account of Ebenezer Retnan Ventures, based on the instructions given. As at the time of the Clearance of the Cheque, the Defendant was Governor of Plateau State and he dealt with him in his Official Capacity as regards the Cheque. He was not aware that the Bank received any Complaint from the Plateau State Government. He could not remember the exact location of Plateau State Government's Account with the AllStates Trust Bank Plc.

He identified the Signature of the Defendant on both the Handwritten and Typed Instructions on **Pages 2 and 3 of Exhibit P4** to be the same but distinguished them by stating that **Page 2** was a Handwritten Instruction whilst **Page 3**, was typed and signed by the Defendant on the Letterhead Paper of the Executive Governor of Plateau State.

He was also one of the Three Persons arraigned before the Federal High Court in Kaduna, and he was subsequently discharged and acquitted from any culpability.

Under **Cross-Examination** he gave a history of his educational and professional qualifications, but the Prosecution took him up on the length of time it took him to complete his Degree Study in the United States, and also on the inconsistencies regarding the date he started work with the Bank, and the dates he relocated to Abuja as furnished by him both in his Written Statement to the EFCC, and his Oral Testimony in Court. The Original Statement of Mr. Adonye was admitted as **Exhibit X**.

According to **DW1**, his Boss Mr. A. A. Odessa who introduced him to the Defendant, witnessed the Letter of Set-Off signed by the Defendant. Subsequently, Mr. A. A. Odessa and AllStates Trust Bank Plc. were prosecuted and convicted, and through this Witness, the Prosecution tendered without Objection, the Judgment in **Exhibit Y**. Further, the Defendant did not open Ebenezer Retnan Ventures Account in Jos, Plateau State but in his Bank's Abuja Branch, where he was maintaining and relating with the Account. He identified **Page 2 of Exhibit P4**, as the Defendant's Handwritten Instruction to the Managing Director through the Branch Manager, Abuja Branch, to clear the Cheque and pay as directed. He positively stated that it was not right for the Defendant to pay Government Money into Private Accounts.

In 2001, he was not the Account Officer for Ebenezer Retnan Ventures and he did not receive the Cheque from the Defendant nor knew how it was disbursed. From his experience, **Exhibit P6**, the Cheque payable to Plateau State Government, was Public Funds, which ought to have been paid into the Plateau State Government's Account and noted that it was not wrong to clear this Cheque through the Bank's Sundry Account.

To his knowledge, the Defendant did not maintain a Domiciliary Account with the Bank, and when he was in Abuja, he had sourced Foreign Currency in Cash in the range of 20, 000 to 40, 000 US Dollars per Transaction for the Defendant. He was aware that the Defendant transferred Funds from Nigeria to the United Kingdom through his Bank and that the Metropolitan Police had sought explanations from the EFCC through his Bank regarding these Transfers.

There was no Re-Examination of this Witness. His further detailed evidence rendered during the Trial would be situated where appropriate in the Court's Analysis.

DW2, Honourable Geoffrey Teme, Former Majority Leader of the Plateau State House of Assembly in 2003, presently works with the Plateau State Government, as a Legislative Liaison Officer. He testified that sometime in 2004, he and Twenty-Three Members of the Plateau State House of Assembly honoured an invitation to the Chambers of the then Deputy Senate President of the Federal Republic of Nigeria, Senator Ibrahim Nasiru Mantu, at the National Assembly Abuja, who was of the same Senatorial Zone as the Defendant.

At the Meeting, they were told to pass a Vote of No-Confidence on the Governor of Plateau State, Chief Dariye based on the Governor's inefficiency to perform as expected. Of the Twenty-Four Members present, Senator Ibrahim Nasiru Mantu took Eight Principal Members of the House of Assembly to meet with President Olusegun Obasanjo, where he reiterated his urgings for Dariye's Impeachment and sought for the President's assurance on the matter. According to this Witness, the President told them to do as suggested else they face the Government's wrath.

After the Meeting with the President, they returned to the Chambers of the Deputy Senator and informed their Colleagues on the outcome of the Meeting and agreed to deliberate on it. Whilst deciding on what to do, they heard the announcement of the dissolution of the whole Political Party Structure and the Declaration of a State of Emergency, where an Interim Government was formed. This State of Emergency lasted for Six Months, and during that Period, some Members of the House of Assembly approached General Yakubu Gowon, a Past President of Nigeria, and he assured them that he would discuss with President Obasanjo. They were then called upon by the Director General of the State Security Service (SSS) and briefed about a Petition from the EFCC against the Defendant. They were subsequently reinstated and the Petition was forwarded to the House of Assembly through the Speaker.

The House, in its deliberations discovered that Certain Papers were missing and the Clerk of the House requested these Papers from the EFCC, which were subsequently forwarded. A Committee was then set up consisting of Nine Members including himself and their purpose was to investigate the Petition, which contained Allegations of Fraud against the Governor Joshua Dariye, Ebenezer Retnan Ventures, Union Homes, PDP South-West and some others in regard to the Ecological Funds of approximately N1.6Billion.

An Open-Door Policy wherein Members of the Public were allowed to present their Complaint was adopted. Officials of the EFCC testified before the Committee and he sought to tender Two Volumes of

the Committee's Report as Exhibits before the Court. After a vehement Objection raised by the Prosecution, the Reports were provisionally admitted as **Exhibits D6 and D7**.

Mr. Teme stated that basically the Ecological Fund was given to fund the 2003 2nd Term Presidential Campaign of President Obasanjo. He also stated that Senator Ibrahim Mantu did not honour the invitation to testify before the Panel and from the Defendant's presentation before the Committee, they discovered that Certain Sums were given for the PDP Campaign 2003 and he could not recall from the Report whether the Defendant took any part of the Money, or how much Plateau State Government benefited from the Ecological Fund.

The Findings in their investigation gave them the power to clear the Governor of the allegations in the Petition, which they did. After submitting their Report, which has never been challenged by even a Minority Report, Armed Policemen from the EFCC surrounded the House of Assembly, and prevented the House of Assembly from further Sitting.

Subsequently, Four out of Twenty-Four Members of the House sat at an unusual hour of 6am and impeached the Defendant, which Impeachment, the Defendant appealed and was later reinstated as Governor. After the Impeachment, the Seats of the House of Assembly were vacated because they refused to abide with the Decision of the EFCC, and they later appealed. During one of the Hearings in Abuja, the Speaker, the Deputy Speaker and Two Members were arrested and taken to Lagos by the EFCC. After the arrest, he and the other Members reported to the EFCC Office in Abuja, where Eight of them were also taken to Lagos. In Lagos they were detained, charged and prosecuted with the same offence the Defendant was charged with, they were granted Court Bail and later discharged and acquitted. However, Four of the Members who had seconded the Defendant's Impeachment and the Decision of the EFCC were not charged alongside the others.

Under **Cross-Examination by the Prosecution**, he gave an extensive narration of his educational, professional and business experience. Both he and the Defendant belonged to the same Political Party, even though since the Year 2006, he has not sought any Political Office through Election and he would not want anything to happen to his Political Friend.

He was taken through the Recommendations made by the Panel in their Report, and he agreed with the Prosecution that the allegations happened before they were elected as Legislators and therefore, incompetent to preside over the allegations. He also agreed that the allegations laid was before a Court of Competent Jurisdiction and so they could not interfere, as it was clear that the House of Assembly could not sit to impeach on a Matter being heard in a Court of Law or pronounce Guilt or otherwise.

He acknowledged the fact that the Impeachment Panel could not question or review the legitimate competence of the Court on a matter, which the Court considers *subjudice*. When questioned, he stated that he had expected a Cheque written in favour of the Plateau State Government to be lodged in the Plateau State Government's Account and spent by it. He was unaware of the Procedure for disbursing Public Funds but stated that no withdrawal of State Funds could be made without the knowledge of the Accountant General of the State, who handles the State's Finances. He was also aware that a Payment Voucher would need to be raised by the Permanent Secretary before any amount is withdrawn from that Account.

From **Exhibit D6 and D7**, the Report did not disclose where the Cheque was lodged. Since the Money was meant for the People of Plateau State, it would be wrong for the Commissioner to pay this Money into his Account and further it would be wrong to pay part of this Money as a Bribe to any Officer from the Ecological Office. Likewise, it would be wrong for any Public Official to pay part of the Money into an Individual Account for the purpose of purchasing a Property in London, England.

When asked in regard to the N100 Million, which formed part of the Ecological Fund meant for the Plateau Citizens, but paid to PDP South- West, he agreed that there was nowhere stated that the PDP should be a Beneficiary of this Sum. He saw nothing wrong in the PDP as a Party assisting other Zones, as it was a Political Issue. According to him, the Money was not stolen but used for a different purpose, which it was meant to address.

Mr. Teme agreed with the Prosecution that each Member of the House of Assembly collected N4, 000, 000 as Car Loan, and admitted that N1, 000, 000 was the Threshold as Car Loan.

He acknowledged that it was an Abuse of Office for the Sum of N160, 000, 000, to be paid into Ebenezer Retnan Venture's Account. His Panel also considered the issue of Chief Dariye Jumping of Bail in London and stated that the Plateau State Government did not run a Foreign Account at that time. He would be surprised that the Defendant had Foreign Accounts in Two Banks for which he issued Cheques. When shown **Exhibits V1 and V3**, the Cheques wherein the Defendant had written the sum of **£57, 000** on the 21st of September 2004, he stated that the Owner of the Cheque was Joshua Chibi Dariye and could not say that he was proud that his Governor operated a Foreign Account in London and would be surprised a Contractor paid the sum of **£396, 000** to buy a Property for the Defendant in London in the Year 2001.

He agreed with the Prosecution that the Panel's **Recommendation 5** which had found the various allegations against the Defendant as baseless and unsubstantiated, to be a wrong recommendation. However, he disagreed that **Recommendation 6**, which exonerated the Defendant was not wrong though he later flipped by saying it was wrong that the Defendant was exonerated on the allegations of the Cheque. Further, the House of Assembly adopted the Report at Plenary and even though there was a Resolution, which ought to be contained in another Paper, there was no evidence of such Resolution in **Exhibits D6 or D7**.

According to Mr. Teme, his Company did not execute any Contract for the Plateau State Government around September 2006, and even when the Company was awarded a contract by a Local Government in Plateau State, he had already resigned as a Board Member of his Company although he was the Sole Signatory of the Account.

There was no Re-Examination.

DW3, John Michael Abdul, a Former Deputy Governor of Nassarawa State from 2007 to 2011 and now a Businessman and Politician, testified that he and the Defendant were once co-workers at Lion Bank Plc. Whilst the Defendant eventually served on the Board of Directors as a Director, he rose through the ranks to become the Managing Director and Chief Executive Officer of the Bank. His entire testimony is contained in the 2nd Set of Circumstances relating to Plateau State/Accountant-General's Accounts and will constitute an unnecessary repetition if stated here.

DW4, Engineer Danjuma Walman working with the Plateau State Government, Ministry of Works and Transport testified that the Direct Labour Agency was a Parastatal, under the Ministry of Works and Housing. This Nomenclature has now been changed to Plateau State Road Maintenance Agency. His entire testimony is contained in the 2nd Set of Circumstances relating to Plateau State/Accountant-General's Accounts and will constitute an unnecessary repetition if stated here.

DW5, Mr. Stephen Igmala, was a Civil Servant, working with the Plateau State Road Maintenance Agency, formerly known as the Direct Labour Agency in May 2000, and he was the Acting General Manager. His entire testimony is contained in the 2nd Set of Circumstances relating to Plateau State/Accountant-General's Accounts and will constitute an unnecessary repetition if stated here.

DW6, Chief Mai Chibi Vwalji, the then Plateau State Deputy Chairman of the People's Democratic Party (PDP) and now an All Progressive Congress (APC) testified under Oath that he is familiar with the PDP as a Party. The Chairman of the Plateau State PDP, Alhaji Habu Shingai had been bedridden for the past Twenty Years.

The Party gets Funds through Fund-Raising Activities and Payments of Membership Dues from its Elected Members. He was shown **Exhibit P13A at Page 10**, one of the Defendant's Statements, which had itemized the Distribution of Money and he affirmed that PDP Plateau State, collected the Sum of Sixty Six Million Naira (N66, 000, 000) for 274 Wards. The Chairman of the State Party had earlier attended the National Executive Committee Meeting of the PDP National Level at the Abuja National Secretariat in 2001, where the National Chairman had informed them that PDP Governors would give their State PDP Chapters some Money towards the Party.

The Governor of the State, being a Member of his Party's State Exco, went to the Party's Secretariat in Plateau State to give them the Sum of Sixty Six Million Naira (N66, 000, 000) for Distribution to the Wards through the Local Government Chairmen. He did not know the Source of the Money distributed but he knew the Money was distributed to each of the Seventeen (17) Local Governments for the Three Hundred (300) State Wards.

Under **Cross-Examination** by the Prosecution, he joined the APC a Year ago, after the Elections and confirmed that the Defendant had decamped to the APC, though he had been elected to the Senate on the Platform of the PDP and he had worked as his Political Supporter to get him elected. He described the hierarchy and positions of Plateau State PDP's Mechanism, Listing the Positions of the Members, and describing their Functions. The Financial Secretary collects Monies from Fundraisers and gives it to the Treasurer and both would keep the Records.

He re-affirmed his Earlier Statement, that the Chairman of the State PDP had been seriously sick for the past Twenty Years, and was not able to even stand up and could not perform his functions as a Politician. He also could not hold Party Meetings during this Period and he had been Deputizing for him.

When challenged with the Question of the Incapacitation of the Chairman and the unlikely event of his attendance at the National Meeting, he denied lying, stating that the Chairman had now and then been attending Meetings.

Chief Mai Chibi Vwalji, a Grade Two Teacher before joining Politics Forty Years ago hates corruption and detests Government Officials stealing Government Money. However, as a Politician he stated that if a Member donates Money to the Political Party as his Contribution, he would not know where the Money came from and would accept it very like an Offering made in Church. He did not know which

Law limits 3rd Party Donations to Political Parties. His State Chapter of the PDP had never dealt with Companies but he had no aversion to receiving Donations from Companies, if given.

Even though he Personally did not collect the Sum of Sixty Six Million Naira, he stated that the Money was counted in his presence and they were in N500 and N1000 Denomination Notes. He was immediately confronted with the fact that these Denominations were introduced after Year 2001 but he denied lying, maintaining that the Money was counted in his presence. He did not know the Source of the Money and he did not know that the Money belonged to Plateau State Government and he could not say what an Ecological Fund was.

He was once again referred to **Page 10 of Exhibit P13A** and he consistently maintained that it was proper for his Party to have received the Sum of Sixty Six Million Naira from the Ecological Fund, as his Party was the Party in Power. He agreed that as at that time, there were other Political Parties such as APGA, APP and LABOUR Party, but they were not the Ruling Party.

Still under Cross-Examination, Chief Mai Chibi Vwalji, stated that it was Morally Right to put to use Government Monies for Political Party Purposes because the Party was in **Power**. The Money was not stated to be Government's Money and neither was it stated to be part of the Ecological Fund and the source was undisclosed. He answered in the positive that everything he was told about the Abuja Meeting was what he himself was told. He was not present when the Money was shared through the Local Governments to the Three Hundred and Twenty-Five (325) Wards.

There was no **Re-Examination** of this Witness.

DW7, Mr. Paul Datugun, a Central Cashier in the Ministry of Finance in Year 2006, testified that his Predecessor, Late Bala Kwafud, had informed him that EFCC Officials had carted away with all the Relevant Documents from the Year 1999 to 2005, when they invaded the Office of the Accountant General in the Ministry of Finance. His entire testimony is contained in the 2nd Set of Circumstances relating to Plateau State/Accountant-General's Accounts and will constitute an unnecessary repetition if stated here.

DW8, Mr. John Gozen Gobak, a Non-Executive Chairman of the Government owned Agricultural Services, Training and Marketing Limited, narrated the history of the Defendant's First and Second Tenure and the Incidences of the State of Emergency declared by Olusegun Obasanjo, the then President of Nigeria, the Impeachment of the Defendant and his Subsequent Reinstatement, a Month and a Half before the Expiration of his Tenure. During the Defendant's First Tenure, he was not the Secretary to the State Government and the Person, who was the Secretary to the State Government, at the relevant time, could best answer the Questions put to him.

Under **Cross-Examination**, Mr. John Gozen Gobak stated that he was formerly a Member of the PDP and is now a Member of the APC. There was no **Re-Examination** of this Witness.

His entire testimony is contained in the 2nd Set of Circumstances relating to Plateau State/Accountant-General's Accounts and will constitute an unnecessary repetition if stated here.

The Defence applied and obtained a Subpoena Duces Tecum to the Deputy Chief Registrar of the Federal High Court in Kaduna State, and after Two Adjournments, the Document requested, which was the Certified Copy of a Ruling delivered in **Suit No: FHC/KD/144C/2004** was produced and admitted into evidence along with the Witness Summons issued out, as **Exhibits D21A and D21B**.

DW9, Honourable Banahel Joseph Andong, the Acting District Head and Traditional Ruler of Monguna District, Jos testified that in 1999, he was elected Member of the House of Assembly representing Bokkos Constituency in Plateau State under the Platform of the PDP, and served as Chairman, House Committee on Works, Housing and Transport and named the other Members of this Committee. He carried out Oversight Functions in areas of Jos Metropolis at Bokkos Barkin Ladi Road, Lantang Mikkan Dams, and some others in Three Zonal Areas of Jos. The work in Bokkos involved Reclamation of Roads, Ponds and Drainages, and in Langtang, the Project was Reactivating Dams built during Solomon Lar's Civilian Government. In the Northern Zones, Erosion Control of Waterway Projects was undertaken. Whenever, there were overflows of the Yakubu Gowon's Dam causing Casualties to People, Property and Houses, the Government did a wonderful job by arresting the situation.

He knew nothing of the Funding of these Projects but only knew that the Federal Government intervened to solve their Ecological Problems. Again, he did not know how the Assistance was rendered, whether Financial, with Labour or with Equipment.

The remainder of his testimony is contained in the 2nd Set of Circumstances relating to Plateau State/Accountant-General's Accounts and will constitute an unnecessary repetition if stated here.

DW10, Mr. Gideon Mitu, a Civil Servant with the Federal Ministry of Budget and National Planning, as a Deputy Director, Expenditure and Social Division, joined the Federal Service in August 2009, on a Transfer of Service from Plateau State Government. He had attained the Rank of Permanent Secretary before his Transfer and had been employed in the Ministry of Education and deployed to the Cabinet Office. He was also from Bokkos Local Government and was from the same Local Government as the Defendant.

He had become Permanent Secretary in the Year 2000 and immediately after, was deployed to the Abuja Liaison Office of Plateau State. He explained his job functions, which principally were to take care of all matters relating to Plateau State Government, the Governor and the State Officials during their stay in Abuja. He also delivered Correspondences to and from his State Government, promptly.

Under **Cross-Examination** by the Prosecution, he agreed that he was from the same Local Government, Local Dialect and Chieftdom as the Defendant, but from a different Village. He gave a track history of his educational background and job progression through the ranks until he became Permanent Secretary in December 2000. He had still been working with the Press in 1999 and stated that he became Secretary at the Cabinet Office within a Period of One Month in June 1999. In September 2000, barely a Year and Few Months, the Defendant made him Permanent Secretary and then posted to the Liaison Office in Abuja, as a trusted hand. He was lucky and grateful the Defendant was Governor, because he helped his Career, Growth and Development and had put his Ethnic Group on the Map. As Permanent Secretary, he had never received any Funds on behalf of the Plateau State Government and the Federal Government paid the State Allocations from the Revenue Account, directly into the Plateau State Government's Account. He finally stated that it was wrong for this Allocation to be paid into a Public Officer's Private Account.

Under **Re-Examination**, he stated that there was no Rank between a Secretary and a Permanent Secretary.

DW11, Prof. Danladi Atu working at the Faculty of Education, Social Science University of Abuja testified that he had been Secretary to the Local Government from 1999 to 2002 and then Chairman from 2002 to 2007, following his Appointment by the Defendant and Subsequent Approval by the House of Assembly. He described the hilly, steep and sloppy terrain of Jos North, stating that this Area

suffered from Tin Mining Activities and were littered with Mining Ponds, which caused many erosion problems depriving certain Communities access to Jos City. He discussed extensively about the problems experienced in the Semurumba Area of Jos, stating that the Pond was reclaimed in 2004 by the Defendant, who had visited the place, and had intervened promptly, making the People happy. The Defendant, as Governor also intervened by doing Stone Works, built Bridges at Laminga Dam, Reclaiming other Areas and also engaged in other Minor Works.

He could not tell where the Funds for these Projects came from.

Under **Cross-Examination**, he was grateful to the Defendant and his Community for recommending him as Chairman, removing him from Classroom Work. He never knew how the Erosion Contracts were financed, as he did not work at the Plateau State Ministry of Works, where the Contracts were awarded. He was equally not aware whether these Projects were captured in the Plateau State Government. He stated that Statutory Allocations goes to the Statutory Accounts of the Local Governments and in this case, Lobbying was only used to influence people and did not include Bribe.

DW12, Israel Dabel currently a Lecturer at the Theological College testified that prior to his retirement, he had worked in the Engineering Department of Plateau Radio and Television Corporation (PRTV) in Plateau State. Pinnacle Communications Limited, a Successful Bidder, supplied the PRTV with New Radio and Television Equipment. He met the Chief Executive of Pinnacle, because he supplied their Transmitter Equipment from Harris UK. The Team of Engineers had earlier in August 2001, inspected the Equipment, most of which were Television Transmitters and One Radio Transmitter, at Harris Factory in Oxford United Kingdom. He named the Members of the Visitation Team and added that the Defendant was the Governor at that time. They achieved their purpose and were satisfied with what they saw. A subsequent visit took place in December 2002 and this time, their Mission was to see the Equipment again after Production was completed and all these were at the insistence of the Chief Executive of Pinnacle Communications.

Whilst at Oxford, they were informed that Plateau State Government should finish payment before the Equipment would be shipped to Nigeria. On their return, a Report was written urging the Governor to pay, so that the Contractor would ship the Broadcast Equipment. He testified that subsequently, Pinnacle Communications brought in the Equipment piecemeal and they were delivered to the PRTV. Yet again, this Witness together with Team of Engineers inspected the Equipment brought in Five (5) Number 40 Foot Containers. The Equipment delivered were checked against their Checklist, and a Few Minor Equipment were not delivered till he retired. After receiving this Equipment, nothing could be done by them because they were yet to be installed and he could only say that the AM Radio at Mianto was installed and tested.

According to him, Pinnacle was not the only Contractor who bid for the Contract but won because its Cost was moderate and because of the good reputation of Harris. The Ministry of Information as Supervising Ministry of the PRTV was the Awarding Ministry of this Contract. He could not remember the Contract Sum and stated that he and his Team had nothing to do with the Financial Aspects of any Contract concerning PRTV or any Financial Issues.

Under **Cross-Examination**, he stated that he was a Member of Council of Registered Engineers in Nigeria (COREN) but not a Member of Nigerian Society of Engineers (NSE). He stated that a Replacement was sought when the Equipment in use started malfunctioning in the Year 2000 and was not sure whether the Replacement was reflected in the Budget of that Year or any other Year. As Director in a Government Corporation, he was not aware of Funds being allocated for any purpose

and was only involved in Petty Cash such as Maintenance of Vehicles etc. and had kept Records of the Expenditure.

He counted the Equipment he inspected in Oxford and had an idea of the Cost Implication of the Contract but could not remember the figure, reiterating the fact that they had nothing to do with the Contractor. He did not know of the relationship between the CEO of Pinnacle and the Defendant and did not know anything about the Quantum of Payment or the Procedure for Payment to the Contractor, stating that his Office was neither responsible nor played a part in the Contract. His responsibility stopped with the Inspection of the Equipment and receiving them. The undelivered Equipment was delivered after his Retirement. With this piece of evidence, DW12 concluded his testimony.

However, upon an Application for Recall by Learned Senior Counsel to the Defence at the Next Date of Trial, which the Court granted, **DW12** tendered Documents relating to **Count 23** of the Charge Sheet involving the sum of N250 Million paid to Pinnacle Communications and they were admitted as follows: -

- A. Exhibit D22-- a Letter from Pinnacle dated 25th of May 2001 addressed to the Executive Governor Plateau State.*
- B. Exhibit D23—an Internal Memo from Engineering Department to GM PRTV, which he Personally signed.*
- C. Exhibit D24—a Letter from GM PRTV dated the 29th of May 2001 to the Governor of Plateau State.*
- D. Exhibit D25—a Letter from Pinnacle Communications dated 18th of June 2001 addressed to the Secretary of the State Government of Plateau State.*
- E. Exhibit D26A—Award of Contract from Ministry of Finance, Plateau State dated the 5th of June 2001.*
- F. Exhibit D26B—the next page of Exhibit D26A—a Letter written by DW12 to collect the Letter of Award on behalf of Pinnacle Communications dated 6th of August 2001.*
- G. Exhibit D27—Letter from Secretary to the State Government Plateau State Government dated the 8th of August concerning Estacode and allowances addressed to the GM PRTV*
- H. Exhibit D28—a Voucher dated August 2001 raised for the Estacode for two people; and*
- I. Exhibit D29—the Certificate of Compliance issued by Harris to Pinnacle Communications dated the 4th of February 2002.*

DW13, Dr. Patrick Dakum, a Former Commissioner for Information in Plateau State, testified that he had worked in various Internal Agencies in Plateau State up to the Year 2002, when in February of that Year, he was appointed Commissioner for Information by the Defendant. Subsequently, in the latter part of 2003, he was appointed Commissioner for Health and was Adviser Emeritus to Chief Joshua Dariye, rendering advice on strategic directions for the Government.

As Commissioner for Information, he provided Policy Directions on and Dissemination of Information by the State Government. He also supervised the Information Agencies including Plateau Publishing Company, the Plateau Printing Press, the Plateau Radio/Television (PRTRV) Corporation and the Archive Unit.

He remembered Pinnacle Communications Limited, as the Company that executed the Turnaround and Expansion of the AM/FM Arms of the Radio Station in Plateau State. The Contract had been

awarded but not yet executed before he assumed Office, and part of his Mandate was to ensure that the Execution was high priority.

He tendered the following Certified Documents into evidence with Reserved Address on the Objections raised by the Prosecution, who contended that these Certified Documents pertained to Correspondence between the Governor of Plateau State and Pinnacle Communications, which were neither copied nor directed to him or to the Minister of Information. These Certified Documents were admitted by the Court with a Suspended Objection as follows: -

- A. A Certified Letter from Pinnacle addressed to the Governor of Plateau State dated the 5th of March 2002 as Exhibit D30;**
- B. A Letter from the Governor of Plateau State signed by the General Manager of PRTV dated the 9th of April 2002 as Exhibit D31;**
- C. A Letter from Harris Systems Limited addressed to Government House in Jos dated the 30th of May 2001 as Exhibit D32. This Letter had attachments, namely: - A Memo written from the Secretary to the State Government to the State Governor dated the 30th of May 2001 and another Letter from Pinnacle Communications Limited to the Governor of Plateau State dated the 25th of May 2001, and finally, a Letter written from PRTV to the Governor of Plateau State dated the 6th of June 2001.**

He was shown **Exhibits D26A and D26B** and he confirmed that he knew Engineer Israel Dabel, as the Director of Engineering in PRTV and knew of the Award Letter. He had reviewed all the Documents relating to Pinnacle and he had been part of the Delegation to Harris in the United Kingdom to meet with its Chief Executive Officer. They were to confirm that the Equipment ordered to be manufactured, complied with the Specifications before Shipment. This Inspection led to the Certification by the Director of Engineering, Mr. Dabel and the General Manager of PRTV, whereupon the Equipment were shipped to Nigeria, subsequently inspected by a Team, before they were installed.

This Project was of high priority due to the situation of unrest prevalent in the State, which occurred based on Misinformation. The Provision of this Equipment quelled the unrest, in that, there was now Real Time Information to the Entire State. Usually, Request for Payments come from the Agency where it is executed, and Payments are made based on Approval by the Governor and the Availability of Funds. The Office of the Commissioner of Finance would definitely play a role in the Payment.

He named **Members of his Group of Honourable Members of the House of Assembly as well as Commissioners that wrote and signed a Letter of Petition to the Prime Minister of the United Kingdom, Mr. Tony Blair through Baroness Cox and had visited the United Kingdom in order to submit the Petition, which drew the attention of the Prime Minister to the global terror threat manifesting in Plateau State.** They had also recommended the convening of an urgent meeting of the Heads of Government of Nigeria and some African Countries on the need for action to stem the killings that was occurring. They had further drawn attention to the truncation of Democracy in Nigeria. Dr. Patrick Dakum stated that his own Original Document of this Petition was destroyed due to the flood in his house and he had obtained a Copy from one of his Fellow Petitioners. Due to the fact that it was an Advocacy, they did not have an Original Copy, and this Copy was submitted and provisionally admitted as **Exhibit D33.**

As a result of the State of Emergency announced by President Olusegun Obasanjo, the Democratic Structures of the State were suspended and did not function. A Military Administrator governed the State for Six (6) Months and the House of Assembly were suspended from functioning.

Under **Cross-Examination**, he reiterated his duties and described the Chain of Approval of Funds to meet the needs of an Agency or Parastatal. He writes a Memo to the Agency concerned, directing them to report to the Office of the Governor or Secretary to the State Government, who in turn and through a Memo would write to the relevant Ministries. In cases regarding execution of projects etc., they, the Agencies could deal directly with the Office of the Governor but in most cases, they dealt with the Secretary to the State Government. He believed the Office of the Governor would then communicate directly to the Agency or through the Secretary to the State Government or through **DW13**.

According to him, the Procedure for the Award of Contracts at the Ministry of Communication was through Competitive Bidding or through a Search for the Relevant Contractor. Usually, a Technical Committee is set up, who makes Recommendations directly to the Office of the Governor or through the Office of the Secretary to the State Government or through him. The Ministry then reviews the Recommendations and forwards it to the Ministry of Information, where the Ministry then writes to the Governor or submits a Memo to the Executive Council, who approves. A Ministry could also present its Recommendations for Approval to the EXCO and none of the Approvals from either the Governor or EXCO was determined by the Contract Sum involved. Upon Approval, Payment Order, Approval or Award Letter is conveyed to the Contractor and depending on the Agreement, the Project commences. For Purchase of Equipment, the Award Letter would include all the requirements such as the Name of the Contractor, Amount Awarded and Payments. His Ministry was not responsible for generating a Letter for the Award of Contract, as it was the duty of the Ministry of Finance and Economic Planning to issue the Award Letter as well as make Payments.

Shown Exhibit D26A- the Letter of Award, he confirmed it was the State Tenders Board that awarded the Contract, which Board consist of the Ministry of Finance, who is a Member of the Board but could not say whether the Ministry's Permanent Secretary was a Member. From this **Exhibit D26B**, he stated Mr. Dabel collected the Letter of Award, who had pledged to collect the Sum of N45, 000 from Pinnacle Communications and according to Dr. Patrick Dakum, this clearly was an indication that Pinnacle did not pay for either the Tender and Communication Fee or the Registration Fee. It was his belief that sighting the Letter of Award was Proof of a Subsisting Contract as well as the responsibility of his Subordinates to generate a Contract Agreement, wherein the Terms of the Contract would be outlined. However, on the face of this **Exhibit D26A**, he could not say when the Contract was to be concluded, the Terms and Conditions of the Contract or Payments for the Contract.

On his assumption to Office as Commissioner, he prioritised the expansion of the PRTV in order to reach the grassroots with real time information and had received briefing from his Parastatals, who informed him on the Awarded Contract. According to him, it was for the Manufacturer to Assemble the Equipment, after which an Inspection would take place and then Installation.

From the Letter of Award, it was his Ministry, as Representative of Plateau State Government that would enter into a Contract with Pinnacle Communications. Shown **Exhibits D30, D31 and D32**, Letters he had tendered and acknowledged, he stated that none of these Exhibits were minuted to him or the Ministry of Information but he had secured them upon a request to Mr. Japheth, the GM of PRTV as part of what he could recall concerning this case. Dr. Patrick Dakum compared the Receipt Numbers on **Exhibits D22 and D30** and agreed the numbers were the same, adding that his Cousin assisted him in Certifying the Documents, therefore he would not know how the Certification was done.

Finally, he testified that he detested Corruption and would not be surprised Pinnacle Communications paid £395, 000 to the Defendant in the United Kingdom in July 2001.

Under **Re-Examination**, he stated he would not be surprised because as a Physician he could cause pain in order to heal.

DW14, Honourable Aminu Agwan Zang, a Businessman, who had served in Elective and non-Elective Positions in Plateau State testified that in 2002, he was appointed Special Assistant to the Governor on Sports and had additional responsibilities such as Project Monitoring and General Duties. In 2003, he was appointed Commissioner of Intergovernmental Affairs and a Member of the Plateau State Executive Council. In late 2003, he was transferred to the Ministry of Local Government and Chieftaincy Affairs and after the Six (6) Months State of Emergency he resumed office and continued in that capacity till his Tenure elapsed.

He described his Schedule of Duties stating that he was Chairman of the Joint Account (referred to as "JAC"), which consisted of all Local Government Chairmen as Members with other Government Officials and also the EFCC, who later joined as Member of the Joint Account Committee towards the End of his Tenure. He narrated his ordeal and those of other Government Functionaries with the EFCC as regards the illegal deductions of Monies from the Joint Account.

At the EFCC Lagos Headquarters, where they were invited, he wrote a Statement wherein he explained the Types of Deductions that were done on the Joint Account and the Beneficiaries of those deductions. Whilst in EFCC custody, he made Additional Statements in respect of the Charges on the Account and in one instance, an EFCC Operative had told him to incriminate the Defendant so he could be released, which he refused to do. After 68 Days in custody, he and two other Commissioners were relocated to another EFCC Location, where they were released without Bail or Arraigned before any Court. He took no Legal Action against the EFCC, as his Custody afforded him the opportunity for sober reflection and learning of the Scriptures.

According to him, the EFCC played a role in the Impeachment of the Governor by inviting as its Guest, some Members of the Plateau State House of Assembly.

Shown Exhibit D33, the Letter of Petition to the Prime Minister of the United Kingdom, he identified his Signature on the Petition, which was used a Medium to draw the Prime Minister's attention to the plight of Plateau State. He and other Signatories, visited European Union Members in Nigeria and also visited the United Kingdom, where they met Baroness Cox and she was given a Copy of the Petition.

Under **Cross-Examination** by the Prosecution, he stated that he neither read the Charge nor knew the Criminal Offences levied against the Defendant and was never contacted by the Defendant to give evidence in Court. The Defendant gave him the opportunity to serve Plateau State from 2000 to 2007. According to him, Federal Government Allocations were paid into the Joint Account, which was distributed to Local Governments, without the permission of the Governor. He paid One (1) Percent of the Allocation into his Ministry's Account, which is used for Official Purposes, that is, Inspectorate Services.

Honourable Aminu Zang stated that he used Public Funds for Public Purposes and there has never been any occasion he would pay the 1percent into his Personal Account or improvise a scenario by which he would pay this Allocation into his Account.

According to him, the Impeachment of the Defendant circumvented the Constitution, which the Supreme Court later set aside and he was not aware that the Defendant was charged to Court as a result of the State of Emergency.

Shown Exhibit D33, the Letter of Petition, he stated that the Signatories to the Petition used Baroness Cox and an undisclosed privileged contact to hand over their Petition to the British Prime Minister. The Original Petition was handed over to the undisclosed privileged contact but their contact did not sign his Acknowledgement Copy of the Petition and he also did not follow up on their contact to know whether he had given the Petition to the Prime Minister. Finally, on this point, he agreed he failed to mention he went to the United Kingdom twice.

His Statement to the EFCC was admitted as **Exhibit D34**, and he could not remember stating whilst at the Middle Belt Forum, that he attributed the shutdown of the Government to Senator Ibrahim Nasiru Mantu.

Under **Re-Examination**, he agreed he wrote his Statement by himself.

DW15, ASP Victor Dilang, a Former Orderly to the Defendant as far back as 1999 when he was a Governor, explained his job function, and stated that sometime in 2001, the Defendant instructed him to meet with the Permanent Secretary in the Federal Ministry of Special Duties at the Secretariat in Abuja, to pick up a Message. On getting there, the Permanent Secretary enquired of the whereabouts of the Defendant, to which he replied that he was at the Liaison Office.

The Permanent Secretary then told him he wanted to see the Defendant, and would not release the Cheque until he assigns someone to him. ASP Victor Dilang then placed a call to the Defendant, who told him that the Permanent Secretary should attach him with someone who would accompany him to the Liaison Office. The Permanent Secretary then gave him a Cheque and asked him to sign, which he did. He identified **Exhibit P14 of Page 27** to be where he wrote his name, signed and dated for the Cheque on the 12th July 2001 and also identified the Cheque as **Exhibit P14 of Page 28**.

When he collected the Cheque, the Permanent Secretary assigned him with somebody, whose name he could not recall, who followed him to the Liaison Office. At the Liaison Office, he introduced this Person to the Defendant and excused himself. After the discussion between that unnamed Person and the Defendant, he returned and the Defendant gave him a Handwritten Letter, he identified as **Exhibit P4 at Page 2**, with an Instruction to collect a Bank Draft of N80million. ASP Victor Dilang, attached the Cheque to the Letter and together with the Person from the Permanent Secretary, they went to AllStates Trust Bank Plc., near Sheraton Hotel, Abuja.

At the Bank, they met the Manager of the Bank, who collected the Cheque and the Letter, issued a Bank Draft of N80million in favour of the Permanent Secretary but they were told to wait for the Normal Banking Process. After waiting for some hours, the Person who accompanied him, went to see the Manager in his Office alone. Later, he too was called in and when he got in, ASP Victor Dilang noted that the Person had signed for the **Eighty Million Naira (N80, 000, 000)** Bank Draft, and he was also instructed to Sign a Bank Draft of **One Hundred Million Naira (N100, 000, 000)** in favour of the then Minister of Special Duties, Mr. Yomi Edu.

Thereafter, he went to Mr. Yomi Edu's Office where he personally handed over the Bank Draft to Mr. Yomi Edu, who then told him he was expecting two Bank Drafts of N100Million each. ASP Victor Dilang called the Defendant, who upon his conversation with the Minister on phone, further instructed that he should collect an Account Number from the Minister. The Minister gave him a

Habib Bank Account Number with no name, and ASP Victor Dilang proceeded to AllStates Trust Bank Plc., where the Manager gave him another Bank Draft in the name of Marine Float Limited, which Company the Defendant told him belonged to the then Vice President, Atiku Abubakar. He then lodged the Bank Draft at Habib Bank, Wuse Branch and returned to meet the Defendant in the Liaison Office. On his return, the Defendant informed him that the sum of N10Million was to be given to Senator Nasiru Ibrahim Mantu, but he, ASP Victor Dilang, played no role or Witnessed the giving of the Money.

He was shown **Exhibit P4 at Page 3**, the Instructions for Payments on the Plateau State Government Letterhead Paper, and he denied ever seeing it before.

According to him, the Defendant explained to him the reasons for disbursing these Monies, being the N100million to Mr. Edu, was for PDP South-West, N100million to Marine Float Limited was PDP North-East, and part of the Money was for Plateau State. However, ASP Victor Dilang did not know what the N80million paid to the Permanent Secretary was for, and did not know any other Beneficiary.

ASP Victor Dilang confirmed that he is a Police Officer fighting Corruption and since the Monies paid were not in Cash, but in Bank Drafts and traceable, with the Source of the Money being the Federal Government and the Central Bank of Nigeria as the Issuer, he did not suspect that the Money was for Corruption, and if he knew he would have blown the whistle. According to him, it was an Official Transaction because he collected the Cheque from a Serving Permanent Secretary.

Finally, he tendered the Witness Summons issued on him, which was admitted without any Objection as **Exhibit D35**, explaining the reason why he was not in Court on the day he was summoned.

Under **Cross-Examination**, ASP Victor Dilang testified that his principal loyalty was to the Nigeria Police, and his duties were to fight, detect, and arrest crime and he had never performed any duty outside his legal duties. He was shown **Exhibit P14 at Pages 27 and 28**, and agreed that it was on the same day he met with the Permanent Secretary and was given the Central Bank Cheque, that the Two Bank Drafts were issued to him, as well as the N80Million to the Person who accompanied him. On that same day as well, the Bank Draft he personally gave to Mr. Yomi Edu, was photocopied, and the Acknowledgment Copy was signed, which he gave to the Defendant.

As regards the Second Bank Draft, he took it to the Bank and only gave the Deposit Slip to the Defendant, his Principal on the same day, the 12th of July 2001.

He acknowledged the fact that he was under Oath, stating that the Cheque given to him on the 12th of July 2001, which he signed for, was a Central Bank Cheque written out in the Name of Plateau State Government. He knew that a Lodgment of a Cheque would require a Process of Clearance, but did not know how many days it would take the Cheque to clear, or whether a Cheque must first be cleared before withdrawals can be made.

He agreed that the Defendant gave him a Note on how the Monies would be disbursed on the 12th. He was then shown **Exhibit P4 at Page 2**, the Defendant's Note that was given to him, and he read out the Date the Defendant signed the note to be the 19th of July 2001. This Witness had no response when confronted with the Disparity of the Dates he was instructed, whether the 12th or the 19th.

He was also referred to the Bank's Minute on the Note, which stated "**Please treat as per Customer's Request**", and read out the date to be 20th of July 2001, but ASP Victor Dilang in response, claimed the Letter was addressed to the Bank Manager, to whom he delivered, and his assignment ended there. He

acknowledged the Signature of the Defendant on the Note dated the 19th, but stated he was not a Handwriting Expert.

As regards the N80Million Cheque, he was shown **Exhibit P7 at Page 2**, the Cheque made out to Union Homes dated 20th July 2001, and he responded that he did not lie when he said the Cheque was given to him on the 12th. He also was shown **Exhibit P7 at Page 3**, the Marine Float Cheque, and acknowledged the date of issuance as 15th August 2001.

According to this Witness, he was also not telling a lie concerning the date he collected the Cheque, which was the 12th of July 2001, and he did not know whether the Dates were either backdated or front dated. He was shown the Reverse Side of the Marine Float Cheque, which showed the date of receipt by the Bank as the 22nd, but maintained the fact that he deposited the Cheque on the 12th. He was aware that the Bank would sign on the Deposit Slip, and identified the Bank Stamp to be the 22nd of August 2001, and other Stamps were dated the 23rd and 24th of August 2001. He confirmed not seeing any July date on the Cheque.

When asked, he answered that he would be surprised to know the Defendant accompanied him to collect the Cheque on the 12th. According to ASP Victor Dilang, the Defendant made several visitations to Permanent Secretaries, not only to the Permanent Secretary of Ecological, and may have met on other days. He did not know Mr. Adewusi James Olanrewaju, the Man in charge of Payment as he was only directed to meet the Permanent Secretary, who then called a Staff. It was this Staff, who brought a Register for him to Sign but before signing, the Permanent Secretary enquired about the Defendant's whereabouts. According to him, it was this Staff, who gave him the Cheque and it was in the Permanent Secretary's Office that he signed for the Cheque. He could not identify the Permanent Secretary when shown **Exhibit P8**, which bore the Photograph of the Permanent Secretary, as this event happened Ten (10) Years ago.

As regards to whether it was within his Schedule of Duties to collect a Cheque for Plateau State Government, he replied it was not within his Schedule to Sign Cheques for Plateau State Government and in this instance, he was not sent to Sign a Cheque for Plateau State, but to Sign a Cheque, which he did not know what it was meant for.

He was shown **Exhibit P14**, where he endorsed his Signature, and identified where he had signed at **ColumnNo. 25**, although it was faint. A Clearer Copy of **Exhibit P5** was shown to him, and he identified the Name on the Cheque to be Plateau State Government, and further identified his Name, and the Amount of N1, 161, 162, 900 as well as the Date, 12th July 2001.

Although he admitted Signing the Register, he denied that the Signature on it belonged to him, as it was not clear.

According to this Witness, he was not wrong when he signed the Cheque for Plateau State and agreed that the Money was meant for Plateau State Government. He did not assist the Defendant in disbursing the N100million each to PDP South-West and PDP North-East, because he was carrying out an ad hoc duty on the instruction of the Defendant. He did not know the Monies were Public Funds, but agreed the Cheque was meant for the Plateau State Government. Although, the Drafts had their Origin from the Cheque, he could not say whether PDP South-West and PDP North-East were part of Plateau State Government, or knew if it was wrong to give State Funds to PDP South-West and PDP North-East. It was his understanding that all the Transactions he had carried out in Bank Drafts, were not Corruption-Based Transactions.

ASP Victor Dilang stated that he has a Diploma in Accounting and an Advance Diploma in Law and Conflict Management and is aware of what constitutes a Crime, but did not see any Crime in his actions, as the Monies were in Bank Drafts and not in Ghana-must-go Bags. Further, the Defendant did not give any Account Number, or Account Number of Plateau State to pay any Money into, and he did not personally benefit from the Cheque. What the Defendant simply told him was, some of the Money was for PDP Plateau State.

Finally, he elaborated on the Question of his Witness Summons and further added he had not been in contact with the Defendant for over Nine Months.

DW16, Honourable Nandant Bako, a Former Two-Term Plateau State House of Assembly Member representing Lantang South Constituency, was also the Chairman of House Committee on Judiciary and by Late 2006 to 2007, was the Speaker of the House of Assembly. He and the Defendant were not from the same Zone nor belonged to the same Political Party following their Elections in 1999. But the Defendant and the former Deputy President of the Senate, Senator Ibrahim Nasiru Mantu were both from Plateau State Central Zone, whose Senatorial Seat, is presently occupied by the Defendant.

He became the Speaker of the House as a result of a controversy that arose between the Defendant and the Federal Government, when the House received a Petition from the EFCC alleging investigation of Corruption against the Defendant, as Governor. The House in considering the Petition, inaugurated a Committee to look into the Petition and being the Chairman of the Judiciary Committee, he was a Member of that Committee. The Investigation started in 2005 and was concluded in 2006 and a Committee Report was submitted to the House of Assembly. He identified the Committee Report as **Exhibit D7** as well as his Name and Signature dated 9th of June 2006 at **Page 133**. The House of Assembly scrutinized the Committee Report and after Deliberations, the Defendant was cleared of the Allegations contained in the Report.

Dissatisfied, the EFCC took the matter before the Kaduna Federal High Court, where he was again cleared of the Allegations. Still dissatisfied, the EFCC, through the President and Senator Ibrahim Nasiru Mantu, who used Federal Might, began to invite Members of the House of Assembly to their Abuja Office, to impeach the Defendant. He was not among those invited to Senator Mantu's Office, but was personally invited by the President Olusegun Obasanjo, who through the Telephone of an unknown Person, instructed him to meet with the Director of the State Security Service, who would escort him to the Villa.

When he arrived the Gate of the Department of State Security, an Official Car picked him up and drove to the Villa, where he met the President, who told him he wanted the Defendant to be impeached by all means. He agreed with the proposition but told the President there were Twenty-Four (24) other Members he would have to convince. The President promised him that if he were able to carry out the Impeachment, he would make him either a Minister or anything he wanted in Nigeria.

Honourable Nandant Bako, testified he was not part of the Six (6) Members out of Twenty-Four (24), who were escorted by the EFCC into the Chambers of the House, where the Defendant was impeached. He was responsible for marshalling a Team of Lawyers to the Federal High Court, for the Court to interpret the Law, on whether Six Members of the House of Assembly could impeach a Governor.

One Engr. Jimmy Cheto approached him and told him that the President had accepted to give him N150Million if he withdrew the case. As a result of this Approach, he changed his Mobile Number but was again approached by Mr. Benahel Anglong, a Close Friend and Fellow Colleague in the House of Assembly but he did not agree or accept all the Benefits offered to him.

According to Honourable Nandant Bako, they won the Case both before the Federal High Court and the Supreme Court, where the Defendant was returned as the Governor of Plateau State, successfully completing his tenure.

Under **Cross-Examination**, he agreed with the Prosecution that he and other Members were given Car Loans in the Sum of N4Million, paid into their Bank Accounts and Deductions were expected to be taken from their Salaries back into the Coffers of the Government, and therefore he would be surprised to learn that some others received theirs in Cash and never paid back. He was never prosecuted by the EFCC in Court because he received and paid the Car Loan through the Proper Procedure.

He reiterated the fact that the Committee Report on the Impeachment was deliberated upon by the House of Assembly, who had the power to either refuse or accept the Report, and in this Case, a Resolution was passed accepting the Report.

He clarified the position that the Committee on Impeachment did not Sit either as a Court or give Judgment, and insisted on this point despite being shown **Paragraph 6.4 of Exhibit D7**. Further, he was shown **Pages 109 to 112 of Exhibit D7**, the Committee Report, which contained the reproduction of the Charge Sheet and when asked, he restated that the Committee did not interfere with Matters already instituted in Court, but however could not say with certainty whether at that time, the Defendant was under Immunity.

He agreed that the Committee could not absolve anyone of any Crime or have the Jurisdiction to entertain a Criminal Matter. However, the Committee simply acted on a Petition sent to the House, to which they were asked to investigate. This Committee subsequently determined that No Offence was committed. According to Honourable Nandant Bako, he did not have a Copy of the Kaduna Federal High Court Judgment that cleared the Defendant nor knew whether the Allegation against the Defendant was Civil or Criminal in Nature. The Singular Role he played, was concerning the Impeachment of the Defendant as Governor.

Honourable Nandant Bako testified that it was from the EFCC Report he became aware that the Defendant collected a Cheque from the Ecological Funds Office on behalf of Plateau State Government and depending on the circumstances, it would be wrong for the Defendant to use his own discretion to disburse Monies to the PDP South West and PDP North East. However, if he was acting under the directive of the Giver/Issuer of the Cheque, that is, the Federal Government of Nigeria, there was nothing wrong with it.

He got to know of the Defendant's Arrest in London from the Petition and was aware the Defendant had jumped bail in London, which was never reported and neither did anyone from London give such evidence before the Committee.

He was asked whether it was the EFCC that nailed the Defendant in London, and he replied that he did not know whether it was the EFCC that arrested the Defendant in London or declared him Wanted and would be surprised to know that the Defendant had transferred some Money to London to buy a House.

According to Honourable Nandant Bako, he would not pay State Funds into his Personal Bank Account and where it occurs, he would write a Memo. Further, depending on the circumstances, State Funds could be paid into the Governor's Account and in this instance, he would not be surprised to know the Defendant paid State Funds into his Personal Bank Account.

Finally, he stated that the Committee, had requested the EFCC to produce the Senator Ibrahim Nasiru Mantu, Vice President Atiku Abubakar and all other Agents, who collected the Money but they failed to produce them.

There was no **Re-Examination** of this Witness and with the Testimony of this Witness, the Case was adjourned for Continuation of Hearing in Defence.

Now, the Court finds that there are Two Sections of the Penal Code that treat the Offence of Criminal Breach of Trust and they are: -

Section 311, which states: -

“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.”

Section 315, which states: -

“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 a fine.”

For the Commission of the Offence of Criminal Breach of Trust, Two Distinct Parts are involved. The First Part consists of the Creation of an Obligation in relation to the Property over which the Defendant acquires Dominion or Control. The Second Part consists of the Misappropriation, Use, Conversion or Disposal or otherwise Dealing with the Property, Dishonestly and contrary to the Terms of Obligation created.

The Person handing over the Property must have confidence in the Person taking the Property, so as to create a Fiduciary Relationship between them or to put him in Position of a Trustee. The Defendant must be in a position where he receives the Property Legally and exercises Possession and Control over the Property, but subsequently Illegally Retains it or Converts it to his own Use against the Terms of the Trust.

The Definition of “Property” is not restricted to Moveable or Immoveable Articles or Items alone, as the definition of the Particular Kind of Property envisaged, could be extended to cover the Purpose, that is, whether the Property is subject to the Ambits/Acts contemplated under this Section.

Therefore, the Defendant must be such in a Position where he could exercise his Control over the Property, i.e., Dominion over the Property and Dishonestly put that Property to his Own Use or some Unauthorized Use, as Dishonest Intention to Misappropriate, Convert or Dispose, are Crucial Elements to be proved to bring home the Charge of Criminal Breach of Trust.

In **NWAMARA'S ENCYCLOPAEDIA OF THE PENAL CODE AND CRIMINAL PROCEDURE CODE OF THE NORTHERN STATES OF NIGERIA AND ABUJA AT PAGE 608**, the Author defined the Offence of Criminal of Breach of Trust as an Aggravated Offence of Criminal Misappropriation, where the Person comes into possession by Express Entrustment or by some Process, placing the Defendant in a Position of Trust and there is Dishonest Use or Disposal of the Property in Violation of the Trust. See also **1976 MADRAS SERIES LAW JOURNAL (CRIMINAL) PAGE 20 AT PAGE 28(DB); His Lordship PETER-ODILI, J.C.A. (AS SHE THEN WAS) AT PAGES 17, 18, PARAS E-B** in the case of **HON. YAKUBU IBRAHIM & ORS VS COMMISSIONER OF POLICE (2010) LPELR-8984 (CA); SABO VS COMMISSIONER OF POLICE (1973) NNLR PAGE 207.**

In **AIYEJENA VS THE STATE (1969) NNLR PAGE 73**, it was held that before there can be a conviction on a Charge of Breach of Trust, there must be evidence of Entrustment and of Dishonest Misappropriation of what was entrusted, and reference was made in that Case, to the Case of **BATSARI VS KANO NATIVE AUTHORITY (1966) NRNLR PAGE 151 AT PAGES 152, 153.** Further, it is clear that Shortage in the Property is not itself Misappropriation, as there must be Direct or Circumstantial Evidence to show that the Misappropriation caused the Shortage. In the case of **BELLO MUHAMMED TAMBUNWAL VS FEDERAL REPUBLIC OF NIGERIA (2018) LPELR-43971 (CA)**, the Dictum of **PETER ODILI JCA (AS SHE THEN WAS)** in **YAKUBU IBRAHIM & ORS VS COMMISSIONER OF POLICE (2010) LPELR-8984 (CA)**, was followed.

His Lordship CRAIG JSC, in the Case of **THEOPHILUS ONUOHA VS THE STATE SC.8/1988 AT PAGES 10, 11 AT PARAS F-C; (1988) 3 NWLR PART 83 AT PAGE 460 (SC)**, held *inter alia*, whilst referring to the Case of **AKWULE VS THE QUEEN (1963) NNLR P.105** that, what the Prosecution was expected to prove was: (1) That the Defendant 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 whatsoever **Disposed** of it **Fraudulently** and in a Manner Contrary to the **Directive(s)** given to him.

Now, from the above Ingredients of the Offence of Criminal Breach of Trust as set out in **ONUOHA'S CASE (SUPRA)**, this Court will examine the Totality of the Evidence, both Oral and Documentary, adduced during the Trial, to determine whether the Prosecution has successfully established, Beyond a Reasonable Doubt, the Counts of Offences of Criminal Breach of Trust.

The Prosecution must prove the following **throughout the Fourteen (14) Count Charges: -**

1. That the Defendant is a **Public Servant**;
2. That in his Capacity as Public Servant, **he was Entrusted with the Monies or with Dominion over the Monies**;
3. That he committed Criminal Breach of Trust in respect of the Monies by-
 - i. **Misappropriating**; or
 - ii. **Converting to their own use**;
 - iii. **Using**; or
 - iv. **Disposing of the Monies or intentionally or willfully allowing any other Person(s) to do so,**

4. That he acted **Dishonestly** in Misappropriating, Converting, Using or Disposing of the Monies.

5. That he did so **in Violation** of: -

- i. **Any Direction of Law or Directive prescribing the Mode in which such Trust is to be discharged; or**
- ii. **Any Legal Contract touching the discharge of such Trust; or**
- iii. **He intentionally allowed some other Persons to do so or commit the above stated.**

From the above stated Ingredients, it is clear that there are some Basic Elements that are Standard and Prevailing, and therefore, the Proof and Resolution of them *ab initio*, will completely and for the Purposes of this Judgment, satisfy **ALL** the Requirements for these Elements in the Related Offences. These Standard Elements are whether the Defendant is a Public Officer and whether he was Entrusted or had Dominion over the Funds of Plateau State.

THE PROSECUTION'S FIRST DUTY TO PROVE: PUBLIC SERVANT

Learned Senior Counsel representing the Prosecution, Mr. Rotimi Jacobs SAN, contended that there was no doubt that the Defendant was a Public Servant by virtue of his Position as the Governor of Plateau State and no doubt that he was an Agent of the State Government when he collected the Cheque from the Permanent Secretary, Ecological Funds Office.

Learned Silk, representing the Defence, on his own part, made no Direct Submission on the Element of Public Servant.

Now, PART I of the FIFTH SCHEDULE to the 1999 Constitution of the Federal Republic of Nigeria (As Amended), particularly at **Section 19**, the Interpretation Section, states, "Public Office means a Person holding any of the Offices specified in **PART II of this Schedule**."

PART II of the FIFTH SCHEDULE to the 1999 Constitution (As Amended) defines Public Officers for the Purposes of the Code of Conduct contained in **PART I**, to include in **Paragraph 4**, Governor and Deputy Governor of a State.

Public Servant and Public Officers are one and the same in terms of the Service they offer for the benefit of the People in General. Officers and Servants can only carry out this Public Service.

Also, **Section 318 of the 1999 Constitution** does not define who a Public Servant is, but defines what is Public Service of a State and who are the Staff and Members contemplated under this definition and it states that "*Public Service of a State, means Service in any Capacity in respect of the Government of the State...*" In the Case of **THE REGISTERED TRUSTEES, P.P.F.N. VS SHOGBOLA (2004) 11 NWLR PT 883 PAGE 1 AT PAGE 20(CA)**, Public Officer was held to be "*Someone in the Public Service of the Government or State as defined under the Heading, Public Service of the Federation or of the State as per Section 277(1)(a), (b), (c), (d), (e), (f) and (g) of the Constitution of the Federal Republic of Nigeria.*"

Section 5(2)(a) and (b) of the 1999 Constitution, are Relevant Provisions and **Paragraph (a)** states that the Executive Powers of a State, "*Shall be vested in the Governor of that State and may, Subject as aforesaid to the Provisions of any Law made by a House of Assembly, be exercised by him either Directly or through the Deputy Governor and Commissioners of the Government of that State or Officers in the Public Service of the State;*"

Section 18(1) of the Interpretation Act of 1964 further defines, "Public Officer" to mean a Member of the Public Service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria or of the Public Service of a State. A Public Officer, is an Officer who discharges any duty in the discharge of which the Public are interested, more clearly so, if he is paid out of a Fund provided by the Public. See the Cases of **R VS BEMBRIDGE (1783) 3 DOUG KB 32 AND R VS WHITAKER (1914) KB 1283**.

Section 10 of the **Penal Code Act**, which is the Definition Section, on its own part, lists out Several Categories of Public Servants, but of particular interest, is **Section 10(a)** thereto, which states: - ***"Every Person appointed by the Government or the Government of the Federation or of a Region while serving in Northern Nigeria or by any Native, Provincial, Municipal or other Local Authority and every Person serving in Northern Nigeria appointed by a Servant or Agent of any such Government or Authority for the performance of Public Duties whether with or without remuneration or for the performance of a Specific Public Duty, while performing that duty"***, is a Public Servant.

Section 10(b) states that: -

"Every Person not coming within the Description set forth in Paragraph (a) who is in the Service of the Government or of any Native, Provincial, Municipal or Local Authority in a Judicial or Quasi-Judicial, Executive, Administrative or Clerical Capacity;"

In the Case of **WILSON VS A.G. OF BENDEL STATE (1985) NWLR PART 4 PAGE 572**, His Lordship **OPUTA, J.S.C.** at **PAGE 64 PARAS B-D** held that, *"The expression "Public Officer" has been defined in Section 7(1) of the Public Officers (Special Provisions) Decree now Act No. 10 of 1976, as: -*

"Public Officer means any Person who holds or has held any Office in: -

(b) The Public Service of a State; or

(c) The Service of a Body whether Corporate or Unincorporated established under a Federal or State Law;"

In **STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES 7TH EDITION AT VOL. 3 PAGE 2209**, a Public Officer was further defined as *"Every one who is appointed to discharge a Public Duty and receives a compensation in whatever shape, and is one who discharges any Duty in the discharge of which the Public are interested, more clearly so, if he is paid out of a Fund provided by the Public."* See the case of **R VS WHITAKER (SUPRA) PAGE 1283**. In the case of **HENLY VS LYME 5 BING PAGES 107, 108**, it was held to include the fact that the *"Public Officer is also Liable to an Action for injury to an individual arising from Abuse of Office, either by Act of Omission or Commission."*

See further the cases of **RE MIRAMS (1891) 1 QB AT 594, CAVE J.; ASOGWA VS CHUKWU (2003) 4 NWLR (PT. 811) 540 AT 551 per ABOKI JCA; CHIEF JOHN EZE VS DR. COSMAS I. OKECHUKWU (1998) 5 NWLR PART 548 PAGE 43 AT 73** where His Lordship **OHO, J.C.A.** in **PAGES 34-36 AT PARAS. E-D** held that:

"Public Officer' is a Holder of a Public Office in the Public Sector of the Economy as distinct and separate from the Private Sector and that he is entitled to some Remuneration from the Public Revenue or Treasury. In addition, that he has some Authority conferred on him by Law, with a Fixed Tenure of Office that must have some Permanency or Continuity and above all else, that the Public Officer has the Power to exercise some amount of Sovereign Authority or Function of Government."

Now, from the undisputed facts, the Defendant, Chief Joshua Chibi Dariye, twice served as Governor and Chief Executive Officer of Plateau State. From **Exhibit P1**, the Letter from the Attorney General of the Federation and Minister of Justice dated the 20th of September 2004 to the Central Authority, United Kingdom, referred to the Defendant as a Public Officer while asking to Freeze the Bank Accounts opened in Breach of the Code of Conduct Forms for Public Officers, as well as his Executive Act seen in **Exhibit P4**, the Letter written and signed by him under the Letterhead Paper of the Executive Governor, Plateau State Government of Nigeria and from his Schedule of Duties defined in the Constitution and by his Oath of Office, he is clearly a Public Officer for the purposes of this Section. As Executive Governor of Plateau State from 1999 to 2007 (taking aside the Period of his Impeachment), he performed Public Functions, was paid from Public Funds and was Empowered by the Law to carry out Public Duties for the benefit of the Public, and did exercise some amount of Authority of Function on behalf of the Federal Government of Nigeria. The Defendant also had a Relatively Fixed Tenure of Office with some sense of Permanency or Continuity and by the Oral and Documentary Exhibits, which confirm that the Defendant served as Executive Governor, the Defendant is found by the Court to qualify as a Public Servant/Officer for the purposes of this Trial and the Court further finds, in the absence of contrary evidence, that this 1st Essential Element has been satisfied throughout all the **Counts 1, 2, 4, 5, 6, 7, 8, 10, 13, 15, 17, 19, 21 and 23**.

THE PROSECUTION'S SECOND DUTY TO PROVE: ENTRUSTMENT OR DOMINION

The Second Essential Element necessary to Ground this Offence is the proof by the Prosecution that in his Capacity as a Public Servant, holding a Public Office, the Defendant was entrusted with the Monies or with Dominion over the Monies.

After considering the Submissions and Arguments under this Head, it is clear that before there can be Conviction on a Charge of Criminal Breach of Trust, there must be evidence of Entrustment and of Dishonest Misappropriation of what was entrusted. Reference is made to the Case of **BATSARI VS KANO NATIVE AUTHORITY (1966) NRNLR PAGE 151 AT PAGES 152, 153**.

“To Entrust” and “To have Dominion” were stated disjunctively in the Penal Code. To Entrust means to assign responsibility for doing something to someone and also means to put something into someone’s care or protection. Dominion, on the other hand, means Sovereignty, Control over the Property and the Power or Right of Governing or Controlling that Property.

As earlier set out above, by **Section 5(2) (a) of the 1999 Constitution (As Amended)**, confers Wide Executive Powers on the Defendant and it is not necessary to show that the Property was that of the Government or of his Employer. The Offence can be committed in respect of any Property entrusted to the Public Servant in his capacity as such. See the case of **AKWULE VS THE QUEEN (1963) NNLR PAGE 105**.

ONU JSC IN MARA VS THE STATE (2013) 3 NWLR (2012) 14 NWLR PT. 1320 PAGE 287 AT 318 AT 319 AT PARA C, held that the Defendant must be a Clerk or Servant or in such Capacity, of the Person reposing trust in him, and in that capacity, he was entrusted with the Property in question or with Dominion over it and had committed Breach of Trust in respect of it. See also the Cases of **FRN VS NUHU & ANOR (2015) LPELR-26013 CA PER ABIRU JCA; AJIBOYE VS FRN (2014) LPELR-24325 CA PER ALKALI JCA**.

In **R VS GRUBB (1915) 2 KB PAGE 683 AT PAGE 689, Lord Reading** held that where the Defendant has obtained or assumed the Control of the Property of another Person under circumstances whereby he becomes entrusted or whereby his receipt, becomes a receipt for or on account of another Person, and fraudulently converts it or the Proceeds, then he has committed an Offence. The words "being entrusted" should not be read as being limited to the moment of the Sending or Delivering of the Property by the Owner, but may cover any subsequent period during which a Person becomes entrusted with the Property..."

Likewise, in the case of **M/S INDIAN OIL CORPORATION VS M/S NEPC INDIA LTD., & ORS ON 20 JULY, 2006 SUPREME COURT OF INDIA; AND CENTRAL BUREAU OF INVESTIGATION VS DUNCANS AGRO INDUSTRIES LTD., CALCUTTA (1996) (5) SCC 591**, it was held that the Property in respect of which **Criminal Breach of Trust** can be committed must necessarily be the Property of some Person other than the Defendant or the Beneficial Interest in or Ownership of it, must be in another Person and the Defendant must hold such Property in **trust** for, and is accountable to, such other Person or for his benefit. If the Defendant was entitled to keep the Money and use it for his own purposes, then plainly there could be no Question of Entrustment.

In the case of **ANG TECK HWA VS PP (1987) SLR (R) 513 AT PAGE 27**, it was held that it is not necessary that the Loss to the Owner should have been actually suffered at the exact time of Entrustment. See also **HIRA LAL CHAUDHARY AND ORS VS STATE ON 7 MARCH 1956 AIR 1956 ALL 619**.

CORNISH, J. in the case of **EMPEROR VS JOHN MCIVER, AIR (1936) Mad 353**, referred to the definition of the word "entrusted" by **Lord Haldane** in **LAKE VS SIMMONS (1927) AC 487**, where His Lordship held that entrustment may have different implications in different contexts. The notion of a "trust" in the ordinary sense of that word is that, there is a Person, the Trustee or the Entrusted, in whom confidence is reposed by another, who commits Property to him and this again supposes that the confidence is freely given. It could cover the case of Property honestly obtained by the Person entrusted with it but subsequently dishonestly misappropriated by him in breach of his trust. See also the case of **J. M. AKHANEY VS STATE OF BOMBAY [AIR 1956 SC 575]**, which clarified that this Term does not contemplate the Creation of a Trust with all the technicalities of the Law of Trust. It contemplates the Creation of a Relationship whereby the Owner of Property makes it over to Another Person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."

Under our Laws, Public Servants, who are entrusted, have positions of Greater Responsibility more than the General Populace. This is because of the Special Status and the Trust, which a Public Servant enjoys in the Eyes of the Public, as a Representative of the Government or Government Owned Enterprises. The Entrustment to him need not be Express, as it could be Implied. See the Recent Cases of **B. D. PATEL VS STATE OF GUJARAT & ON 20 APRIL (2017) R/CR.MA/19007/2014 AND SUPERINTENDENT AND REMEMBRANCE OF LEGAL AFFAIRS V SK ROY AIR 1974 SC 794, (1974) CR.LJ 678 (SC)**, where it was held by the Supreme Court of India that, it is the Ostensible or Apparent Scope of a Public Servant's Authority when receiving the Property, that has to be taken into consideration. The Public may not be aware of the Technical Limitations of his Powers under some Technical Limitations of some Internal Rules of the Department or Office concerned. It is the **Use** made by the Public Servant in his Actual Official Capacity, which determines whether there is Sufficient Nexus or Connection between the Acts complained of and the Official Capacity, so as to bring the Act within the Scope of the Section.

There is no requirement for the Creation of a Formal Trust as long as it is shown that the Federal Government funded the Ecological Problems in Plateau State from its own Funds domiciled at the Ecological Funds Office in Abuja. Then, there is also the Entrustment from Plateau State itself, where its Citizens reposes Confidence and Trust in its Elected Officials, particularly on the Executive Governor, to effectively manage Committed Funds for their benefit. Control, but not Ownership, is a Crucial Point and the Prosecution must show that the Owner of the Property, whether a Person, Organization, or Group, entrusted or gave the Money to the Defendant, or otherwise allowed the Defendant control over it.

At the Start off, it is important to note that the Monies alleged to be misappropriated by the Defendant are Grants from the Federal Government of Nigeria to satisfy the Ecological Problems in Plateau State as well as Funds directly from the Accounts of the Plateau State Government, meant for the benefit of the Citizens of Plateau State. These Monies were Public Monies, in that the Monies were held by Officers in the Public Service of the State, on behalf of the Government of the State and even of the Federation. They could be described as Agents in their Official Capacity, and this is regardless of whether it was held temporarily or otherwise, or whether the Monies were subject to any Trust or Specific Allocation or not. See **Section 2 of Chapter F26 of the Finance (Control and Management) Act**.

A careful look at **Exhibit P14 at Page 3** will show that the Defendant, as Executive Governor of Plateau State, had written a Letter dated the 7th of May 2001 titled, **“S.O.S. IN RESPECT OF RECLAMATION OF LAND DEVASTATED BY PAST MINING ACTIVITIES IN PLATEAU STATE: AN APPEAL FOR FEDERAL GOVERNMENT ASSISTANCE.”** (Underlining mine) In it, His Excellency the President of Nigeria, through the Office of the Vice-President, was requested to listen to the cries of the good and peaceful people of Plateau State and graciously give Approval for the release of the Sum of N3.197Billion for the Reclamation of Land devastated by past mining activities, which had continued to be a major problem in Plateau State. Eventually, Mr. President approved the Sum of Nine Hundred, and Fifty-Six Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N956, 162, 900) only on the 25th of June 2001.

It is important to note that in this Letter, the Defendant had appealed to the Vice-President of Nigeria “on behalf of the People of Plateau State”. Five Major Selected Dangerous Mine Ponds within Plateau State, urgently requiring Reclamation were identified.

The Defendant had also on the 7th of June 2001, appealed to the President, through the Minister of Special Duties for Financial Assistance, in another Save Our Soul (S.O.S.) Letter, seeking Funds for the Channelization Works at Bokkos, Plateau State, wherein the Sum of Two Hundred and Five Million Naira (N205, 000, 000) was approved for payment by the Ecological Funds Office under the Office of the Secretary to the Federal Government.

The Total of the Sum sought amounted to One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand Nine Hundred Naira (N1, 161, 162, 900).

This Money has its Ownership Root/Source as the Federal Government of Nigeria. It was a Dedicated Fund to resolve the Ecological Problems in Plateau State regarding Reclamation and Channelization and so, it was specifically assigned and entrusted to Plateau State Government. The Executive Governor of Plateau State, the Author of the Two Letters, being the Main Approver of the

Disbursement of the Funds in the Cheque, was entrusted by the Federal Government to fulfill his Save Our Soul Plea and perform as expected. In **Pages 22 to 25 of Exhibit P14**, the Purpose for this Money was clearly emphasized and communicated to the Defendant in the Reply of the Federal Government through the Minister for Special Duties.

The Defendant as the Chief Executive Officer of Plateau State has to be a Responsible Accounting Officer for this Money entrusted by the Federal Government of Nigeria. The Cheque, by logical deduction, was not addressed to anyone else except Plateau State Government and the Property in the Cheque was not meant for Chief Joshua Chibi Dariye, both in his Private and Official Capacity as Executive Governor. It also was not addressed to the AllStates Trust Bank Plc., the Accountant General, or to any Official of Plateau State Government, or even Ebenezer Retnan Ventures.

The question to be asked is, whether the Citizens of Plateau State will be affected by the actions of those entrusted with Funds to ensure its proper use.

The Grant of the Ecological Funds was bestowed on the People and Government of Plateau State, who in turn entrusted proper execution of that Fund to the Executive Governor of their State, who by his Oath of Office enshrined in the **Seventh Schedule of the 1999 Constitution** vowed to discharge his Duties as Governor in the best interest of the State.

A careful perusal of **Exhibit P5**, the Certified True Copy of the Extract from the Movement Register, will show on Serial Number 25 that on the 12th of July 2001, a Cheque addressed to Plateau State Government in the Sum of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900) was signed for and collected by Victor Dilang.

The argument of Learned Silk representing the Defence, that the Cheque was entrusted to Victor Dilang and not the Defendant, does not hold water in light of the above Principles. It is imperative to state that, it is not just being an Officer in the employ of a State, Federation or Official of Plateau State Government alone that confers Dominion and Entrustment, because a Secretary or Director working in Plateau State Government can never confer authority on Plateau State Government over the Deployment of its Funds. Therefore, any Person that can affect the Movement and Use of the Money by his Signature can properly be said to have Dominion over it. That Dominion translates to Control and the Ability to Influence and Determine the Use of the Money. Further, it is that Person, who has the Ultimate Power to affect the Deployment, Movement or Disposal of the Money that could properly be said to have been entrusted with the Funds.

Victor Dilang himself had testified that obtaining the Cheque was not within the Scope of his Official Duties as Orderly to the Executive Governor of Plateau State. He had also gone further to state very explicitly, that he handed over the Cheque to the Person who had instructed him to sign for it. This piece of evidence corroborates the Testimony of **PW2**, Mr. Adewusi of the Ecological Funds Office, who stated that the Defendant's Orderly signed the Movement Register to collect the Cheque and handed it over to the Defendant.

The fact that the Defendant had his Orderly sign for the Cheque has not absolved him of Dominion and Control over the Cheque.

Apart from the above contention, Learned Silk representing the Defendant further contended that the Defendant did not go to the Ecological Funds Office to collect the Cheque. However, there is the evidence from the Documentary Exhibit of **P14**, the Payment Voucher of the Ecological Funds Office

dated the 12th of July 2001 with Accompanying Documents, where at **Page 24** thereof, the Permanent Secretary of the Ecological Funds Office minuted on the 12th of July 2001, the following: -

“For Immediate Action Please. The Governor is waiting to collect the Cheque TODAY.”

This Comment, without more, corroborates the testimony of **PW2**, Mr. Adewusi, who testified that on his return from the Central Bank of Nigeria, where he went to collect the Cheque, he met the Defendant seated in the Office of the Permanent Secretary and this Comment further contradicts the testimony of Victor Dilang himself, when he testified that he went alone to pick up the Cheque from the Ecological Funds Office.

PW2, Mr. Adewusi, a Principal Accountant from the Ecological Funds Office, stated that the Cheque was written in the name of Plateau State Government and was supposed to be paid into the Plateau State Government Account.

DW1, Mr. Adonye Roberts, a Former Staff of the AllStates Trust Bank Plc., under Cross-Examination had stated that from his experience, **Exhibit P6**, the Cheque payable to Plateau State Government was Public Funds, which ought to be paid into the said Government’s Account although, it was not wrong to clear the Cheque through a Sundry Account. He knew that Government Funds must be used for Government Purposes and where Funds were to be used for Ecological Purposes, that Funds must be used for it only.

DW2, Honourable Geoffrey Teme, a Member of the Plateau State House of Assembly, when questioned under Cross-Examination in regard to the Cheque, stated that he had expected a Cheque written in favour of the Plateau State Government, to be lodged in the Plateau State Government’s Account and spent by it.

DW8, Mr. John Gozen Gobak, a Former Secretary to the State Government, under Cross-Examination stated that Money received from the Federal Government is channelled through the Ministry of Finance, who will then pay it into Government Account. These Monies are to be used for the benefit of Plateau State Government.

DW10, Mr. Gideon Mitu, a Former Permanent Secretary of the Plateau State Liaison Office in Abuja, under Cross-Examination had stated that as Permanent Secretary, he had never received any funds on behalf of the Plateau State Government, adding that the Federal Government paid the State Allocations from the Revenue Account directly in the Plateau State Government’s Account. According to him, it was wrong for this Allocation to be paid into a Public Officer’s Private Account.

DW15, Sergeant Victor Dilang, the Defendant’s Former Police Orderly, under Cross-Examination when asked, agreed with the Prosecution that the Cheque was meant for the Plateau State Government.

Through all these Witnesses **PW1, DW1, DW2, DW8, DW10 and DW15**, the Court finds that the Cheque from the Central Bank of Nigeria was to have been remitted directly into Plateau State Government’s Account under the Management of Relevant Officers of the State Government, who had the Power(s) to collect the Cheque, Process its Payment and finally, make Reference to the Executive Governor.

As regards the Ecological Funds Cheque from the Central Bank of Nigeria, all the above testimonies of **PW2, DW1, DW2, DW8, DW10 and DW15**, corroborate the fact that the Property in the Cheque was

Public Funds for the benefit of Plateau State Government and the Court finds that the Defendant was entrusted both by the Federal Government as an Executor and also by the People of Plateau State over the Ecological Funds. This established a Fiduciary Relationship between the People of Plateau State and the Defendant.

As regards the Element of Entrustment for the Funds of Plateau State Government, the Defendant is found to have been entrusted with the Proper Execution of the Funds in the Account of the Accountant General of Plateau State and any Other Organ of Plateau State Government and was the Approving Authority for the Expenditure of the State Funds, exercising Dominion and Control over those Funds.

In other words, the Federal Government of Nigeria, being the Owner of the Money, the “Property”, freely reposed confidence in the Plateau State Government by committing the Budgetary Allocations to the State as well as entrusting the State with the Ecological Funds, on the assurance that Plateau State Government would render Proper Accounts for the use of the Money. It can safely be implied that Plateau State Government, then assumed control and the Officers who can be liable, are the Officers that affected the Disbursement/Disposal of that Money. To this extent, the Actual Person, who took the Decisions to Disburse the Funds in the manner he did, can be said to have had been entrusted with Control and Dominion. In short, the Defendant rightfully had Possession, but not Ownership. With the assumption that the Defendant understood Plateau State Laws, Regulations and Directives and Financial Regulations concerning Revenues, the appending of his Signature on the Letter of Instruction in his Official Capacity, shows that he had Dominion and Control over the Funds entrusted to him for the benefit of the People of Plateau State.

The Defendant, as Governor, was *Dominus Litis* over Plateau State Funds, and only he could grant Approvals for their Disbursements. He indeed exercised Dominion and Control over the Movement and Expenditure of the Funds and this Element of Entrustment is found proved throughout **Counts 1, 2, 4, 5, 6, 7 and 23**, in respect of the Cheque from the Central Bank of Nigeria and in **Counts 8, 10, 13, 15, 17, 19 and 21** in respect of Funds emanating from the Plateau State Government.

PROSECUTION’S 3RD DUTY TO PROVE: VIOLATION OF LAW PRESCRIBING THE MODE OR LEGAL CONTRACT, EXPRESS OR IMPLIED, OR DIRECTIVE

The Prosecution must establish that the **Defendant**, did so in violation of:

- i. Any **Direction of Law** or **Directive** prescribing the **Mode** in which such **Trust** is to be discharged; **OR**
- ii. Any **Legal Contract** touching the Discharge of such **Trust**; **OR**
- iii. He intentionally **allowed** some other Person(s) to do so **OR** commit the above stated.

The Word “Violation” is a Terminal Issue and whether or not, there were Violations or not, the Court will initially set out the Law, Contracts, Rules, Regulations, or Directives, if any, and then in its Actual Determination of the Issues hereunder, the Court will then pronounce on whether from the facts and evidence adduced, the Defendant actually violated the Law or Contract.

Violation of Law therefore is any Act (or, less commonly, failure to act) that fails to abide by Existing Law or something that needed to be treated with Respect. Some Acts, such as Fraud or Misappropriation, can violate both Civil and Criminal Laws. Violation is an Action taken in Breach of a

Law or Code of Behaviour, and is an Infringement, Transgression, Infraction, and Contravention of a Duty or Right, Interrupting or Disturbing the Natural Prescribed Order of Things. It can also mean the failure to do what is required or expected by a Law, Rule or Agreement, and it could occur when a Person crosses a Legal Boundary or a Binding Business Deal.

In the instance of Violation of a Contract, it is synonymous with the Term “Breach of Contract” and could include many different types of Violations. Once a Contract is signed, the Parties are bound/obliged to keep their own part of the bargain, as failure to do so, can result in legal consequences. To excuse a Party from performing his or her own end of the bargain, under the Strict Regulating Guidelines of the Contract, that excuse or justification for the breach or errancy of the Terms of the Contract, imposes on the Party, the necessity of providing or adducing Legal Excuse recognizable by the Courts and Contract Law. Nothing else will suffice.

Now, by the Circumstances of this Case, the Regulating Laws, Directives and Guidelines will be set out. Starting with the **1999 Constitution of the Federal Republic of Nigeria (As Amended)**, the **Seventh Schedule**, which contains the Oath of Office of Governor of a State, states inter alia,

“I, ...do solemnly swear/affirm that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as Governor of...State, I will discharge my duties to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the Law... that I will strive to preserve the Fundamental Objectives and Directive Principles of State Policy contained in the Constitution of the Federal Republic of Nigeria... that I will not allow my Personal interest to influence my official conduct or my official decisions...; that I will abide by the Code of Conduct contained in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria...; and I will devote myself to the service and well-being of the people of Nigeria. So help me God”

Now, the Court will initially refer to the Case of **AKINBOBOLA VS THE STATE (1991) 8 NWLR PT 208 191 AT 207**, whereit was held that the Constitution must be construed to give effect and force to **ALL** the Provisions otherwise its Purposes would not be Served. Further, reference is made to the cases of **OKHAE VS GOVERNOR OF BENDEL STATE & ORS (1990) 4 NWLR PT 144, 327 AT 366; ISHOLA VS AJIBOYE (1994) 6 NWLR PT 352, 506 AT 558-559; P.D.P. VS I.N.E.C. (1999) 71 LRCN 2465 AT 2518; I.M.B. SECURITIES PLC VS TINUBU (2001) 91 LRCN 3000 AT 3016; OBIH VS MBAKWE & 2 ORS (1984) 1 SC 325 AT 341 AND IFEZUE VS MBADUGHA (1984) 5 S.C. 79 AT 101.**

Since the Supreme Court have ruled that **ALL** Provisions must be given effect to, and the Court regards the **Oath of Office** as contained in the **Seventh Schedule**, to be an Undertaking, where the Defendant, either affirmed or swore to uphold, and can be said to be an Agreement between him and the People of Plateau State that he would carry out his Official Duties in Compliance with the Law. Therefore, he is expected to Comply, Obey and Issue out Lawful Directives in compliance with the Plateau State Financial Instructions of his State.

Other Possible Violations could be from the **Code of Conduct for Public Officers, the Relevant of Plateau State Laws including Financial Rules and Regulations; the Penal Code Law; the Bills of Exchange Act CAP. 35 Laws of the Federation 1990 in regard to the Central Bank of Nigeria Cheque and Other Cheques.**

The Court, having determined the Principles it will be guided by, as regards Violation of Law, Contract, or Directives, will now consider the Element of Dishonestly before considering what it will call, The Quadruplet Modes of Misappropriation, Conversion, Use and Disposal. This is deliberately set out first, so that the Court will consider the Evidence in the light of the Quadruplet Modes and thereafter, determine the Substantive Offences alleged to have been committed.

The Prosecution is mandated to prove through all the Counts of Offences that the Defendant committed these Offences in Violation of any Direction of Law, prescribing the Mode in which such Trust is to be discharged or in Violation of any Legal Contract, Express or Implied, which were made touching on the Discharge of such Trust and that he did so, Dishonestly.

PROSECUTION'S 4th DUTY TO PROVE: DISHONESTLY

The Fourth Element to be established by the Prosecution Beyond Reasonable Doubt is whether the Defendant committed the Offences in the Charge, dishonestly. The **DISHONEST INTENT**, which is the required Mens Rea, must be evident in all of the Defendant's Actions. A Dishonest Intention is an essential ingredient of Criminal Breach of Trust. Further, intention may frequently be presumed from the consequences of the act, as a Person is presumed to intend the natural consequences of his act. See **WIGMORE ON EVIDENCE VOLUME 2 PAGE 42 PARTICULARLY AT PARAGRAPH 242.**

The word "**Dishonesty**" means is to act without honesty. It is used to describe a Lack of Probity, Cheating, Lying, or being Deliberately Deceptive or a Lack in Integrity, Knavishness, Perfidiosity, Corruption or Treacherousness. Dishonesty is the fundamental component of a majority of Offences relating to the Acquisition, Conversion and Disposal of Property, whether Tangible or Intangible.

As described by **STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES, SEVENTH EDITION, VOLUME 1 AT PAGE 731**, "Dishonest" for the purposes of Accessory Liability for Breach of Trust, is a Person is not dishonest, unless his Conduct is dishonest by Ordinary Standards of Reasonable and Honest People. Reference was made to the Case of **TWINSECTRA LIMITED VS YARDLEY (2002) ALL E.R. PAGE 377 (HOUSE OF LORDS)**

Section 16 of the **Penal Code Act** defines "Dishonestly" as, "A Person is said to do a thing "dishonestly", who does that thing with the intention of causing a wrongful gain to himself or another or of causing wrongful loss to any other Person." By wrongful gain this was defined under **Section 13** of the Act, as gain by unlawful means of Property to which the Person gaining, is not legally entitled. The Penal Code Act also went further to define what is meant by wrongful loss in **Section 14** to mean, the loss by unlawful means of Property to which the Person losing it, is legally entitled. Under **Section 15**, a Person is said to gain wrongfully when such Person retains wrongfully, as well as when such Person acquires wrongfully, and a Person is said to lose wrongfully when such Person is wrongfully kept out of any Property, as well as when such Person is wrongfully deprived of Property.

The Decision in **ONUOHA VS THE STATE (1988) 7 SC PT 1 PAGE 74 AT PAGE 94** recognized that it is sufficient to construe dishonestly in its natural meaning, i.e., Intention to Cheat, Deceive or Mislead. See also **His Lordship, PETER-ODILI, J.C.A. (AS HE THEN WAS)** in the case of **HON. YAKUBU IBRAHIM & ORS VS COMMISSIONER OF POLICE (2010) LPELR-8984 (CA) Per (P. 18, PARAS B-E)**. Further reference is made to the cases of **TIRAH VS COMMISSIONER OF POLICE (1973) NNLR PAGE 143 (CA); OKONKWO VS COMMISSIONER OF POLICE (1985) HCNLR PAGE**

1277;J. ONIBANIYI & ANOR VS THE STATE (1972) SUIT NO: SC.235/1971 8-9 SC PAGE 97 PER UDO UDOMA JSC.

In Australian Jurisprudence, the words, “honesty” and “dishonesty” as discussed in the case of **R VS SALVO (1980) VR PAGE 40 AT PAGE 407**, are used in ordinary parlance to connote respectively, “non-compliance with or disregard of the dictates of the Moral Virtue of Justice, which acknowledges and gives effect to the rights of others to, or in respect of material things, or of the relationship of one Person to another, e.g. Master and Pupil, Vendor and Purchaser, Employer and Employee, etc. The Terms may in certain contexts connote respect for or the disregard of the Moral Virtue of Truth. The word “dishonestly” implies reference to a Standard of Morality underlying the Law: they derive not from the Law but from the Standard of Ethics accepted by the Community. The Law sets Standards of Legality and Illegality but cannot set and never has purported to set Standards of Morality.”

The Court of Appeal in England in the case of **R VS GHOSH (1982) 2 ALL ER PAGE 689 AT PAGE 696** at **RATIO 154**, held that Dishonesty is an element of *Mens Rea*, clearly referring to a State of Mind, and that overall, the test that must be applied is hybrid, but with a Subjective Bias which "looks into the mind" of the Person concerned and establishes what he was thinking. The Test was Two-Stage, namely:

- a) "Where the Person's actions honest according to the Standards of Reasonable and Honest People?" If a Jury decides that they were, then the Defendant's claim to be honest will be credible. But, if the Court decides that the Actions were Dishonest, the further question is: -
- b) "Did the Person concerned believe that what he did was Dishonest at the time?"

The **Queensland Court of Appeal in Australia** in the Case of **R VS DILLON; EX PARTE ATTORNEY GENERAL (QLD) (2015) QCA PAGE 155 OR (2016) 1 Qd R 56 (14/194)**, departed from the Dictum in **R VS GHOSH (CITED SUPRA)**, when it held inter alia that, “...Queensland Courts must now construe the Term “Dishonestly” as requiring the Prosecution to prove only that what the Accused Person did was dishonest by the Standards of Ordinary Honest People, and to secure a Conviction, the Prosecution **need not prove** that the Accused Person must have realized that what he or she was doing, was Dishonest by the Standards of Ordinary Honest People.”

The Decision in **R VS GHOSH (CITED SUPRA)** was also criticized in 2017, and overruled by the **United Kingdom’s Supreme Court** in the case of **IVEY VS GENTING CASINOS (UK) LTD TRADING AS, CROCKFORDS [2017] UKSC 67 DELIVERED ON THE 25TH OCTOBER 2017**, where the Supreme Court concluded that the Correct Approach is to:

- a) Determine what the Defendant actually knew of or believed as to the Facts. Whether the Defendant’s beliefs were reasonable, are not a Separate Issue – but goes to whether the beliefs were genuinely held;
- b) Decide whether the Defendant’s Conduct is dishonest by the Standards of Ordinary, Reasonable and Honest People;
- c) There is no further Requirement that the Defendant Knew or Appreciated that he or she acted Dishonestly.

The position as a result is, that the Court must form a view of what the Defendant's belief was, of the relevant facts (but it is no longer necessary to consider whether the Defendant concerned, believed that what he did was dishonest at the time).

The decision of whether a Particular Action or Set of Actions is Dishonest remains separate from the Issue of Moral Justification. For example, when Robin Hood robbed the Sheriff of Nottingham, he knew that he was, in effect, stealing from the Crown, and knew that he was acting dishonestly and would have been properly convicted of Robbery. His argument would have been that he was morally justified in acting in this way, but in Modern Legal Terms, this could only have been brought to the Court by way of Mitigation of Sentencing and would not have affected the Inference of Dishonesty.

It is clear that the New Trend in English Law is for the Actions of the Defendant to be Only Tested OBJECTIVELY and will not apply as a Test to determine the Subjective State of Mind of the Defendant. This Court will therefore, examine the evidence led by the Prosecution and Defence in regard to Misappropriation, or Conversion or Use or Disposal to determine whether these Acts were carried out in a Dishonest Fashion.

A Person must Knowingly Misappropriate the Money, and cannot commit the Crime by making a Mistake or Error. A Person who misappropriates Funds does not have to intend to actually physically take the Money. It can be enough for the Prosecution to show that the Defendant intended to take any action that results (or would likely result) in the Misappropriation of Funds. In some instances, the Defendant must know the action is illegal; while in other instances, the Defendant only has to act intentionally and does not need to know that the Conduct is Criminal.

PROSECUTION'S 5TH DUTY TO PROVE: MISAPPROPRIATION, OR CONVERSION OR DISPOSAL AND USE

Under this head, it is important to note that **Section 311 of the Penal Code**, the Definitive Section, lists the Elements of the Offence in a **DISJUNCTIVE FASHION** by the consistent use of the word "**OR**". This is to say that any of the under listed could operate independently in order to establish the Offence, as proof of one, dispenses with proof of the others. Whilst Entrustment is paired with Dominion, the Prosecution may then decide to proceed on the basis of any of the Four Options, or what this Court will call the **Quadruplet Modes**, through which the Entrustment or Dominion was breached. It is very **important** to understand, that none of the Quadruplet Modes takes greater pre-eminence over the other, as Proof of one is sufficient to sustain the Charge.

The Prosecution is expected to establish that the Defendant as Public Servant, being Entrusted or having Dominion over both the Ecological Funds and Funds of Plateau State Government:

- a) Misappropriated the Ecological Funds and Funds of Plateau State Government; **OR**
- b) Converted the Ecological Funds and Funds of Plateau State Government to his own Use; **OR**
- c) Used the Ecological Funds and Funds of Plateau State Government; **OR**
- d) Disposed the Ecological Funds and Funds of Plateau State Government **OR** by Intentionally **OR** Willfully allowing any other Person(s) to do so. It is also worthy of note that in regard to the element of Disposal, the Section again, appears to widen up by expanding the Defendant's Culpability under this Charge to include his Influence or Interference in Causing or Affecting another Person's Actions by suffering him to Dispose of the Property.

At this point, it is important to have a clear understanding on what these Quadruplet Modes of Misappropriation, Conversion, Use and Disposal mean, in order to apply either of them to the evidence adduced before the Court.

Misappropriation is the Intentional and Illegal Use of Property or Funds and it is also the Improper Application of Funds entrusted to a Person's care.

The Legal Scholar NWAMARA at PAGE 621 defined Misappropriation of Money to be the wrongful setting apart or assigning of a Sum of Money to a purpose or use, for which it should not lawfully be assigned or set apart. **Reference is also made to ALL INDIA LAW REPORT MANUAL VOLUME 28 PAGE 678.**

It is not enough to establish that the Money has not been accounted for or that it was mismanaged. It has to be established that the Defendant had dishonestly put the Property to his own use or to some unauthorized use. See the case of **Y.O. BAKARE & 2ORS VS THE STATE PER COKER JSC SC. 338/67; LC VOL. 1 2004 AT PAGE 173**, where His Lordship held that the necessary Criminal Intent under **Section 16 of the Penal Code** had to be proved. It is the Wrongful Conversion or dealing with anything by the Person to whom it has been entrusted. Dishonest Intention to Misappropriate is a crucial fact to be proved to bring home the Charge of Criminal Breach of Trust.

In the case of **I.G. TIRAH VS COP (1973) NCLR AT PAGE 143, PER JONES SPJ**, it was held that the Defendant, in dealing with the Money or Property entrusted to him, did something else with it, constituting Misappropriation.

In addition, Misappropriation is the Umbrella Term under which the different ways of misusing someone else's Funds are grouped. **Black's Law Dictionary, Seventh Edition**, defines it as the unauthorized, improper, or unlawful use of Funds or other Property for purposes other than that for which it is intended including not only stealing but also unauthorized temporary use for one's own purpose, whether or not he derives any gain or benefit therefrom. It thus includes defalcation, defined in **Black's** as misappropriation of trust Funds or Money held in any fiduciary capacity, and failure to properly account for such Funds, and conversion, which is any unauthorized act which deprives an owner of his Property permanently or for an indefinite time. See the case of **Re Lunt, 255 Kan. 529, 1994.**

As regards, **Conversion**, it is an unauthorized control, wrongfully and intentionally, exerted over another's Property, in denial of, or inconsistent with, his Title or Rights therein, or in derogation, exclusion, or defiance of such Title or Rights, **WITHOUT** the Owner's consent and **WITHOUT** lawful justification. It involves an unauthorized assumption of the right of ownership over another's Property. Generally, any type of Conversion that occurs after a Person obtains lawful possession of the Property is sufficient.

The element of knowledge is found when the Defendant engages in the conduct and he is aware to a high probability that he is doing so. An essential element of Criminal Conversion is that "the Property must be owned by another and the Conversion thereof must be without the consent and against the will of the party, to whom the Property belongs, coupled with the fraudulent intent to deprive the owner of the Property. See the case of **PEOPLE VS FIELDEN, 162 COLORADO 574, 576 (COLORADO 196)**. Knowledge coupled with the intentional exertion and Criminal Intent of unauthorized control, forms the crux of the crime of Conversion. Exerting control over the Property means, "to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber or possess Property, or to secure, transfer, or extend a right over the Property. See the case of the case of **IRVIN VS STATE, 501 N.E.2D**

1139, 1141 (INDIANA CT. APP. 1986).

The Defendant must have converted the Property to his own use or for purposes other than those for which it was entrusted. It is clear that conversion may not ordinarily be a matter of direct proof, but when it is established that the Property, is entrusted to him or that he had dominion over it and rendered false explanations for his failure to account for it, then an inference of conversion may readily be made. A whole series of contemporaneous facts and surrounding circumstances of an event must be considered together in the circumstances of the case, in order to fix the Defendant irresistibly with the commission of the offence of Criminal Breach of Trust. See the cases of **LORTIM VS THE STATE (1997) 2 NWLR PART 490, PAGE 711 AT 725 PARAS C-D; AND MAGDALENE ONOGWU VS THE STATE (1995) 6 NWLR PT 401 PAGE 276.**

His Lordship ADEKEYE JCA, (AS SHE THEN WAS) in PATRICK OKOROJI VS THE STATE (2002) 1 NCC PAGE 279 AT PAGE 297, held that the Prosecution must establish the following elements of Conversion, which are: - 1) Intent to convert the tangible or intangible Property of another to one's own possession and use; and 2) The Property in question is subsequently converted. It is immaterial whether the Thing or Money converted is taken for the purpose of Conversion, or whether at the time of the conversion, it was in the possession of the Person who converts it.

The intention must also be shown that the unauthorized act deprives another of his Property, permanently or for an indefinite time. See **FRANCIS AKILAPA VS COMMISSIONER OF POLICE (1981) 4 OYSHC AT 558 AT 562-563,** where it was held that the intent to permanently deprive the owner of the Money can be formed either at the time of the receipt of the Money or subsequently after the receipt. See also the case of **OKOROJI VS THE STATE (2002) 5 NWLR PT 759 PAGE 21 AT PAGE 49 PARAS G-H.**

In the Act of Conversion, a Person must not only take the Money, but must use it for his own purposes. However, this does not require that the Defendant actually took the Money and used it to buy something or otherwise spent it. Courts have held it enough that to transfer the Money to a Bank Account or even to refuse or fail to hand over the owner's Money when the owner demands it.

As regards **Use**, the Third Quadruplet Mode, in this Context, refers to a Method or Manner or Purpose of utilizing or employing something or applying something for a Personal Privilege or Benefit. It could even extend to using a Particular Service to achieve an end.

Use refers to the applying, taking, holding, employing or deploying something, or consuming an amount of that thing from a limited supply. It also includes obtaining a benefit from something or putting into service to attain an end or availing one's self of something as a means to an end.

Depending on the Context in which it is used, it could have a positive or negative connotation. A Person who misappropriates Funds with the intent to later return the Money to the rightful owner is still Guilty of Use or Misappropriation. It also does not matter if the Misappropriation or Use only lasted for a short amount of time.

To prove Use of the Funds in the Central Bank of Nigeria Cheque as well as Funds of the Plateau State Government and the Accountant General of Plateau State, the Prosecution is to establish any personal benefit, whether financial or otherwise, accruing to the Defendant by showing beyond a reasonable doubt that the deployment of the Funds was to his own personal use. It is expected of the Prosecution to show that the Defendant got his hands grubby with filthy lucre by gaining from the Funds in a sordid, distasteful or in a dishonourable and shameful way.

As regards the Mode of **Disposal**, it refers to the Act of transferring the Property or relinquishing the Control over the Property to Another's Care or Possession, where through the Operation of Law, the Title over that Property is lost. This Act of Disposal could either be done by the Defendant for his own Personal Interests or could on behalf of a Third Party or Parties. It could also mean the Systematic Destruction by the Defendant, who had Power and Authority to dispose as he willed.

A Person who misappropriates Funds with the intent to later return the Money to the rightful owner is still Guilty of Misappropriation by his initial act of Disposal and it does not matter if the Misappropriation only lasted for a short amount of time.

Now, as earlier highlighted, the Peculiar Circumstances of the Offences of Criminal Breach of Trust were Categorized into Two Major Circumstances. On the one hand, are the Counts related to the Central Bank of Nigeria Cheque, which are in **Counts 1, 2, 4, 5, 6, 7, and 23** and on the other hand, are Counts related to the Plateau State Government Accounts, which are in **Counts 8, 10, 13, 15, 17, 19, and 21**.

The **FIRST SET OF CIRCUMSTANCES**, all have the Central Bank of Nigeria Cheque in the Sum of One Billion, **One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900)**, as their Root/Foundation and Common Denominator and this would be considered first.

PW1, Detective Musa Sunday, in his Examination-in-Chief stated that upon the Pointer from the Metropolitan Police in London, which had referred to Certain Banks and Companies, they approached AllStates Trust Bank Plc., and Lion Bank Plc., (now known as Diamond Bank Plc.) and investigated a Company known as Ebenezer Retnan Ventures.

Indeed, they discovered that the Account of Ebenezer Retnan Ventures was domiciled at the AllStates Trust Bank Plc., and obtained the Account Details, and the Account Opening Documents of Ebenezer Retnan Ventures, including its Mandate Card.

From the Statement of Account of the Plateau State Government, they discovered Monies related to the Ecological Fund of the State. The Bank Manager of AllStates Trust Bank Plc., availed them with a Photocopy of a Handwritten Document, evidencing where the Defendant had split the Sum of about One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900. 00) only.

Since the Money did not emanate from the Plateau State Government, further enquiries were made to determine the Source of this Money. The Manager made available to them a Photocopy of the Central Bank of Nigeria Cheque covering the said amount and an Additional Typed Disbursement Letter written by the Defendant to the Branch Manager of AllStates Trust Bank Plc.

The Source of the Central Bank of Nigeria's Cheque was traced to the Ecological Funds Office under the Presidency, located at the Federal Secretariat, where one Mr. Adewusi was interviewed. Mr. Adewusi explained that the Plateau State Government had earlier applied through the normal process for Funds to resolve Ecological Projects in the State and approval had been given for the sum of One

Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira, (N1, 161, 162, 900. 00).

Prior to Preparing the Cheque, a Payment Voucher covering the said Amount with Annexed Documents were prepared and audited.

The Team were informed that the Defendant and his Orderly, Sergeant Victor Dilang, visited the Ecological Funds Office, where Sergeant Victor Dilang signed for the Cheque in the Movement Register and collected the Cheque on the instruction of the Defendant. The Cheque was then taken to the AllStates Trust Bank Plc., Abuja Branch by the Defendant and in the Office of the Branch Manager, the Defendant instructed the Bank on how the Money would be disbursed to Individuals and Companies.

The Branch Manager actually complied with the Defendant's Instructions and instead of paying the Money into Plateau State Government's Account for Clearance, the Bank used their own Bank Account to clear the said Cheque of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900. 00) and disbursed to the Individuals and Companies, as directed by the Defendant.

The Covering Letter, the Handwritten Instructions as well as the Typed Instructions were admitted into evidence without Objections as **Exhibit P4** and he identified the handwriting of the Defendant on **Page 2 of Exhibit P4**. He also identified the Certified True Copy of a Page in the Movement Register, which was admitted as **Exhibit P5**. The Central Bank of Nigeria's Cheque, certified by Mr. J.O. Adewusi, dated the 21st day of July 2001, was also recovered by the Team and was admitted into evidence as **Exhibit P6**.

The Defendant himself during an interview and when confronted with this Document, admitted being the Maker of the Document and volunteered his Statement, wherein he explained the distribution of the Funds in the Handwritten and Signed Documents, which total is **One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900)** as follows: - For the Handwritten Instructions, it states thus: -

1. **Plateau State Government----- N550, 000, 000 (Five Hundred and Fifty Million Naira)**
2. **Pinnacle Communications----- N250, 000, 000 (Two Hundred and Fifty Million Naira)**
3. **Union Homes-----N80, 000, 000 (Eighty Million Naira)**
4. **PDP South-West-----N100, 000, 000 (One Hundred Million Naira)**
5. **Sundry -----N97, 000, 000 + N63, 000, 000 Totalling N160, 000, 000 (One Hundred and Sixty Million Naira)**
6. **COT-----N4, 300, 000 (Four Million, Three Hundred Thousand Naira)**
7. **Sundry 2-----N16, 862, 900 (Sixteen Million, Eight Hundred Sixty-Two Thousand, Nine Hundred Naira)**

On **Page 3 Exhibit P4**, is the Typed Letter written on the Letterhead Paper of the Executive Governor of Plateau State Government of Nigeria, addressed to the Managing Director through the Branch Manager of the Abuja Branch of the AllStates Trust Bank Plc. dated the 19th of July 2001, with the caption "**RE: N1, 161, 162, 900 In Favour Of (IFO) PLATEAU STATE GOVERNMENT.**"

In this Document, the Defendant had instructed the Bank to clear the Cheque and treat in the following manner: -

1. **Do a Draft IFO of Pinnacle Communications Limited for N250.0 Million**
2. **A Draft IFO Plateau State Government for N550.0 Million payable at Jos**

3. **A Draft of N80.0 Million IFO Union Savings and Loans Limited**
4. **A Draft IFO Ebenezer Retnan Ventures for N176, 862, 900.00**
5. **PDP (South West)- N100.0 Million**
6. **Balance of N4.3M as COT Charges after Concessions.**

The Court observes that the difference between the Handwritten and Typed Instructions was the fact that the Purpose for the Draft in favour of Ebenezer Retnan Ventures in the Sum of N176, 862, 900.00, was explained in the Handwritten Instruction.

Further to this Recovery, the Team actually traced where those Funds went to in the course of their investigations. The Representative of Pinnacle Communications Limited confirmed collecting the sum of Two Hundred and Fifty Million (N250, 000, 000) but he proved to be a Contractor to Plateau State Government. The Sum of Five Hundred and Fifty Million Naira (N550, 000, 000) actually went to the Plateau State Government. The Sum of Eighty Million Naira (N80, 000, 000) issued in favour of Union Savings and Loans was traced to the Permanent Secretary in the Ecological Funds Office by the name, Mr. Kingsley Nkumah.

Mr. Nkumah confessed that the Eighty Million Naira (N80, 000, 000) was his Bribe Money given to him for facilitating the Ecological Fund. This amount was subsequently recovered by the EFCC and he was charged to a High Court in Lagos, where upon the grant of an Administrative Bail, Nkumah resigned and left the Country.

Union Homes Head Office in Lagos was approached by the EFCC and they confirmed that the Account in which the Eighty Million Naira (N80, 000, 000) Cheque was cleared belonged to Mr. Kingsley Nkumah, the Permanent Secretary, and further gave the EFCC the Mandate Card of his Account. The Handwritten Instruction to Union Home Savings and Loans as well as the Mandate Card of Mr. Nkumah was tendered without Objection as **Exhibit P8**.

The sum of One Hundred and Seventy-Six Million, Eight Hundred and Sixty-Two Thousand, Nine Hundred Naira (N176, 862, 900) was traced into the Account of Ebenezer Retnan Ventures domiciled at the AllStates Trust Bank Plc. From their investigations at the Corporate Affairs Commission, they gathered that the Defendant owned this Company. The Statement of Account of Ebenezer Retnan Ventures was obtained and the above Sum was traced into this Account.

The Cheque in the Sum of One Hundred Million Naira (N100, 000, 000) payable to the PDP South-West was traced into the Account of Marine Float Limited, which by their investigations revealed that Marine Float Limited is owned by the Former Vice-President of Nigeria, Alhaji Atiku Abubakar. Efforts to recover this Sum of Money have been ongoing but there has been no success in recovering the Money from him.

Some Documents regarding the Disbursement of these Sums of Money, where forwarded to the EFCC together with Cheques and the Covering Letter. These Documents were admitted into evidence as **Exhibit P7**.

Under Cross-Examination, PW1, in answer to the question of whether the Money on the face of **Exhibit P4**, i.e., the Handwritten Note, was disbursed to Ebenezer Retnan Ventures, he replied that only the Sum of One Hundred, and Sixty Million Naira (N160, 000, 000) was cleared from the Bank's Sundry Account into Ebenezer Retnan Ventures' Account. He explained that the Defendant's Directive at **Page 3 of Exhibit P4** was carried out but not that of Directive Number 4, which had stated that the sum of N176, 862, 900 was to be paid into Ebenezer Retnan Ventures' Account. The reason for not obeying Directive Number 4 was because only the sum of N160, 000, 000 could be and was paid into

the Account. The Defendant had in his Statement, fully explained how the balance of N16, 862, 900 was disbursed to individuals.

PW1, Detective Musa Sunday, stated that the Ecological Fund is a Special Intervention Fund administered directly by the Office of the President to solve Ecological Problems. The Members and the Activities of the Fund Administrators are overseen with the Meetings chaired by the Vice-President, who at that time was Alhaji Atiku Abubakar. He did not know the Conditions attached to the Disbursements of the Ecological Funds, but could tell that it was not only for States, as there were only Three (3) States out of Twenty-Seven (27) Beneficiary Entities.

Through his investigation, he confirmed that Pinnacle Communications Ltd was indeed a Contractor of Plateau State Government but did not go on to investigate, as he was not part of the EFCC Team, who focused on the Sum paid to Pinnacle Communications Ltd. Further, he stated that the Sum of N550, 000, 000 was paid to the Plateau State Government.

Further, the Sum of N80Million from Dr. Kingsley Nkumah's Union Home Savings and Loans Account was recovered in Bank Draft, Registered and kept with the EFCC Exhibit Keeper.

The Defendant did not tell him that there were Conditions attached to him receiving the Money but in his Statement, he made it clear that the One Hundred Million Naira (N100, 000, 000) paid to the PDP South-West, was different from the One Hundred Million Naira (N100, 000, 000) he gave to Marine Float Ltd, which belonged to the then Vice-President, Alhaji Atiku Abubakar.

He was asked whether the Conditions attached to the Defendant being granted the Ecological Funds were that Eighty Million Naira (N80, 000, 000) would go to the Permanent Secretary and One Hundred Million Naira (N100, 000, 000) to the Chairman, the Vice-President of Nigeria. He was also asked, whether Obasanjo as President of the Federal Republic of Nigeria returned the Sum of One Hundred Million Naira (N100, 000, 000) in 2004 allocated to the PDP South-West and he replied that he did not participate in all these aspects.

He conceded that if One Hundred Million Naira (N100, 000, 000) was given to PDP South-West, with another One Hundred Million Naira (N100, 000, 000) given to Marine Float Ltd and Eighty Million Naira (N80, 000, 000) given to the Permanent Secretary, the Total Amount deducted from the Ecological Funds released to Plateau State, would be the Sum of Two Hundred and Eighty Million Naira (N280, 000, 000).

PW1 further explained that Each Disbursement, as set out by the Defendant in his Statement, were investigated by different Team Members, and included investigations into the One Hundred Million Naira (N100, 000, 000) given to Marine Float Ltd, the Eighty Million Naira (N80, 000, 000) paid into Union Homes, the fact that the Defendant gave Senator Mantu, the Former Deputy Senate-President of Nigeria, the Sum of Ten Million Naira (N10, 000, 000.00), as well as the Sum of N66Million meant for 274 Units/Wards of PDP in Plateau State.

He was referred to the **First Paragraph of Page 11 of Exhibit P13**, where the Defendant had explained how and who benefitted from the Disbursement and questioned as to why it was ONLY the Defendant charged to Court in respect of the Sums alleged in the Charge, and he responded that investigations were still going on since 2007, in respect of the One Hundred Million Naira (N100, 000, 000) allocated to the PDP South-West, which was Personally collected by Mr. Yomi Edu, the then Minister of Special Duties, the remaining One Hundred Million Naira (N100, 000, 000) that was

assigned to Marine Float for the benefit of the Vice-President of Nigeria, Alhaji Atiku Abubakar, Dr. Kingsley Nkumah, and Senator Mantu.

When questioned about the Central Bank of Nigeria Cheque in **Exhibit P6**, he replied that the Cheque was cleared into the AllStates Trust Bank Plc.'s Call Account and disbursed in accordance with the Defendant's Handwritten and Typed Instructions given in his Official Capacity.

PW2, Mr. Adewusi, in his Examination-in-Chief, testified that the Plateau State Government had an Approval for payment under the Ecological Funds Office to the tune of One Billion Naira (N1, 000, 000, 000) Plus, and he was one of the Signatories that signed. The Second Signatory, Mr. Topah Ukanah, who signed under Category B, is now deceased.

PW2, took the Cheque to the Central Bank of Nigeria for confirmation and on his return, he received a telephone call from the Secretary of the Permanent Secretary of Ecological Services, instructing him to come along to the Office of the Permanent Secretary, Dr. Kingsley Nkumah, with both the Central Bank Cheque and the Cheque Delivery Register. On getting there, he met the Defendant, the then Executive Governor of Plateau State, in the Office of the Permanent Secretary and was directed to release the Cheque to Chief Joshua Dariye. He stated that one of the Aides of the then Executive Governor, signed for the Cheque after completing the Delivery Register whereupon he released the Cheque.

He identified the Payment Voucher with all the Documents annexed, in particular the Payment Voucher, the Credit Advice, the Request Letter from Plateau State Government, where the Vice-President minuted to the Minister Special Duties (Ecology), Mr. Yomi Edu, another Request Letter from the Minister of Special Duties to the President, and all Other Minuted Documents, and they were all admitted into evidence without any Objections as **Exhibit P14**.

He noted that the Total Amount sought for by Plateau State Government, was Three Billion Naira Plus (N3, 000, 000, 000+) but only the Sum of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900) was approved.

PW2 stated that the Approval for the Funds, the Writing of the Cheque, the Confirmation with the Central Bank of Nigeria by him, the Collection and the Release of the Cheque to the Defendant, all occurred on the same day, the 12th day of July 2001. From his experience, this was the first time a Serving Governor would come personally to collect a Cheque.

He noted that the Cheque was written in the name of Plateau State Government and was supposed to be paid into the Plateau State Government Account.

He testified that Dr. Nkumah, the Permanent Secretary of the Ecological Funds Office was dismissed from the Service as a result of this issue.

Under Cross-Examination, PW2 agreed with the Defence Silk that the control of the Ecological Funds were in the hands of Alhaji Atiku Abubakar, as Vice- President of Nigeria and also Mr. Yomi Edu, as Minister of Special Duties. He could not state the Process leading up to the Approval of this Fund but knew that the Account of the Ecological Fund was domiciled in the Office of the Secretary to the Federal Government.

He did not see as unusual or irregular the fact that the Executive Governor Personally collected that Cheque if he was available and the Permanent Secretary authorised the release of the Cheque.

On the question as to whether the Plateau State Government complained about the Disbursement and the Handling of the Proceeds of the Ecological Fund, he stated that he was not aware of any complaint, which, in any event, would not have been channelled through him.

PW3, Mr. Bamanga Bello, in his Cross-Examination stated that in the course of the investigation, he saw the Central Bank of Nigeria's Crossed Cheque in the Sum of N1, 161, 162, 900 made payable to the Plateau State Government. This Cheque was not paid into the Plateau State Government Account but into a Transit Account, a Special Clearing Account of AllStates Trust Bank Plc., where the Defendant through Written and Typed Instructions, dictated the Manner of Disbursements of the Funds into various Accounts including Ebenezer Retnan Ventures Account. According to him, without the existing relationship between Ebenezer Retnan Ventures and the Bank, the Bank would, not have cleared this Crossed Cheque.

PW3 could not remember seeing the Account Opening Form for Dr. Nkumah with Union Homes Savings and Loans, even though he met with him. All he could say was that the Money paid into his Account at the Union Homes Savings and Loans was eventually recovered. He also stated that he did not investigate the sum of N250 Million paid to Pinnacle.

PW3 vehemently disagreed with the proposition that the Central Bank of Nigeria's Cheque was only cleared into the AllStates Trust Bank Plc. Transit Account in Abuja because of Ebenezer Retnan Ventures. According to him, the Plateau State Government only had an Account with the Jos Branch of the Bank.

DW1, Mr. Adonye Roberts, in his Examination-in-Chief, acknowledged the fact that the Cheque written out in favour of Plateau State Government, was deposited and cleared into the Bank's Suspense Account and his Bank did not receive any Complaint from the Plateau State Government. He identified the Signature of the Defendant on both the Handwritten and Typed Instructions on **Pages 2 and 3 of Exhibit P4**.

Under Cross-Examination, DW1 stated that it was not wrong to clear the Cheque through a Sundry Account. From his experience, **Exhibit P6**, the Central Bank of Nigeria Cheque payable to Plateau State Government, was Public Funds, which ought to be paid into the said Government's Account. He knew that Government Funds must be used for Government Purposes and where Funds were to be used for Ecological Purposes, those Funds must be used for that Purpose only.

According to DW1, the Defendant did not open Ebenezer Retnan Ventures Account in Jos, Plateau State but in the Abuja Branch of the Bank, where the Defendant was maintaining and relating with the Account. He identified **Page 2 of Exhibit P4** as the Defendant's Handwritten Instruction to the Managing Director, through the Branch Manager Abuja Branch, which conveyed the Defendant's Instruction of the 19th of July 2001, to his Bank to Clear the Cheque and pay as directed.

When shown **Exhibit 15C**, the Ebenezer Retnan Ventures' Statement of Account with the AllStates Trust Bank Plc., he read the Narration of the 26th of July 2001, to be the Sum of, "One Hundred and Sixty Million Naira (N160, 000, 000) Being Part Payment from the CBN Cheque Cleared." According to this Witness, the Handwritten Instruction was in line with **Exhibit P4** and the Draft made in favour of Ebenezer Retnan Ventures, tallied with the Statement of Account.

He positively stated that it was not right for the Defendant to pay Government Money into Private Account.

To his knowledge, the Defendant did not maintain a Domiciliary Account with the Bank, and when he was in Abuja, he had sourced Foreign Currency in Cash in the range of 20, 000 to 40, 000 US Dollars per Transaction for the Defendant. He was aware that the Defendant transferred Funds from Nigeria to the United Kingdom through his Bank and that the Metropolitan Police had sought explanations from the EFCC through his Bank regarding these Transfers.

DW3, Honourable Geoffrey Teme, a Former Majority Leader of the Plateau State House of Assembly in 2003, stated in his Examination-in-Chief that a Committee was set up consisting of Nine Members including himself and their purpose was to investigate the Petition, which contained allegations of Fraud against Governor Joshua Dariye, Ebenezer Retnan Ventures, Union Homes, PDP South-West and some others in regard to the Ecological Funds of approximately N1.6Billion. He stated that basically the Ecological Fund was given to fund the 2003 2nd Term Presidential Campaign of President Obasanjo.

An Open-Door Policy, wherein members of the Public were allowed to present their complaint was adopted. Officials of the EFCC testified before the Committee and he sought to tender Two Volumes of the Committee's Report as Exhibits before the Court. After a vehement objection raised by the Prosecution, the Reports were provisionally admitted as **Exhibits D6 and D7**.

Under Cross-Examination, DW2 stated that from **Exhibits D6 and D7**, the Report did not disclose where the Cheque was lodged. Since the Money was meant for the People of Plateau State, it would be wrong for a Commissioner to pay this Money into his Account and further it would be wrong to pay part of this Money as a bribe to any Officer from the Ecological Office. Likewise, it would be wrong for any Public Official to pay part of the Money into an Individual Account for the purpose of purchasing a Property in London, England.

When questioned on the N100 Million paid to PDP South-West, which formed part of the Ecological Fund meant for the Plateau Citizens, he agreed that there was nowhere stated that the PDP should be a beneficiary of this Sum and acknowledged that it was an Abuse of Office that the Sum of N160Million was paid into Ebenezer Retnan Ventures' Account.

DW6, Chief Mai Chibi Vwalji, the then Plateau State Deputy Chairman of the Peoples Democratic Party (PDP) and now in the All Progressive Congress (APC), during his Examination-in-Chief, was shown **Exhibit P13A at Page 10**, which is one of the Defendant's Statements, wherein the Distribution of Money was itemized. He affirmed that PDP Plateau State collected the sum of Sixty Six Million Naira (N66, 000, 000) for 274 Wards. The Chairman of the State Party had earlier attended the National Executive Committee Meeting of the PDP National Level at the Abuja National Secretariat in 2001, where the National Chairman had informed them that PDP Governors should give their State PDP Chapters some Money towards the Party.

The Governor of the State, being a Member of his Party's State Exco, went to the Party's Secretariat in Plateau State to give them the Sum of Sixty Six Million Naira (N66, 000, 000) for Distribution to the Wards through the Local Government Chairmen. He did not know the Source of the Money distributed, but he knew the Money was distributed to each of the Seventeen (17) Local Governments for the Three Hundred (300) State Wards.

Under Cross-Examination, he maintained that it was proper for his Party to have received the Sum of Sixty Six Million Naira (N66, 000, 000) from the Ecological Fund, as his Party was the Party in Power.

DW7, Mr. Paul Datugun, a Staff in the Central Cashier of the Ministry of Finance under Cross-Examination stated that his Office, the Central Cashier, must make all Payments to Contractors. He

explained the process to be that the Approval will come from His Excellency, the Executive Governor, through his Commissioner of Finance to the Accountant General, who will then forward same to the Director of Expenditure and from there to the Central Cashier for payment. It was not possible for the Permanent Secretary, the Commissioner of Finance or even the Governor to side line the Central Cashier and pay the Contractor directly. Therefore, it is the Accountant General's duty to disburse to Contractors and added that the Payment Ledgers i.e. Cash Books, were in his custody.

DW8, John Gozen Gobak, a Non-Executive Chairman of the Government owned Agricultural Services, Training and Marketing Limited and a Politician, under Cross-Examination described the process of Award of Contract from a Ministry. According to him, a Ministerial Tenders Board considers the Contract as well as the amount involved, to determine whether the Contract Sum is within the Powers of the Ministry. Where it is found to be above, Recommendations are made to the State's Tenders Board, for the State Executive Council's Approval. This Council consists of Commissioners and Members of the States Executives.

The Council's Approval would then go back to the State's Tenders Board, who will publicly advertise for Bids. The Winner of the Bid would then be given the Contract to perform and the relevant Ministry would supervise the performance of the Contract, with the Ministry of Finance making payments. He testified that he had never partaken in any of these processes.

According to him, Monies received from the Federal Government are channelled through the Ministry of Finance, who will then pay it into the Government's Account. These Monies are to be used for the benefit of Plateau State Government.

DW9, Honourable Banahel Joseph Andong, the Acting District Head and Traditional Ruler of Monguna District, Jos testified that in 1999, he was elected Member of the House of Assembly representing Bokkos Constituency in Plateau State under the platform of the PDP, and served as Chairman, House Committee on Works, Housing and Transport. He named the other Members of this Committee. He carried out oversight functions in areas of Jos Metropolis at Bokkos Barkin Ladi Road, Lantang Mikkan Dams, and some others in Three Zonal Areas of Jos. The work in Bokkos involved reclamation of roads, ponds and drainages and in Langtang, the project was reactivating dams built during Solomon Lar's Civilian Government. In the Northern Zones, erosion control of waterway projects was undertaken. Whenever, there were overflows of the Yakubu Gowon Dam, which caused casualties to people, property and houses, the Government did a wonderful job by arresting the situation.

He knew nothing of the Funding of these Projects but only knew the Federal Government intervened to solve their Ecological Problems. Again, he did not know how the assistance was rendered, whether financial, with labour or with Equipment.

DW10, Mr. Gideon Mitu, a Former Permanent Secretary with the Plateau State Government between 1999 and 2003, later deployed to the Plateau State Liaison Office in Abuja stated under Cross-Examination that as Permanent Secretary, he had never received any Funds on behalf of the Plateau State Government and the Federal Government paid the State Allocations from the Revenue Account directly into the Plateau State Government's Account. He stated it wrong that this Allocation be paid into a Public Officer's Private Account.

DW11, Prof. Danladi Atu working at the Faculty of Education, Social Science University of Abuja testified that he had been Secretary to the Local Government from 1999 to 2002 and then Chairman from 2002 to 2007, following his appointment by the Defendant and subsequent approval by the House of Assembly. He described the hilly, steep and sloppy terrain of Jos North, stating that this area

suffered from Tin Mining activities and were littered with mining ponds, which caused many erosion problems, depriving certain Communities access to Jos City. He discussed extensively the problems experienced in the Semurumba Area of Jos, stating that the Defendant, who also visited the place and intervened promptly making the people happy, reclaimed the pond in 2004. The Defendant, as Governor, also intervened by doing stone works and building bridges at Laminga Dam, further reclaiming other areas and had done minor works.

Under Cross-Examination, he did not know how the Erosion Contracts were financed, as he did not work with the Plateau State Ministry of Works, where the Contracts were awarded. He was equally not aware whether these Projects were captured in the Plateau State Government.

DW12, Israel Dabel currently a Lecturer at the Theological College testified in Chief that prior to his retirement, he had worked in the Engineering Department of Plateau Radio and Television Corporation (PRTV) in Plateau State. He stated that Pinnacle Communications Limited, as a Successful Bidder, supplied the PRTV with new Radio and Television Equipment. He met the Chief Executive of Pinnacle, because he supplied their Transmitter Equipment from Harris UK. The Team of Engineers had earlier in August 2001, inspected the Equipment, most of which were Television Transmitters and One Radio Transmitter, at Harris Factory in Oxford United Kingdom.

Under Cross-Examination, he did not know the relationship between the CEO of Pinnacle and the Defendant and did not know anything about the quantum of payment or the procedure for payment to the Contractor and stated that his Office was neither responsible nor played a part in the Contract. His responsibility stopped with the Inspection of the Equipment and receiving them.

Upon a Recall of this Witness, the following Documents relating to Count 23 of the Charge Sheet involving the sum of N250 Million paid to Pinnacle Communications were admitted as follows: -

- A. **Exhibit D22**-- a Letter from Pinnacle dated 25th of May 2001 addressed to the Executive Governor Plateau State.
- B. **Exhibit D23**—an Internal Memo from Engineering Department to GM PRTV, which he Personally signed.
- C. **Exhibit D24**—a Letter from GM PRTV dated the 29th of May 2001 to the Governor of Plateau State.
- D. **Exhibit D25**—a Letter from Pinnacle Communications dated 18th of June 2001 addressed to the Secretary of the State Government of Plateau State.
- E. **Exhibit D26A**—Award of Contract from Ministry of Finance, Plateau State dated the 5th of June 2001.
- F. **Exhibit D26B**—the next page of Exhibit D26A—a Letter written by DW12 to collect the Letter of Award on behalf of Pinnacle Communications dated 6th of August 2001.
- G. **Exhibit D27**—Letter from Secretary to the State Government Plateau State Government dated the 8th of August concerning Estacode and allowances addressed to the GM PRTV
- H. **Exhibit D28**—a Voucher dated August 2001 raised for the Estacode for two people; and
- I. **Exhibit D29**—the Certificate of Compliance issued by Harris to Pinnacle Communications dated the 4th of February 2002.

DW13, Dr. Patrick Dakum, a Former Commissioner of Information Plateau State testified in-Chief remembering Pinnacle Communications Limited, as the Company that executed the Turnaround and Expansion of the AM/FM Arms of the Radio Station in Plateau State. The Contract had been awarded

but not yet executed before he assumed Office, and part of his Mandate was to ensure that the Execution was high priority.

He tendered Certified Documents into evidence with a suspended Objection, which was not subsequently addressed, as follows: -

- D. A Certified Letter from Pinnacle addressed to the Governor of Plateau State dated the 5th of March 2002 as **Exhibit D30**;
- E. A Letter from the Governor of Plateau State signed by the General Manager of PRTV dated the 9th of April 2002 as **Exhibit D31**;
- F. A Letter from Harris Systems Limited addressed to Government House in Jos dated the 30th of May 2001 as **Exhibit D32**. This Letter had attachments, namely: - A Memo written from the Secretary to the State Government to the State Governor dated the 30th of May 2001 and another Letter from Pinnacle Communications Limited to the Governor of Plateau State dated the 25th of May 2001, and finally, a Letter written from PRTV to the Governor of Plateau State dated the 6th of June 2001.

This Project was of high priority due to the situation of unrest prevalent in the State, which occurred based on misinformation and the provision of this Equipment quelled the unrest, in that there was now real time information to the Entire State. Usually, Request for Payment comes from the Agency where it is executed, and these Payments are made based on Approval by the Governor and subject to the availability of Funds. The Office of the Commissioner for Finance would definitely play a role in the Payment.

Shown **Exhibit D26A**- the Letter of Award, he confirmed it was the State Tenders Board that awarded the Contract, and the Board consists of Members from the Ministry of Finance, but could not say whether the Ministry's Permanent Secretary was also a Member.

From this **Exhibit D26B**, DW13 stated that Mr. Dabel collected the Letter of Award and had pledged to collect the sum of N45, 000 from Pinnacle Communications. According to him, this clearly was an indication that Pinnacle did not pay for either the Tender and Communication Fee or Registration Fee. It was his belief that sighting the Letter of Award was Proof of a Subsisting Contract as well as the responsibility of his Subordinates to generate a Contract Agreement, setting out the Terms of the Contract. However, on the face of **Exhibit D26A**, he could not say when the Contract was to be concluded, nor could he say the Terms and Conditions of the Contract or Payments for the Contract.

On his assumption to Office as Commissioner, he prioritised the expansion of the PRTV in order to reach the grassroots with real time information and had received briefings from his Parastatals, which informed him on the Awarded Contract. It was for the Manufacturer to assemble the Equipment, after which an Inspection would take place and then Installation.

From the Letter of Award, it was his Ministry, as Representative of Plateau State Government, that would enter into a Contract with Pinnacle Communications. Shown Exhibits **D30, D31 and D32**, he stated that none of these Exhibits were minuted to him or the Ministry of Information but he had secured them upon a Request to Mr. Japheth, the General Manager of PRTV.

DW14, Honourable Aminu Agwan Zang, a Businessman, who had served in elective and non-elective positions in Plateau State testified in Chief that he knew the Direct Labour Agency, when as Special Assistant to the Governor, it was his duty to go round some of the high impact Projects and gave

feedback to the Governor. The then President, Chief Olusegun Obasanjo was to visit Plateau State, so detailed tours of these Projects were embarked upon especially in the Southern Senatorial Zone. Through the Ministry of Works and Direct Labour Agency, heavy infrastructural works made inaccessible places in Plateau, accessible.

Under Cross-Examination, DW14 stated that he uses Public Funds for Public Purposes and there has never been any occasion he would pay 1percent of Public Money into his Personal Account. He could also not envisage a scenario where he would pay this allocation into his account.

DW15, ASP Victor Dilang, a former Orderly to the Defendant as far back as 1999 when he was a Governor, explained his job function, and stated that sometime in 2001, the Defendant instructed him to meet with the Permanent Secretary in the Federal Ministry of Special Duties in the Secretariat in Abuja, to pick up a message. On getting there, the Permanent Secretary enquired of the whereabouts of the Defendant, to which he replied that he was at the Liaison Office.

The Permanent Secretary told him he wanted to see the Defendant, and would not release the Cheque until he assigns someone to him. DW15 then placed a call to the Defendant, who told him that the Permanent Secretary should attach him with someone who would accompany him to the Liaison Office. The Permanent Secretary then gave him a Cheque and asked him to sign, which he did. He identified Exhibit P14 of Page 27 to be where he wrote his name, signed and dated for the Cheque, 12th July 2001 and also identified the Cheque as Exhibit P14 of Page 28.

When he collected the Cheque, the Permanent Secretary assigned him with somebody whose name he could not recall, that followed him to the Liaison Office. At the Liaison Office, he introduced this Person to the Defendant and excused himself.

After the discussion between that Unnamed Person and the Defendant, the Defendant gave him a Handwritten Letter, which he identified as Exhibit P4 at Page 2. He was instructed by the Defendant to collect a Bank Draft in the Sum of N80Million. DW15 attached the Cheque to the Letter and together with the Person from the Permanent Secretary, both went to AllStates Trust Bank Plc., near Sheraton Hotel, Abuja.

At the Bank, they met the Manager of the Bank, who collected the Cheque and the Letter, and issued a Bank Draft of N80Million in favour of the Permanent Secretary but told to wait for the normal Banking process. After waiting for some hours, the Person who accompanied him went to see the Manager in his Office alone. Later, he too was called in and when he got in, DW15 noted that the Person had signed for the N80Million Bank Draft, and he was also instructed to sign a Bank Draft of N100Million meant for delivery to the then Minister of Special Duties, Mr. Yomi Edu.

Thereafter, he went to Mr. Yomi Edu's Office where he Personally handed over the Bank Draft to Mr. Yomi Edu, who told him he was expecting Two Bank Drafts of N100Million each. DW15 then called the Defendant, who upon his conversation with the Minister on the telephone, further instructed that he should collect an Account Number from the Minister. The Minister gave him a Habib Bank Account Number with no name, and DW15 proceeded to AllStates Trust Bank Plc., where the Manager gave him another Bank Draft in the name of Marine Float Limited, which Company the Defendant told him belonged to the then Vice President, Alhaji Atiku Abubakar. He then lodged the Bank Draft at Habib Bank, Wuse Branch and returned to meet the Defendant in the Liaison Office. On his return, the Defendant informed him that the Sum of N10Million was to be given to Senator Nasiru Ibrahim Mantu, but he, DW15, played no role or Witnessed the giving of this Money.

He was shown **Exhibit P4 at Page 3**, the Instructions for payments on the Plateau State Government Letterhead Paper, and he denied ever seeing it before.

According to DW15, the Defendant had explained to him the reasons for disbursing these Monies in the manner he did. He had said that the Sum of N100Million given to Mr. Edu was actually for PDP South-West, the N100Million for Marine Float Limited was actually for PDP North-East, and Part of the Money was for Plateau State Government. However, DW15 did not know what the N80Million paid to the Permanent Secretary was for, and did not know of any other beneficiary.

Under Cross-examination, DW15 testified that his principal loyalty was to the Nigeria Police, and his duties were to fight, detect, and arrest crime and had never performed any duty outside his legal duties. He was shown **Exhibit P14 at Pages 27 and 28**, and agreed that it was on the same day he met with the Permanent Secretary that he was given the Central Bank Cheque, adding that Two Bank Drafts were given to him Personally, whilst the N80Million Draft, was given to the Person who accompanied him. On that same day, the Bank Draft he Personally gave to Mr. Yomi Edu, was photocopied, and signed as Acknowledgment Copy, and he gave it to the Defendant. As regards the Second Bank Draft, he took it to the Bank and only gave the Deposit Slip to the Defendant, his Principal on the same day, the 12th of July 2001.

He acknowledged the fact that he was under Oath, stating that the Cheque given to him on the 12th of July 2001, which he signed for, was a Central Bank Cheque written in the name of Plateau State Government. He knew that a Lodgment of a Cheque would require a process of clearance, but did not know how many days it would take the Cheque to clear, or whether a Cheque must first be cleared before withdrawals can be made.

He agreed that the Defendant gave him a Note on how the Monies would be disbursed on the 12th. He was then shown **Exhibit P4 at Page 2**, the Defendant's Note that was given to him, and he read out the date the Defendant signed it, which was the 19th of July 2001.

This Witness had no response when confronted with the disparity of the dates he was instructed-whether it was the 12th or the 19th of July 2001.

He was also referred to the Bank's Minute on the Note, which stated "Please treat as per Customer's Request", and read out the date to be 20th of July 2001, but DW15 in response, claimed the Letter was addressed to the Bank Manager, to whom he delivered, and his assignment ended there. He acknowledged the Signature of the Defendant on the note dated the 19th, but stated he was not a Handwriting Expert.

As regards the N80Million Cheque, he was shown **Exhibit P7 at Page 2** and told to note the date of the Cheque was made out to Union Homes dated the 20th July 2001. He replied by saying that he did not lie when he earlier stated that the Cheque was given to him on the 12th. He also was shown **Exhibit P7 at Page 3**, the Marine Float Cheque, and acknowledged the date of issuance to be the 15th August 2001.

According to this Witness, he was not telling a lie concerning the date he collected the Cheque, the 12th of July 2001, and did not know whether the dates were either backdated or front dated. He was shown the reverse side of the Marine Float Cheque, which showed the date of receipt by the Bank as the 22nd, but maintained the fact that he deposited the Cheque on the 12th. He was aware that the Bank would sign on the Deposit Slip, and identified the Bank Stamp to be the 22nd of August 2001, and

other Stamps were dated the 23rd and 24th of August 2001. He confirmed not seeing any July date on the Cheque.

When asked, he answered that he would be surprised to know that the Defendant accompanied him to collect the Cheque on the 12th. According to DW15, the Defendant made several visitations to Permanent Secretaries, not only to the Permanent Secretary of Ecological, and they may have met on other days.

He did not know Mr. Adewusi James Olanrewaju, the man in charge of Payment as he was only directed to meet the Permanent Secretary, who then called a Staff. It was this Staff, who brought a Register for him to sign but before signing, the Permanent Secretary enquired about the Defendant's whereabouts. According to him, it was this Staff, who gave him the Cheque and it was in the Permanent Secretary's Office that he signed for the Cheque. He could not identify the Permanent Secretary when shown **Exhibit P8**, the Mandate Card, which bore the Passport Photograph of the Permanent Secretary, as this event happened 10Years ago.

As regards to whether it was within his Schedule of Duties to collect a Cheque for Plateau State Government, he replied it was not within his Schedule to sign Cheques for Plateau State Government and in this instance, he was not sent to sign a Cheque for Plateau State, but to sign a Cheque, which he did not know what it was meant for.

He was shown **Exhibit P14**, where he endorsed his Signature, and he identified where he had signed in Serial Number 25, although it was faint. A Clearer Copy **Exhibit P5** was shown to him, and he identified from the Register, his Name, and the Name on the Cheque to be Plateau State Government, written out in the Sum of N1, 161, 162, 900 dated The 12th of July 2001.

Although he admitted signing the Register, he denied the Signature being his, as it was not clear.

According to this Witness, he was not wrong when he signed the Cheque for Plateau State Government and agreed that the Money was meant for Plateau State Government. He did not assist the Defendant in disbursing the Sum of One Hundred Million Naira (N100, 000, 000) each to PDP South-West and PDP North-East, because he was carrying out an ad hoc duty on the instruction of the Defendant. He did not know the Monies were Public Funds, but agreed the Cheque was meant for the Plateau State Government. Although, the Drafts had their origin from the Cheque, he could not say whether PDP South-West and PDP North-East were part of Plateau State Government, and neither did he know if it was wrong to give State Funds to PDP South-West and PDP North-East. It was his understanding that all the transactions he had carried out concerning the Bank Drafts, were not Corruption-Based Transactions.

DW15 stated that he has a Diploma in Accounting and an Advance Diploma in Law and Conflict Management and is aware of what constitutes a Crime, but did not see any Crime in his actions, as the Monies were in Bank Drafts and not in Ghana-must-go Bags. Further, the Defendant did not give him any Account Number, or Account Number of Plateau State to pay in any Money, and neither did he benefit from the Cheque. What the Defendant simply told him was, some of the Monies were for PDP Plateau State.

At this point, and as an aside, the Court finds it pertinent to comment on the credibility of this Witness. It is uncertain that he fully understood the implication of his testimony under Oath. He had used different, conflicting testimony, back flipping and front flipping on glaring Documentary Evidence, and it was a great wonder that he could untangle himself from the complicated labyrinth of

lies and untruths he wove around himself. This is sad considering that the fact his is a Police Officer with the Nigeria Police Force, which should be beacon of light for probity and the truth.

DW16, Honourable Nandant Bako, a former Two-Term Plateau State House of Assembly Member representing Lantang South Constituency, was also the Chairman of House Committee on Judiciary and by Late 2006 to 2007, he was the Speaker of the House of Assembly. He testified that it was from the EFCC Report he became aware that the Defendant collected a Cheque from the Ecological Fund on behalf of Plateau State Government. According to him, depending on the circumstances, it would be wrong for the Defendant to use his own discretion to disburse Monies to the PDP South-West and PDP North-East. However, if he was acting under the Directive of the Giver/Issuer of the Cheque, that is, the Federal Government of Nigeria, there was nothing wrong with it.

Under Cross-Examination, DW16 stated that he would not pay State Funds into his Personal Bank Account and where it occurs, he would write a Memo. Further, depending on the circumstances, State Funds could be paid into the Governor's Account and in this instance he would not be surprised to know the Defendant paid State Funds into his Personal Bank Account.

Now, the Genesis of the Ecological Funds granted to the Plateau State Government evolved from Applications dated the 7th of May 2001 and the 7th of June 2001, made by Chief Joshua Chibi Dariye, as the Governor of Plateau State, in a Representative Capacity for the People of Plateau State. The Total Sum of **One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira, (N1, 161, 162, 900)**, was granted to Plateau State Government for the Specific Purposes of Reclamation and Channelization.

From **Exhibit P6**, which is also reflected in the Bundle of Documents accompanying the Payment Voucher in **Exhibit P14 at Page 28**, the Certified True Copies of the Central Bank of Nigeria Cheque, was included. It is clear that the Name of the Beneficiary on the Cheque dated the 12th day of July 2001, which incidentally was a Cross-Cheque, was **PLATEAU STATE GOVERNMENT**.

In General Banking Practice, the Mandate of the Drawer of a Cheque is that the Paying Bank should pay the Cheque to the Person whose Name appears upon it and no one else. Therefore, if a Bank collects a Cheque and pays it to a Person not entitled to the Proceeds in the Cheque, it is Guilty of the Tort of Conversion. Reference is made on this point, to the Case of **TRADE BANK PLC VS BENILUX (NIG) LIMITED (2003) 9 NWLR PART 825 PAGE 416 (SC)**.

This Principle is enshrined in the Law known as the **Bills of Exchange Act CAP 35, Laws of the Federation of Nigeria 1990**, particularly at **PART II, Sections 3(1); 7; 81(1) and (2)**.

It is Uncontroverted Evidence that this Cheque, was paid into and cleared out of the Suspense/Sundry Account of the AllStates Trust Bank Plc., Abuja Branch, contrary to the Specific Instruction on the face of the Cheque and I dare say, contrary to the Intention of the Ecological Funds Office. This is because, the Ecological Funds Office, could very well at the onset, have addressed the Cheque to any Payee, even the Payee suggested by the Defendant.

Now, before a Criminal Breach of Trust can be determined, the Question must logically be asked, "**What was breached?**" To answer the Question, **Exhibit P14** with its Accompanying Documents must be thoroughly perused.

From **Page 1 of Exhibit P14**, the Payment Voucher, at the Column slated for Detailed Description of Service or Article, the Narration is as follows: -

“Being the amount released to the above named State Government for Flood Channelization Works at Bokkos, Reclamation of CTM Stadium and Bukuru Abandoned Mining Ponds. Vide Attached Documents and Minutes Of Approval. File NO. EF/PL/26/I refers.”

A literal meaning of the Narration is that the **WHOLE** and not just **PART** of the Funds in the Cheque was strictly to be applied to resolve Ecological Problems of Reclamation and Channelization.

It is also important to state that this Approved Sum was to be deducted from the Secretary to the Government of the Federation, Ecological Funds Account, which by the Payment Voucher evidenced the fact that the deductions took place from this Particular Account. The Funds, therefore, belonged to the Federal Government of Nigeria, and upon its Grant and Entrustment, became the Property of Plateau State Government.

It was expected that Designated Officers of the Government of Plateau State should collect and pay in the Cheque into an Appropriate Government Account.

Now, the evidence of **PW2**, Mr. Adewusi, that the Defendant personally came to the Ecological Funds Office to receive this Cheque, is pitted against the evidence led by **DW15**, Sergeant Victor Dilang, the Former Orderly to the Defendant, who stated that he was sent to collect a Cheque and in the company of an Unnamed Person, went to the Bank to pay in the Cheque.

To tip the balance in favour of one Witness against the other, other Surrounding Circumstantial Evidence will be considered by the Court, in order to determine who is actually telling the Truth. Had the Defendant testified before the Court, his evidence would have been useful to determine one way or another, the true situation.

From **Exhibit P13C**, the Defendant’s Extra-Judicial Statements before the EFCC, he had stated therein that: -

“I confirm that the Special Allocation of Ecological Fund of N1, 167, 162, 900, which was not peculiar to Plateau State was signed and collected by my Orderly Sgt Victor Dilang. This instruction was subsequently cleared and disbursed as explained above in the foregoing paragraphs.”

This Statement on its own, has not resolved the question of whether the Defendant himself, was present at the Ecological Funds Office on the 12th of July 2001.

PW2, Mr. Adewusi, was in charge of the Central Pay Office, which controlled all the processing for the payment of Ecological Matters handled by the Ecological Funds Office, to the point of Approval. After the Approval is obtained, the File is sent to the Finance and Account Department Office, of the Office of the Secretary to the Federal Government of Nigeria for Processing of Payment. The Approval would then be sent to the Charges Section for them to raise the Payment Voucher. After raising the Voucher, attaching Relevant Documents, they would then pass it on to the Checking Section for them to check that the necessary documents are attached.

Once the checked documents are in order, this Section will schedule the Payment Voucher to the Internal Audit Unit, which will check and confirm that due process has been followed in raising the Voucher. Once the Unit is satisfied that due process was followed, they would then schedule the Payment Voucher to the Central Pay Office.

As Principal Accountant, it was his duty to go through the Payment Voucher and all the attached documents to ensure that the payments have been approved, and once convinced of that, he would pass on the Payment Voucher to the Cheque Writer to write the Cheque for the payment. The Cheque Writer would then take the Cheque to the Authorized Signatories to sign. There are two Categories of Signatories, namely **Signatory A** and **Signatory B**. Each had Three Signatories under each Category and he is one of the Signatories under Category A. Any Member each of the two Categories, can sign any Cheque to make it valid. After signing, any Member of the two Categories that signed can take it to the Central Bank of Nigeria for Confirmation. Once the Cheque has been confirmed, it is ready for Delivery to any Representative of the Beneficiary. To deliver a Cheque meant for Payment under the Ecological Funds Office, the Permanent Secretary would give either a Written or Verbal Directive on whom to deliver the Cheque to.

PW2, had testified that upon his return from the Central Bank of Nigeria, where he confirmed the Cheque, he received a telephone call instructing him to come to the Office of the Permanent Secretary, Dr. Kingsley Nkumah with both the Cheque and the Cheque Delivery Register. On getting there, he met the Defendant and was directed to release the Cheque to him. The Defendant then instructed one of the Aides to sign for the Cheque after completing the Delivery Register, whereupon, the Cheque was released to him.

He explained the normal process to be that the Permanent Secretary Ecological Funds would Minute on the Letter of Request, a requirement that the Name of the Representative of the Beneficiary State mandated to collect the Cheque, must be specifically mentioned in the Request and this would be sent to the Permanent Secretary for endorsement to the Central Pay Office for Collection.

Under Cross-Examination, he did not see as unusual or irregular the fact that the Executive Governor personally collected that Cheque, if he was available and if the Permanent Secretary authorised the release of the Cheque.

Mr. Adewusi, in reaction to the actual expenditure of the Funds, considered it pitiable that the Total Sum of N280 Million (N280, 000, 000) was shared from the Award Sum by Three Individuals, namely the Vice-President of Nigeria, Alhaji Atiku Abubakar, Mr. Yomi Edu, the Minister of Special Duties and Mr. Nkumah, the Permanent Secretary of the Ecological Funds Office.

The confirmation for Mr. Adewusi's evidence is that the Permanent Secretary would either through a Handwritten or Oral Directive indicate the Person to collect this Cheque. In this instance, the Person to collect the Cheque is as seen in the Minute of the Permanent Secretary dated the 12th of July 2001 in **Exhibit P14 at Page 24**, where he noted: -

“For Immediate Action Please. The Governor is waiting to collect the Cheque TODAY.”

The Testimony of Mr. Victor Dilang, the Orderly, on the other hand, is that it was not within the Schedule of his Duties to collect Cheques on behalf of Plateau State Government and had stated that he was only sent to sign a Cheque, which he did not know anything about.

Still under Cross-Examination, he testified that his principal loyalty was to the Nigeria Police, and his duties were to fight, detect, and arrest crime and had never performed any duty outside his legal duties. He was shown **Exhibit P14 at Pages 27 and 28**, and agreed that it was on the same day he met with the Permanent Secretary that he was given the Central Bank Cheque, adding that Two Bank Drafts were given to him personally, whilst the N80 Million Draft, was given to the Person who

accompanied him. On that same day, the Bank Draft he personally gave to Mr. Yomi Edu, was photocopied, and signed as Acknowledgment Copy, and he gave it to the Defendant. As regards the Second Bank Draft, he took it to the Bank and only gave the Deposit Slip to the Defendant, his Principal, on the same day, the 12th of July 2001.

He acknowledged the fact that he was under Oath, stating that the Cheque given to him on the 12th of July 2001, which he signed for, was a Central Bank Cheque written in the name of Plateau State Government. He knew that a Lodgment of a Cheque would require a Process of Clearance, but did not know how many days it would take the Cheque to clear, or whether a Cheque must first be cleared before withdrawals can be made.

He agreed that the Defendant gave him a Note on how the Monies would be disbursed on the 12th. He was then shown **Exhibit P4 at Page 2**, the Defendant's Note that was given to him, and he read out the date the Defendant signed it, which was the 19th of July 2001.

This Witness had no response when confronted with the disparity of the Dates he was instructed-whether it was the 12th or the 19th of July 2001.

He was also referred to the Bank's Endorsement on the Note, which stated "***Please treat as per Customer's Request***", and read out the date to be 20th of July 2001, but Sergeant Victor Dilang in response, claimed that the Letter was addressed to the Bank Manager, to whom he delivered, and his assignment ended there. He acknowledged the Signature of the Defendant on the Note dated the 19th, but stated he was not a Handwriting Expert.

As regards the N80Million Cheque, he was shown **Exhibit P7 at Page 2** and told to note that the Date of the Cheque was made out to Union Homes on the 20th July 2001. He replied by saying that he did not lie when he earlier stated that the Cheque was given to him on the 12th. He also was shown **Exhibit P7 at Page 3**, the Marine Float Cheque, and acknowledged the date of issuance to be the 15th of August 2001.

According to this Witness, he was not telling a lie concerning the Date he collected the Cheque, the 12th of July 2001, and did not know whether the Dates were either backdated or front dated. He was shown the reverse side of the Marine Float Cheque, which showed the Date of Receipt by the Bank as the 22nd of August, but maintained the fact that he deposited the Cheque on the 12th. He was aware that the Bank would sign on the Deposit Slip, and identified the Bank Stamp to be the 22nd of August 2001, and other Stamps were dated the 23rd and 24th of August 2001. He confirmed not seeing any July date on the Cheque.

When asked, he answered that he would be surprised to know that the Defendant accompanied him to collect the Cheque on the 12th. According to Sergeant Victor Dilang, the Defendant made several visitations to Permanent Secretaries, not only to the Permanent Secretary of Ecological, and they may have met on other days.

He did not know Mr. Adewusi James Olanrewaju, the man in charge of the Payment as he was only directed to meet the Permanent Secretary, who then called a Staff. It was this Staff, who brought a Register for him to sign but before signing, the Permanent Secretary enquired about the Defendant's whereabouts. According to him, it was this Staff, who gave him the Cheque and it was in the Permanent Secretary's Office that he signed for the Cheque. He could not identify the Permanent Secretary when shown **Exhibit P8**, the Mandate Card, which bore the Passport Photograph of the Permanent Secretary, as this event happened Ten (10)Years ago.

He was then shown **Exhibit P14**, where he endorsed his Signature, and he identified where he had signed in **Serial Number 25**, although he claimed the writing was faint. A Clearer Copy **Exhibit P5** was shown to him, and he identified from the Register, his Name, and the Name on the Cheque to be Plateau State Government, written out in the Sum of N1, 161, 162, 900 and dated the 12th of July 2001. Although he admitted signing the Register, he denied the Signature being his, as it was not clear.

According to this Witness, he was not wrong when he signed the Cheque for Plateau State Government and agreed that the Money was meant for Plateau State Government. He did not assist the Defendant in disbursing the Sum of One Hundred Million Naira (N100, 000, 000) each to PDP South-West and PDP North-East, because he was carrying out an ad hoc duty on the instruction of the Defendant. He did not know the Monies were Public Funds, but agreed the Cheque was meant for the Plateau State Government. Although, the Drafts had their Origin from the Cheque, he could not say whether PDP South-West and PDP North-East were part of Plateau State Government, and neither did he know, if it was wrong to give State Funds to PDP South-West and PDP North-East. It was his understanding that all the transactions he had carried out concerning the Bank Drafts, were not Corruption-Based Transactions.

Now, if the evidence of Victor Dilang is to be believed by the Court, then it means that he collected the Cheque on the 12th of July 2001, first took it to the Defendant at the Liaison Office, then went to the AllStates Trust Bank Plc., Abuja Branch, in the company of the Unnamed Person from the Permanent Secretary, Dr. Nkumah, spent hours as he claimed in the Bank, where the Draft Payments of N80Million was given to the Unnamed Person and he was given the Draft of N100Million for delivery to the Minister of Special Duties, Mr. Yomi Edu, and upon delivery to Mr. Yomi Edu, at his Office, the Defendant discovered through a telephone call to Mr. Edu, that there was still an outstanding Sum of N100Million due to the Vice-President, then Mr. Dilang went back to the Bank with the Account Number of Marine Float, (owned by the Vice-President), given to him, whereupon he proceeded to AllStates Trust Bank Plc., to collect another Draft in the Sum of N100Million and then he proceeded to Habib Bank to deposit the Draft in Marine Float's Account, and on his return to the Liaison Office, he gave the Defendant the a Deposit Slip on the 12th of July 2001 and then the Defendant informed him that the Sum of N10Million was to be given to the then Deputy Senate President, Senator Nasiru Ibrahim Mantu, and stated that he, Sergeant Victor Dilang, played no role nor witnessed the giving of the Money.

The Court deliberately did not put a FULL STOP in the above recantation of the sequence of Mr. Dilang's activities on the 12th of July 2001. It is admittedly longwinded.

Sergeant Victor Dilang agreed that he met with the Permanent Secretary, Dr. Nkumah, who through Mr. Adewusi, gave him a Cheque and perhaps, had a brief conversation with him, but he could not recognize or identify Dr. Nkumah, when shown his Passport Photograph on the Mandate Card admitted as **Exhibit P8**.

Sergeant Victor Dilang also agreed that the Defendant gave him a Handwritten Note to the Bank on the 12th of July 2001, which he identified before the Court as **Exhibit P4 at Page 2**. A cursory glance at the Date on **Exhibit P4** shows that the Defendant in his Handwritten Note to the Bank wrote the date, as 19th day of July 2001. The Defendant had not only signed the Note but had dated it and when shown the disparity of dates, he had no explanation. He also had no explanation to the notation made by the AllStates Trust Bank Plc. on the Handwritten Note dated the 20th of July 2001.

More perplexing is the fact that the date of the N80 Million Draft, made in favour of Dr. Nkumah, from the Bank is the 20th of July 2001. Further still, this Witness could not explain the date of 15th of August 2001 when the Marine Float Limited Draft of N100 Million was written, which was received by the Bank on the 22nd of August 2001. Other Stamps affixed on the reverse side of this Cheque were between the 22nd and 24th of August 2001.

Not too surprisingly, he could not remember seeing any July date on this Cheque.

If Sergeant Victor Dilang's testimony, was to be believed, it is not too far fetched to hope that as a Police Officer, he ought to have remembered Mr. Adewusi, who brought the Register to him to sign, he also ought to have remembered Dr. Nkumah and if he spent that much time with the "Unnamed Person" attached to him from the Ecological Funds Office, it is conceivable that he would at least remember his Name, since he stated that when they took the Draft to the Bank, they "spent hours together" waiting for the processing of the Cheque.

This Witness also could not state for certain that the Signature on **Exhibit P14 Page 27**, the Movement Register, was his and despite asserting that he signed the Movement Register, he denied the Signature as being his own Signature.

By his dates, it is believable that Sergeant Victor Dilang is a Time Traveller, very much like Dr. Who, who travels to the future and uncannily has the ability to time travel to the past. This is because on the 12th of July 2001, he travelled forward through time space to collect the Handwritten Note, than returned to the Present Time, in order to deposit both the Handwritten Note and the Cheque to the AllStates Trust Bank Plc. even though the evidence before the Court, shows that he had to have travelled forward again in time to actually pay in the Cheques as per the Stamps affixed by the Bank, especially as regards the Marine Float Draft.

After all said and done, the Testimony of Sergeant Victor Dilangelicited in Chief and under Cross-Examination, has invariably served to **confirm** the following: -

1. That it was the Defendant who instructed him to take the Cheque and Handwritten Note to the Bank, where the Central Bank of Nigeria Cheque was deposited at the AllStates Trust Bank Plc., Abuja Branch, and from his evidence, if this were so, it is expected that he would go further to state that the Cheque was deposited into the Plateau State Government's Account. This he did NOT SAY.
2. That he was the Vessel of Distribution of the Drafts made to different Persons from the Proceeds of the Central Bank of Nigeria Cheque, meant to resolve Ecological Problems in Plateau State. In his Narration before the Court, he explained that the Two Drafts of N100 Million each were for the PDP South-West and PDP North-East.
3. That it was not from the Account of Plateau State Government that the Monies in the Cheque were disbursed from.
4. That the Monies in the Cheque did not enter into the Account of Plateau State Government.

Apart from that, Sergeant Victor Dilang had stated that he knew that a lodgment of a Cheque would require a Clearing Process but did not know how many days it took for a Cheque to clear or knew of whether a Cheque must first be cleared before withdrawals could be made.

It is judicially noticed that the Usual Custom of Banking Practice for any Cheque, including that from the Central Bank of Nigeria, which is NOT a DRAFT that could be presented for immediate application, has to undergo a Clearing Process and depending on the Bank, it may take few days to clear. Case Law

Logically, the AllStates Trust Bank Plc. would have needed to wait for this Clearing Process to be completed and payments made into their Suspense/Sundry Account before disbursing the Funds in the Cheque.

Therefore, access to that Fund in the Cheque on the 12th of July 2001 as stated by Sergeant Victor Dilang, is not plausible.

Then if as he claims, he took the Handwritten Note along with the Cheque, on the 12th of July 2001, the confirmation of that Payment in Bank Draft had to be the date the Marine Float Limited Cheque was issued. But it is apparent, as seen in **Exhibit P7** that the Marine Float Limited Cheque was issued on the 15th of August 2001. These Drafts issued out on the Instruction of the Defendant were from the 20th of July through to the 15th of August 2001.

More telling piece of evidence is the Endorsement made by the AllStates Trust Bank Plc. on **Exhibit P4 Page 2**, and the Endorsement reads, "Please Treat as per Customer's Request". This Endorsement was dated the 20th of July 2001, indicating that the Relevant Authority at the Bank notified his Subordinate to treat the Handwritten Note as per the Customer's Request. In fact, the AllStates Trust Bank Plc. began to carry out the Defendant's Instruction on the 20th of July 2001.

It is only logical that if the directive was issued on the 20th of July 2001, NO Action could legitimately take place before this date to issue out Drafts as claimed by Sergeant Victor Dilang.

This means without any shadow of doubt that the date, 12th of July 2001, was a wrong date put before the Court by Sergeant Victor Dilang and it is glaring that the Narration put up by him, does not simply add up.

Now, from the evidence adduced before the Court, the Plateau State Government did not have an Account with the AllStates Trust Bank Plc. domiciled in the Abuja Branch but had at its Jos Branch. Nevertheless, the fact remains that the Plateau State Government still had an Account with the AllStates Trust Bank and the Cheque could conceivably have been lodged in Abuja, which would have reflected automatically in the Jos Branch and the Account of Plateau State Government would have been credited immediately.

Had the Defendant paid the Cheque into the Plateau State Government Account with the AllStates Trust Bank, the Monies in the Cheque would still have entered into that Account **ONLY**. This is because the AllStates Trust Bank Plc. is ONE BANK. Generally, Banks, with Multiple Branches, are not required to distinctly incorporate each Branch, as a Separate Unit. Therefore, the AllStates Trust Bank Plc., whether in Jos, Abuja or even, in Cross-River, is still the AllStates Trust Bank Plc., unless Separate Certificates of Incorporation can be shown for each Branch.

The Court will therefore maintain its position that Jos and Abuja Branch were the same in Terms of Accountability and Crediting of Accounts. Therefore, there is no reason under the Sun for the Defendant to Request in **Page 3 of Exhibit P4**, that Payment to the Plateau State Government was to be effected in Jos. It makes absolutely no sense!

In this instant case, there is the Central Bank of Nigeria Cheque having a very Clear Purpose and having Ultimate Set Goals. That Ultimate Goal was to solve Ecological Problems in Plateau State. The

Funds in the Cheque were already assigned for this identified and specific purpose. The Usual Custodians of these Types of Cheques were the Permanent Secretary of Finance, Commissioner of Finance or the Accountant General of Plateau State, who were the Officials expected to lodge the Cheque into the Plateau State Government Account and disburse the Monies in the Cheque upon Approval from the Executive Governor. This shows that there is an Established Process and Order in the scheme of things. There are Steps to be taken before Approvals and Disbursement could take place.

PW5, Mr. Cyril Tsenyil, the Accountant General of Plateau State's testimony is on point, on the Steps to be taken before Approvals and Disbursements are made. According to him, by his experience as Accountant General, the Procedure was to ensure that the Defined Channels through which Payment Vouchers are generated, follow Due Process. There must be an Approval by the Executive Governor or an Accounting Officer of a Ministry, Department and Agency, whose Approval is sent to the Director of Treasury to process the Approval for Payment. The Director of Treasury then sends it onwards to the Account (Other Charges) or Account (Salaries), depending on the circumstances, to raise the Payment Voucher. After the Auditor checks this Payment Voucher, it is passed back to the Accountant General to check whether the Payment Voucher together with the Attachments such as the Initial Approval etc., satisfied the requirements. Whereupon he then authorizes Payment either through the Medium of a Cheque or by e-Payment instructions and he added that the Accountant General would not pay out Government Monies without the Vouchers.

In other words, Public Expenditure is expected to follow Due Process after going through the inbuilt Checks and Balance System, administratively or statutorily created, by a State. If this were not so, then the Defendant ought to have entered into the Witness Box and testify to the contrary with hard evidence.

By the testimonial evidence of **PW1, PW3, DW2, DW8 and DW10**, they all maintained that the Central Bank of Nigeria Cheque was **NOT** handed over to the Officials of Plateau State Government and was **NOT** lodged into any Account of the Plateau State Government.

It is clear that the Lodgment of the Cheque into the AllStates Trust Bank Plc., Abuja Branch, and with the Handwritten Instruction to clear this Cheque in the manner stated therein, is an indication of the direction the Defendant intended to take. The Defendant in **Exhibit P13C**, his Extra-Judicial Statements before the EFCC, he had stated therein that, *"I confirm that the Special Allocation of Ecological Fund of N1, 167, 162, 900, which was not peculiar to Plateau State, was signed and collected by my Orderly Sgt Victor Dilang. This Instruction was subsequently cleared and disbursed as explained above in the foregoing paragraphs."*

It remains sacrosanct that the Central Bank of Nigeria Cheque was NOT Lodged or Cleared through the Account belonging to the Plateau State Government, either with the AllStates Trust Bank Plc., or with the Lion Bank Plc. but lodged and Cleared through the Sundry Account of the AllStates Trust Bank Plc. as instructed by the Defendant. Immediately, the AllStates Trust Bank Plc., began to apply the Cheque as directed in the Handwritten Instruction of the Defendant, the Cheque began to lose its Originality, both in FORM and in SUBSTANCE. The Cheque had changed its FORM, from being NO longer a CHEQUE but transfigured into DRAFTS. Not only did this transfiguration occur, the SUBSTANCE, that is, the Original Sum in the Cheque had also changed, from the Sum of N1, 161, 162, 900 down to the Sum of N550, 000, 000 in favour of Plateau State Government, which was raised

afresh and anew by the AllStates Trust Bank Plc. The difference between the N1, 161, 162, 900 and the N550, 000, 000, were gone with the wind, as bidden by the Defendant.

The Deployment of the Sum of N550Million in a Draft is an indication that the Source/Root/Origin of the Funds was concealed from the Government of Plateau State. This was a Deliberate Act. The Act further, was a deliberate deception. These Changes both in FORM and in SUM was virtually unrecognizable by any Official of Plateau State Government, which no doubt helped eliminate tedious questions the Defendant would have had to answer from the Plateau State Government Officials.

By the reason of the Defendant's Instruction and by the execution of the Instruction by the AllStates Trust Bank, it is a clear case of Misappropriation taking place, as the Original Cheque had been used and subsequently disposed of in its Original Form. Through the Defendant's Instructions, the Monies in the Cheque were disposed of and what the Plateau State Government received in a Draft Form was the Sum of N550Million out of the Central Bank of Cheque N1, 161, 162, 900. Consequently, the Plateau State Government lost the Sum of Six Hundred and Eleven Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N611, 162, 900) to Persons, who were not of the Plateau State Government.

The Defendant, by his Extra-Judicial Statement to the EFCC, is a Chartered Accountant, a Seasoned Professional, and therefore, it can be imputed that he had absolute knowledge on what his intentions were at the time he communicated the SOS to the Federal Government.

Therefore, in conclusion on **Count 1** of the Amended Charge, the Court finds that the Defendant, Chief Joshua Chibi Dariye, as Executive Governor of Plateau State, was a Public Officer, with Dominion and certainly Control over the Central Bank of Nigeria Cheque in the Sum of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900) only being Ecological Funds allocated to solve the Ecological Problems of Plateau State. In that Capacity, he caused the deposit of the above Cheque into the AllStates Trust Bank Plc., Abuja Branch and cleared through this Bank without paying the Cheque into the Account of the Plateau State Government Account. Chief Joshua Chibi Dariye did so, in Violation of the Directive on the Cheque, in Violation of the Financial Rules and Regulations of Plateau State, and Bills of Exchange Act. Further, the Manner in which the Defendant, through his Handwritten and Typed Instructions directed the AllStates Trust Bank Plc., to use its Suspense/Sundry Account to clear the Cheque, knowing that the Origin of the Cheque would be concealed from the Government of Plateau State, showed an Act of dishonestmisappropriation of the Cheque.

As regards,**Count 2, 4, 5, 6, 7 and 23**, theyalsotrace their Root Source to the Ecological Funds Money contained in the Central Bank of Nigeria Cheque admitted as **Exhibit P6**. Each Count originated from the Defendant's Handwritten Instruction dated the 19th of July 2001 as informed in **Page 2 of Exhibit P4**, wherein he instructed the AllStates Trust Bank Plc., to clear the Sum of One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900) in the following manner, namely: -

1. Plateau State Government----- N550, 000, 000 (Five Hundred and Fifty Million Naira)
2. Pinnacle Communications----- N250, 000, 000 (Two Hundred and Fifty Million Naira)
3. Union Homes-----N80, 000, 000 (Eighty Million Naira)
4. PDP South-West-----N100, 000, 000 (One Hundred Million Naira)

5. Sundry 1 -----N97, 000, 000 + N63, 000, 000 Totalling N160, 000, 000 (One Hundred and Sixty Million Naira)
6. COT-----N4, 300, 000 (Four Million, Three Hundred Thousand Naira)
7. Sundry 2-----N16, 862, 900 (Sixteen Million, Eight Hundred Sixty-Two Thousand, Nine Hundred Naira)

Still on the same the 19th of July 2001, the Defendant authored another Instruction to the AllStates Trust Bank Plc., but this time, it was typed on his Official Letterhead, as Executive Governor of Plateau State Government. This Letter bore the Defendant's Name, i.e., Chief Joshua Chibi Dariye, and it was addressed to the Managing Director of the AllStates Trust Bank Plc., through the Branch Manager. The AllStates Trust Bank Plc., affixed its Stamp evidencing receipt, which Letter is admitted as **Exhibit P4 Page 3**.

This Typed Instruction reads as follows: -

"Kindly clear the above Cheque and treat as follows:

1. Do a Draft IFO of Pinnacle Communications Limited for N250.0 Million
2. A Draft IFO Plateau State Government for N550.0 Million payable at Jos
3. A Draft of N80.0 Million IFO Union Savings and Loans Limited
4. A Draft IFO Ebenezer Retnan Ventures for N176, 862, 900.00
5. PDP (South West)- N100.0 Million
6. Balance of N4.3M as COT Charges after concessions.

The Defendant, when confronted by Detective Musa Sunday, in regard to his Handwritten Instruction to the AllStates Trust Bank Plc., he again re-wrote another Disbursement List in **Exhibit P13A**, in this manner, such as: -

1. PLSG-----550M
2. Pinnacle Communications Limited-----250M
3. PD S/W-----N100M (20/7/01)
4. Marine Float-----N100M (15/8/2001)
5. Union Homes-----N80M
6. PDP -----66 for 274 Wards
7. Senator Mantu-----10 for Central Zone Wards
8. COT-----4

A comparative analysis of both the Handwritten and Typed Instruction to the AllStates Trust Bank Plc., would show that the Titles on both Instructions were exactly the same and the Sums of Monies involved were almost identical except for the fact that in the Handwritten Instruction, there were **Sundry 1 and Sundry 2** whereas in the Typed Instruction, the Sums of Monies classified as **Sundry 1 and 2**, were Summed up into a Draft payable to Ebenezer Retnan Ventures, as established by the Oral and Documentary Evidence before the Court.

Further, a careful look at the Defendant's Extra-Judicial Statement to the EFCC in **Exhibit P13A**, will show that the Beneficiaries of the Central Bank of Nigeria Cheque appear to be an Enlarged Version from those contained in Handwritten and Typed Instructions.

Now, starting off with **Count 2**, the Defendant, Joshua Chibi Dariye in said to have committed Criminal Breach of Trust of the Ecological Funds by diverting the Sum of N160Million into the Private Account of Ebenezer Retnan Ventures, an Unregistered Company owned by him.

From the evidence adduced, there appears to be connection between **Count 2 and Count 7** as set out in the Charges. **Count 7** alleges that the Defendant, Chief Joshua Chibi Dariye, committed Criminal Breach of Trust in the Sum of N16, 862, 900, which Sum part of the Ecological Funds, which he took by titling this Sum as “**Sundry Number II**”.

From testimony of PW1, Detective Musa Sunday, the Sums in **Counts 2 and 7** were paid into the Account of Ebenezer Retnan Ventures with the AllStates Trust Bank Plc. Both Sums in the Counts trace their Origin to the Ecological Funds contained in the Central Bank of Nigeria Cheque, **Exhibit P6** and both have a Common Route where they both terminated. Therefore, it would be convenient to take both Counts together but make Separate Decision on each Count.

DW1, Mr. Adonye Roberts, the Erstwhile Staff from the AllStates Trust Bank Plc., stated that his Bank used its Suspense/Sundry Account to Clear the Cheque, and had identified the Defendant’s Handwritten Instructions addressed to the Managing Director through the Abuja Branch Manager of his Bank. He also identified the Statement of Account of Ebenezer Retnan Ventures, admitted as **Exhibit P15C**, which he confirmed. When referred to the Statement and Description of Transaction for the date of 26th of July 2001, he read the Narration to be, “**BNG PART PYMT FRM CBN CHQ CLRD**”, which he explained in Court to mean, “Being Part Payment from CBN Cheque Cleared. According to this Witness, the Handwritten Instruction in **Exhibit P4** tallied with the Draft made in favour of Ebenezer Retnan Ventures, which all tallied with the Statement of Account, wherein the Sum of One Hundred and Sixty Million Naira (N160, 000, 000) was paid.

The AllStates Trust Bank Plc. was investigated and the Bank made a Statement in **Exhibit P7**, the AllStates Trust Bank Plc., Reply Letter dated the 4th of February 2005 addressed to the Economic and Financial Crimes Commission, Abuja written for the Attention of Ibrahim Magu/Chile Okoroma. The Letter stated thus:

*“Further to your Request, please find attached the Original Instruments for Two of the Payments and Certified True Copies of the Two. **The Balance of N176, 862, 900.00 was paid to Ebenezer Retnan Ventures.**”*

It is worthy of note that this **Exhibit P7** is the Best Evidence, as it established the fact that the AllStates Trust Bank Plc., indeed carried out and disposed of the Monies in the Cheque in Draft Forms, in the Mode/Manner as per the Defendant’s Instruction/Directive. The AllStates produced the Instruments it was directed to raise, for the benefit of the Persons, the Defendant had instructed to be paid.

By this **Exhibit P7**, the AllStates Trust Bank Plc. had also positively and unequivocally asserted that Ebenezer Retnan Ventures took benefit of the remaining Balance of N176, 862, 900.00.

The fact that the Defendant, in his Handwritten Instruction had classified the Sums of N97, 000, 000 + N63, 000, 000 Totalling N160, 000, 000 (One Hundred and Sixty Million Naira), as **Sundry 1** and further classified the Sum of N16, 862, 900 (Sixteen Million, Eight Hundred Sixty-Two Thousand, Nine Hundred Naira) as **Sundry 2**, discloses an intention *ab initio* to conceal, which Account the Sundry 1 and 2 would go into. The Branch Manager or his Subordinate, who are not either a Witness or Witnesses before the Court, were in a better position to explain the Bank’s understanding of this Directive to Pay into Sundry 1 and 2. However, the Typed Written Instruction, which also emanated from the Defendant in his Official Capacity, in **Exhibit P4 at Page 3**, unambiguously pointed to where the Monies should go. Namely, into the Account of Ebenezer Retnan Ventures and the Bank humbly complied and used its Suspense/Sundry Account, to Clear the Sum of One Hundred, and Sixty Million

(N160, 000, 000), into the Ebenezer Retnans Account. Unfortunately for the Defendant, even with the use of the AllStates Trust Bank Plc. Sundry Account, the Origin of this Sum was still referred in **Exhibit P15C** to be from the Central Bank of Nigeria Cheque. How about that!!!

According to the Defendant, during his interview with Detective Musa Sunday, he admitted being the Maker of the Handwritten Instruction when he was confronted with it, and had volunteered Statements, wherein he explained the Distribution of the Sum of the One Billion, One Hundred and Sixty-One Million, One Hundred and Sixty-Two Thousand, Nine Hundred Naira (N1, 161, 162, 900) Ecological Funds.

From the testimonies of **DW15**, Sergeant Victor Dilang and **DW6**, Chief Mai Chibi Vwalji, the then Plateau State Deputy Chairman of the People's Democratic Party (PDP), put forward by the Defence, the fact that the Defendant did not personally gain from the Central Bank of Nigeria Cheque in his own Personal Name is evident. Further, the Defendant, in his Extra-Judicial Statement to the EFCC dated the 12th of June 2007 admitted as **Exhibit P13A**, had also demonstrated this fact of not personally deriving benefit or gain from the Funds in the Central Bank of Nigeria Cheque. This was further buttressed from the gesticulations or line of questioning made by the Erstwhile Defence Silk, G.S. Pwul SAN to PW1, Detective Musa Sunday, wherein he suggested that there were Pre-Conditions given to the Defendant to secure the Release of the Central Bank of Nigeria Cheque. These suggested pre-conditions were, the Payment of the Sum of Hundred Million Naira (N100, 000, 000) was for PDP South-West for the benefit of President Olusegun Obasanjo but who returned it; the Sum of another N100 Million paid to Marine Float Limited; the Sum of Ten Million Naira (N10, 000, 000) for the benefit of Deputy Senate President Mantu; and the Sum of either Six Million, Eight Hundred Thousand (N6, 800, 000) or Sixty-Six Million Naira (N66, 000, 000) for the benefit of 274 PDP Wards. In response, Detective Musa Sunday stated that the Defendant did not disclose these as Conditions to him.

Now, these Conditions referred to by the Erstwhile Defence Silk, are not before the Court, nor are the Conditions contained in the Payment Voucher in **Exhibit P14**. Detective Musa Sunday had stated that Chief Joshua Dariye did not mention there were Conditions at the time he made his Extra-Judicial Statement to the EFCC. Therefore, if at all there were Conditions, the Erstwhile Senior Counsel representing the Defence Silk, G.S. Pwul, needed to have entered the Witness Box to testify as to these Conditions or better still, the Defendant, to whom the Central Bank of Nigeria Cheque was released, to testify on those Conditions Precedent. The burden as an asserter of this fact was laid on him to testify as to the heavily impressed Conditions placed on him, by the Individuals named during the Cross-Examination.

Further, G.S. Pwul SAN sought to show that all the Disbursements of all the Sums of Monies in the Central Bank of Nigeria Cheque, if summed up together, overshot the Funds in the Cheque by the Defendant, as the Sums did not add up. This fact is, if true, was then an open invitation to both the Defendant and his Senior Counsel to enter into the Witness Box and do the Maths, and since the Defendant did not enter the Witness Box, Defence Silk, G.S. Pwul SAN, could have done so in his stead.

Apart from the above, from the Testimony of **DW6**, Chief Mai Chibi Vwalji, when shown the Extra-Judicial Statement of the Defendant in **Exhibit P13A at Page 10**, he affirmed that the PDP Plateau State collected the Sum of Sixty Six Million Naira (N66, 000, 000) for 274 Wards. According to him, the National Chairman of the PDP through the Chairman of the State Chapter of the Party had informed them that PDP Governors would give their State some Money towards the Party. The Defendant,

asthen Governor of the State, and an EXCO Member of the State PDP, went to the PDP Secretariat in Plateau State, where he gave the Sum of Sixty Six Million Naira (N66, 000, 000) for distribution to the Wards through their Local Government Chairmen. This Witness did not know the Source of the Money distributed, but knew that the Money was distributed to each of the Seventeen (17) Local Governments for the benefit of Three Hundred (300) State Wards. Under Cross-Examination, he maintained the point that it was Proper for his Party to have received the Sum of Sixty Six Million Naira (N66, 000, 000) from the Ecological Fund, as his Party was the Party in Power.

By this above testimony of Chief Mai Chibi Vwalji, a Former Deputy Chairman of the PDP Plateau State Chapter, it simply shows the World, a Man completely out of touch with the Financing of a Political Party, as it is clear that he had never read or digested the Byelaws of his Party, both at the State Level as well as the at the National Level, and perhaps never did, when he joined the Party or contested for the Office of Deputy Chairman of his Party's Chapter. He would have put to heart the Byelaws of his Party, to discover for himself that Funds of Plateau State Government and that of the Peoples Democratic Party are distinctively and mutually exclusive. These Funds never mix!!!

Further, it is inconceivable that Funds of the Plateau State Government and that of any Political Party, in whatever shape or manner, should swing as a Pendulum from the Plateau State Government to a Political Party and vice versa. Doing so, would unapologetically undermine Funds meant for the General Good of the Citizens of Plateau State. If such is to occur, it is contrary to our Laws, it is Repugnant to Natural Justice, Equity and Good Conscience and importantly, to Public Policy.

Chief Mai Chibi Vwalji's testimony uttered in Public, is quite disturbing, and shocking, and is no doubt an embarrassment to the Polity of his Party and for everything the Philosophy of Democracy stands for. When he subsequently knew that the Source of the N66Million that was paid to his Party, had emanated from the Plateau State Ecological Funds, he did not even Bulge or even Mask a Surprise. Rather, he pontificated at the fact that his Party, was the Ruling Party in Power and so, it was **morally right** to use Government Monies for his Party. This is a glorified example of Ignorance is Bliss. It is likened to the **Arabian Quotation** that says "**He who knows not and knows not that he knows not** is a fool; avoid **him**. **He who knows not and knows that he knows not** is a student; teach **him**. **He who knows and knows not that he knows** is asleep; wake **him**. **He who knows and knows that he knows** is a wise man; follow **him**".

Now, it is certain that the Central Bank Cheque was issued in the Name of the Plateau State Government. There is NO follow-up Directive from the Federal Government of Nigeria that Payments in the Sum of N66Million was for the benefit of 274 PDP Wards and the Sum of N10Million to Senator Mantu, was for the benefit of Ten (10) Plateau Central Zones. Even on the assumption that these Payments were legitimate, it might well have been ordered to be paid from the Plateau State Government's Account and not from the Central Bank of Nigeria Cheque meant to meet the plight of the Citizens of Plateau State, who were facing Ecological Problems that needed Reclamation and Channelization.

It is worthy of note that this Distribution List as contained in the Defendant's Extra-Judicial Statement, whether true or an afterthought still does not **MATERIALLY** change the Purpose Mandate, which was, to Solve Ecological Problems in Plateau State. In fact, the Extra-Judicial Statement, further drove home the point that the Monies were disposed of or used for Purposes other than for the Actual Purpose it was meant for.

The AllStates Trust Bank Plc., in **Exhibit P7**, a Letter from this Bank, had positively and unequivocally stated that what remained from the Central Bank of Nigeria's Cheque was the Sum of N176, 862, 900, which was paid into the Account of Ebenezer Retnan Ventures and interestingly, Ebenezer Retnan Ventures Account was created, domiciled and maintained in the Abuja Branch of the AllStates Trust Bank Plc. From the AllStates Trust Bank Plc.'s assertion, it could only mean that it was from only this Account of Ebenezer Retnan Ventures, that the Sums of N66Million given to the 274 PDP Wards and N10Million to PDP Plateau Central Wards would be found.

From a careful perusal of Ebenezer Retnan Ventures' Statement of Account, it remains unclear, how the Sum of Sixty-Six Million Naira (N66, 000, 000) was disbursed to the 274 PDP Wards and the Sum of N10Million was disbursed to the Deputy Senate President Mantu. However, **DW6**, Chief Mai Chibi Vwalji, in his testimony in chief, confirmed the receipt of the Sum of Sixty-Six Million Naira (N66, 000, 000) for the benefit of 274 PDP Wards. His evidence was also back up by the Defendant as set out in his Extra-Judicial Statement to the EFCC in **Exhibit P13A**.

From the Statement of Account of Ebenezer Retnan Ventures with the AllStates Trust Bank Plc., admitted as **Exhibit 15C, DW1**, Mr. Adonye Roberts had demonstrated in Court, through the Statement, When and the Nature of Transaction, wherein the Sum of "**One Hundred and Sixty Million Naira (N160, 000, 000)**" was paid into this Account. From the Statement of Account of Ebenezer Retnan Ventures, the Narration of the Transaction stated that the Sum of One Hundred and Sixty Million Naira (N160, 000, 000) as "Being Part Payment from the CBN Cheque Cleared". Prior to the lodgment of this Sum, the Account of Ebenezer Retnan Ventures was in Debit Balance of N-40, 793, 415.45 (Minus Forty Million, Seven Hundred and Ninety-Three Thousand, Four Hundred and Fifteen Naira, Forty-Five Kobo) and upon lodgment, the Credit Balance rose to the Sum of N119, 205, 584.54, (One Hundred and Nineteen Million, Two Hundred and Five Thousand, Five Hundred and Eighty-Four Naira, Fifty-Four Kobo).

Further, after this Money was lodged into the Account, Monies were drawn down from the Account. For example, when the Sum of N160Million was lodged on the 26th of July 2001, on that same day, a Cheque in the Sum of N35Million in favour of Colonel Tanko Zubairu was withdrawn from the Account. Other Withdrawals were also subsequently made, which are testament that the Defendant CONVERTED to his OWN USE the Sum One Hundred and Sixty Million Naira (N160, 000, 000), which originated from the Central Bank of Nigeria Cheque. From the evidence adduced before the Court, the Sum of N16, 862, 900.00, (Sixteen Million, Eight Hundred and Sixty-Two Thousand, Nine Hundred Naira), could not be paid into the Account of Ebenezer Retnan Ventures because the Monies in the Central Bank of Nigeria was insufficient to cover this Sum.

But, it is interesting to note that this Sum of N16, 862, 900.00 was eventually credited into this Account of Ebenezer Retnan Ventures on the 21st of October 2002. Upon lodgment, on the 24th of October 2002, a Cash Withdrawal in the Sum of N3, 210, 000 was made in favour of Excel. Prior to the lodgment of this Sum, the Account Balance of Ebenezer Retnan Ventures was N185, 146, 793.48 on the 17th of October 2002 and upon lodgment, the Credit Balance rose to the Sum of N202, 009, 693.48. Further Withdrawals as per the Description of Transactions in the Statement of Account of Ebenezer Retnan Ventures were also made, which are also testament to the fact that the Defendant CONVERTED to his OWN USE the Sum of N16, 862, 900.00, whose Origin was from the Central Bank of Nigeria Cheque. Had it been that the Amount of N16, 862, 900.00 was slightly different, the benefit of doubt would have been exercised in favour of the Defendant because then, the Amounts would not add up to the Letter in **Exhibit P7**, written by the AllStates Trust Bank Plc.

It can therefore be seen that the Defendant's Instruction was contrary to the Mandate in the Central Bank of Nigeria's Cheque and the Persons who benefitted therefrom were not lawfully entitled to it. He too, was not lawfully entitled to the Monies in the Central Bank of Nigeria Cheque, as the Monies therein, were for the benefit of the Plateau State Government, principally and primarily for the PURPOSE of solving Ecological Problems in his State, where he as Executive Governor, had Dominion and Sovereignty over the People and Funds therein.

What he had set in motion with his own hand, caused a wrongful loss in the Sum of N160, 000, 000 as well as the Sum N16, 862, 900, to the Plateau State Government, which was lawfully expected to be expended towards Reclamation and Channelization. The Payments of N66, 000, 000 or even One Naira (N1) to the 274 PDP Wards, as well as the Payment of the Sum of N10, 000, 000 to Deputy Senate President, Senator Mantu, when they were not included as Beneficiaries in the Payment Voucher, was a clear Misappropriation of Funds. Chief Joshua Chibi Dariye, a "Chartered Accountant" knew they were not lawfully entitled to these Monies, but he paid them anyway. The Beneficiaries of the Defendant's Largesse, acknowledged receipt of the Funds.

Therefore, from the above facts, as regards **Count 2** of the Amended Charge, the Defendant, is found as a Public Officer, to have been entrusted with Dominion and Control over the Plateau State Government's Ecological Funds, which was meant to address the Ecological Problems of the State did abuse his Position, by diverting the Sum of One Hundred and Sixty Million Naira (N160, 000, 000) into Ebenezer Retnan Ventures, a Venture owned by him in Violation of the Clear Directive stated on the Cheque and Violation of his Oath of Office. He not only Converted these Funds, he ended up Disposing to his Own Use and Benefit and in a Circuitous Manner that shows a dishonest Intent to Misappropriate the Funds, thereby committing Criminal Breach of Trust.

He is accordingly found Guilty of this Count.

As regards **Count 7**, the Same Reasoning applies and the Defendant's Typed and Handwritten Instructions as well as the Narration in **Exhibit P7**, by the AllStates Trust Bank Plc., and more importantly, by the Statement of Account of Ebenezer Retnan Ventures in **Exhibit P15C**, the Court finds that the Defendant, being a Public Officer, was entrusted with the Sum of Sixteen Million, Eight Hundred and Sixty-Two Thousand, Nine Hundred Naira (N16, 862, 900), property of the Plateau State Government's Ecological Funds, meant to address the Ecological Problems of Plateau State, had full Control and Dominion over this Fund. However, in breach of the Trust reposed on him by the Citizens of Plateau State, he caused the Payment of this Amount, which he titled Sundry N0.2, and succeeded in a dishonest manner to conceal this Amount from the Officials of Plateau State Government and is accordingly found Guilty of this Count of Offence.

As regards **Count 4**, which deals with the Sum of N80, 000, 000 (Eighty Million Naira) issued in favour of Union Homes Saving and Loan, PW1, Detective Musa Sunday, stated that Union Homes was approached by the EFCC in Lagos, where it confirmed that Dr. Kingsley Nkumah, the Permanent Secretary of the Ecological Funds Office, operated the Union Homes Savings and Loans Account and also confirmed that the Eighty Million Naira (N80, 000, 000) Cheque was cleared into his Account.

Before this Court is **Exhibit P7**, the AllStates Trust Bank Plc.'s Reply Letter to the EFCC dated the 4th of February 2005, wherein the Bank attached to the Letter, an Original AllStates Trust Bank Draft dated

the 20th of July 2001, payable to the Union Homes Savings and Loans Limited. Both Detective Musa Sunday and Sergeant Victor Dilang confirmed the fact that this Sum was for the benefit of Dr. Kingsley Nkumah, the Permanent Secretary of the Ecological Funds Office. According to PW1, Detective Musa Sunday, Dr. Nkumah had confessed that the Eighty Million Naira (N80, 000, 000) was his Bribe Money given to him for facilitating the Ecological Fund and the Money was recovered from him. Dr. Nkumah had been Charged to a High Court in Lagos, whereupon the Grant of an Administrative Bail, he resigned and left the Country.

According to **PW2**, Mr. Adewusi, a Staff from the Ecological Funds Office, he had learnt that Dr. Kingsley Nkumah, was dismissed as a result of his involvement in the Central Bank of Nigeria's Cheque, wherein he benefitted the Sum of Eighty Million Naira (N80, 000, 000) and he had considered it pitiful that this Sum belonging to Plateau State Government, a State of over Three Million People, was given to One Individual.

Sergeant now ASP Victor Dilang, testified that he was instructed by the Defendant to meet with the Permanent Secretary in the Federal Ministry of Special Duties in the Secretariat in Abuja, to pick up a Message. On getting there, the Permanent Secretary refused to release the Cheque to him until he saw Chief Joshua Chibi Dariye. Sergeant Victor Dilang put a call through to the Defendant, who was at the Liaison Office and who further instructed him that the Permanent Secretary would attach him with someone who would accompany him to the Liaison Office. The Permanent Secretary then gave him a Cheque to sign, which he did as seen in **Exhibit P14 at Page 27**. Dr. Kingsley Nkumah then assigned him with someone whose Name he could not recall, who followed him to the Liaison Office.

After discussions, the Defendant summoned him and gave him a Handwritten Letter he identified as **Exhibit P4 at Page 2**, with an Instruction to collect a Bank Draft of Eighty Million Naira (N80, 000, 000). In company of this unnamed Person, they went to the AllStates Trust Bank where a Bank Draft in the Sum of Eighty Million Naira (N80, 000, 000) was issued in favour of the Permanent Secretary and he noted that the unnamed Person attached to him by Dr. Kingsley Nkumah signed and collected the Draft of Eighty Million Naira (N80, 000,000).

The Defendant himself in his Extra-Judicial Statement **Exhibit P13A** had whilst itemizing how the Sum of the Ecological Funds was disbursed, listed out the Payment to Union Homes as **Item 5** in the Sum of Eighty Million Naira (N80, 000, 000). He did not state who the Beneficiary was, but upon an Investigative Enquiry to Union Homes, the Account Details under which this Payment was made, was supplied by the Union Homes, who also furnished the Mandate Card of the Account Holder, tendered into evidence as **Exhibit P8**. This Exhibit, which contained the Passport Photograph of Dr. Kingsley Nkumah, was confirmed to be the Presidency, as his Employer and his Position to be the Permanent Secretary of Ecological Funds. An Attachment to this Exhibit, is the Letter written by Dr. Nkumah, in his own handwriting to the Branch Manager, Union Homes, Abuja dated the 31st day of January 2002, had revealed a Financial Relationship between Dr. Nkumah and Union Homes.

There is also the AllStates Trust Bank Plc. Draft issued in favour of the Union Homes Savings and Loans Limited dated the 20th of July 2001, as seen in **Exhibit P7**, which was reclaimed by the EFCC from Union Homes in respect of the Account of Dr. Kingsley. PW1, Detective Musa Sunday had stated that the Sum of Eighty Million Naira (N80, 000, 000) was recovered from Dr. Nkumah's Union Homes and Savings Account in Bank Draft, was registered and kept with the EFCC Exhibit Keeper.

Now, even though this Sum of Eighty Million Naira (N80, 000, 000) was not to the direct benefit/gain of the Defendant, being a Public Officer with Dominion and Control over Plateau State Government's Funds, in breach of that Trust reposed on him by the People of his State, Disposed the Sum in this

Count and caused the Use by Another of the Funds belonging to the Plateau State Government's Ecological Funds thereby Misappropriating this Sum. A logical reason for the Defendant giving this Amount of Money to Dr. Kingsley Nkumah can be seen as an Inducement/Gratification for the prompt release of the Cheque to the Plateau State Government. The Ecological Funds Cheque was written out, Processed, Confirmed by the Central Bank of Nigeria and delivered to the Defendant on the Same Day, which is an unusual occurrence.

If the confession of Dr. Kingsley Nkumah is anything to go by, and if the Refund of this Sum is also be reckoned with, it has not changed the fact that the Deprivation of the Funds due to the Plateau State Government, need not be a Permanent Loss as by the Principles above stated, a Temporal Loss is sufficient.

In conclusion, the Court finds that the Defendant, being a Public Officer was entrusted with the Sum of Eighty Million Naira (N80, 000, 000), property of the Plateau State Government's Ecological Funds, meant to address the Ecological Problems of Plateau State, had full Control and Dominion over this Fund. However, in breach of the Trust reposed on him by the Citizens of Plateau State, he caused the Payment of this Amount to an Outsider/Stranger to Plateau State Government, contrary to the Set Purpose of the Funds with a dishonest intent towards facilitating the Early Release of the Central Bank of Nigeria's Cheque and is accordingly found Guilty of the Offence in **Count 4**.

Count 5 deals with the Sum of another Sum of N100 Million paid to Marine Float Limited, a Company said to be owned by the then Vice-President of the Federal Republic of Nigeria, Alhaji Atiku Abubakar. According to PW1, Detective Musa Sunday, under Cross-Examination, the Defendant did not tell him that there were Conditions attached to receiving the Money. DW15, Sergeant now ASP Victor Dilang stated that he was instructed to sign a Bank Draft of a Hundred Million Naira (N100, 000, 000) to the then Minister of Special Duties Mr. Yomi Edu. He went to Mr. Yomi Edu's Office where he personally handed over the Bank Draft for this Sum but was told by Mr. Yomi Edu that the Cheques should have been Two in Number in the Sum of a Hundred Million Naira (N100, 000, 000) each. A call was put through to the Defendant, who had a Conversation with Mr. Edu and at the end of their Conversation, he was instructed to collect an Account Number from the Minister. Mr. Yomi Edu then gave him a Habib Bank Account Number with No Name and he proceeded to AllStates Trust Bank Plc., where the Bank Manager gave him another Bank Draft in the Name of Marine Float Limited, which Company, the Defendant told him belonged to the then Vice President, Alhaji Atiku Abubakar. He testified that he lodged the Bank Draft at the Wuse Branch of Habib Bank and reported back to the Defendant. He stated further that the Defendant had explained to him the Reason for disbursing the Money to Marine Float to be that it was meant for PDP North-East.

The Defendant, Chief Joshua Chibi Dariye, confirmed in his Extra-Judicial Statement in **Exhibit P13A**, both confirmed the evidence rendered by Detective Musa Sunday and wrote down how he assigned the Sum of One Hundred Million to Marine Float Limited.

The AllStates Trust Bank Plc., the Recipient of the Defendant's Instruction Bank, divulged the Original Draft dated the 15th of August 2001 in **Exhibit P7**, its Letter to the EFCC dated the 4th of February 2005, wherein the Defendant instructed the Bank to issue a Draft in the Sum of N100, 000, 000 (One Hundred Million Naira) in favour of Marine Float Limited. On the Reverse Side of the Draft, are Several Stamps of the AllStates Trust Bank Plc., and Two Clearing Stamps of Habib Bank Limited. The AllStates Trust Bank Plc., confirmed in this **Exhibit P7**, that the Sum of N100, 000, 000 (One Hundred Million Naira) was paid to Marine Float Limited and from the Clearing Stamps on the Draft, it is evident that Marine Float Limited received proceeds in the Draft through its Banker, Habib Bank Limited.

According to **PW1**, Detective Musa Sunday, efforts to recover this Sum of N100Million from Marine Float were still ongoing.

In the Defendant's Extra-Judicial Statement to the EFCC admitted as **Exhibit P13A**, he had listed the Distribution of the Ecological Funds to include in **Item 4**, the Name Marine Float to whom the Sum of One Hundred Million Naira (N100, 000, 000) was given on the 15th of August 2001. He had indicated on the Side that these were Two Distinct Transfers to Two Separate Organizations. The Defendant in this Exhibit stated thus: -

"These instructions came from me as I was then directed. The PDP S/W Draft of N100m was collected by Mr. Yomi Edu, while the N100m to Marine Float was given to Vice President Atiku. (Handwriting and type instruction on the Ecological Fund)."

Chief Joshua Chibi Dariye had made reference to his Handwritten and Typed Instructions in **Exhibit P4**. It is noted that he did not state the **REASONS** why these Funds were given to this Company, except to say that he was directed. He also did not say **WHO** directed him to make this Payment. More importantly, he did not say that this Fund was to be used to satisfy any Ecological Needs of Plateau State Government. All his Former Lawyer, G.S. Pwul SAN, sought to establish through his line of questionings during Cross-Examination, was that this Money represented a Condition to the Defendant before he got the Money. He had also stressed the Time Factor for Processing and Collection to be effected in Record Time, was evidence of the fact that before the Approval and the Central Bank of Nigeria's Cheque was obtained, Certain Payments had to be made to the Approvers of his SOS Request.

Detective Musa Sunday had testified that they did not reclaim this Sum of Money because Investigations on the Payment to Marine Float Limited was still ongoing.

The fact that the Investigation is still ongoing or not, since the Year 2001, has not changed the fact that Plateau State Government, did not derive any Benefit from this One Hundred Million Naira (N100, 000, 000) Cheque and has not changed the fact that the Purpose of the Funds was diverted into a Private Company not owned by Plateau State Government. Had the Defendant testified, he may have been able to explain WHY, this Sum was given to Marine Float Limited.

Suffice to say, that as Public Officer, entrusted with the Dominion and Control of the Ecological Funds for Plateau State, had the Duty to ensure expeditious use of the Money and in the absence of any Reason or Explanation Why Marine Float had to benefit from this Funds, the Court must assume that it was not for any Legitimate Reason and therefore, the Defendant breached the Trust reposed on him by the Citizens of Plateau State and in his neglecting to follow Due Process for this Payment, he is found to have dishonestly disposed of the Sum in this Court and is hereby found Guilty as Charged in **Count 5**.

Count 6, is as regards, the Sum of N100Million paid by the Defendant to PDP South-West on the 20th of July 2001, **DW15**, Sergeant now ASP Victor Dilang, testified to the effect that he was given a Bank Draft of One Hundred Million Naira (N100, 000, 000) and instructed to take it to Mr. Yomi Edu, the then Minister of Special Duties, who collected this Draft in this Sum personally in his Office. According to Sergeant now ASP Dilang, when he met Mr. Yomi Edu and gave him the Cheque for this Sum, he was told by Mr. Yomi Edu that the Cheques should have been Two in Number in the Sum of a Hundred Million Naira (N100, 000, 000) each. The Defendant had explained to him that this Sum of Money was

for PDP South-West. He made a Photocopy of the Draft, which was signed as Acknowledgement Copy and he had given this Copy to the Defendant.

The Defendant in his Extra-Judicial Statement admitted as **Exhibit P13A**, had listed the Distribution of the Ecological Funds to include in **Item 3**, the "PD S/W" to whom the Sum of One Hundred Million Naira (N100, 000, 000) was given on the 20th of July 2001. He had indicated on the Side that these were Two Distinct Transfers to Two Separate Organizations. The Defendant in this Exhibit stated thus: -

"These instructions came from me as I was then directed. The PDP S/W Draft of N100m was collected by Mr. Yomi Edu...(Handwriting and type instruction on the Ecological Fund)."

According to PW1, Musa Sunday, under Cross-Examination the Defendant did not tell him that there were Conditions attached to receiving the Money. Further, under Cross-Examination, Detective Musa Sunday stated he did not participate in the investigation involving the return of the Sum of N100Million in 2004 by the President of the Federal Republic of Nigeria, President Olusegun Obasanjo that had been initially paid to Mr. Yomi Edu for PDP South-West. It is in evidence that President Olusegun Obasanjo, on being informed of this Money, returned this Amount allocated to the South-West.

When questioned why it was only the Defendant who was charged to Court in respect of the Sums alleged in the Charge, Detective Musa Sunday responded that Investigations were still ongoing.

Chief Joshua Chibi Dariye had made reference to his Handwritten and Typed Instructions in **Exhibit P4**. It is noted that he did not state the **REASONS** why these Funds were given to the then Honourable Minister of Special Duties, Mr. Yomi Edu for the benefit of PDP South-West, except to say that he was directed. He also did not say **WHO** directed him to make this Payment. More importantly, he did not say that this Fund was to be used to satisfy any Ecological Needs of Plateau State Government. Yet again, the Defendant's Former Lawyer, G.S. Pwul SAN, sought to establish through his line of Questionings during Cross-Examination, that this Money represented a Pre-Condition to the Defendant before he got the Money. He had also focused on the Record Time it took for the Processing and Collection of the Central Bank of Nigeria's Cheque to be a compelling factor for the rapid release of his SOS Monetary Request.

One fact, which stands as Strong as the Rock of Gibraltar, is that whether or not President Olusegun Obasanjo received the Sum of N100Million but subsequently returned the Money, does not change the Act of Disposal, and the Return of this Money, only reinforces the point of an Initial Disposal. This Disposal, Permanent or Temporal, effected a loss wrongfully incurred, at the time the Disposal occurred. The Defendant knew that the AllStates Trust Bank Plc. would carry out his Instruction, and that the Monies precipitating from the Cheque would be disposed to each beneficiary as per his Instruction.

Therefore, Chief Joshua Chibi Dariye, being a Public Officer, entrusted with the Dominion and Control of the Ecological Funds for Plateau State, had the Duty to ensure efficient use of the Money belonging to the Plateau State Government and in the absence of any Reason or Explanation Why PDP South-West had to benefit from this Funds, the Court must assume that it was not for any Lawful Reason and therefore, the Defendant to have breached the Trust reposed on him by the Citizenry of Plateau State. There was no evidence of Due Process being followed for this Payment, with no Formal Accountability rendered by Chief Joshua Chibi Dariye to the Plateau State Government. It was expected that he entered the Witness Box to explain the Reasons Why such Payment was made and there was also no

evidence of how this Particular Fund was related to the furtherance of Ecological Projects in the State. The Defendant is accordingly found to have dishonestly disposed of the Sum in this Count and is hereby found Guilty as Charged in **Count 6**.

Count 23, is in regard to the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000), where the Defendant is said to have committed Criminal Breach of Trust in respect to Plateau State Ecological Funds released by the Federal Government, by diverting this Sum into the Private Account of Pinnacle Communications Limited, part of which was used to purchase for the Defendant Flat 28 Regents Plaza Apartment, 8 Grenville Road, London NW8 at the Cost of Three Hundred and Ninety-Five Thousand Pounds (£395, 000).

From the Documentary Evidence before the Court, this Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) was consistently stated throughout the Instructions written by the Defendant to the AllStates Trust Bank Plc. as well as in his Extra-Judicial Statement to the EFCC in **Exhibit P13A**. This Sum, amongst other Sums, eviscerated from the Central Bank of Nigeria's Cheque dated the 12th of July 2001 in **Exhibit P6**, meant for Reclamation and Channelization of the Ecological Problems in Plateau State. The AllStates Trust Bank Plc. was instructed by the Defendant to issue a Draft to Pinnacle Communications Limited, and in the course of the EFCC's Investigation, the Bank divulged, inter alia, a Certified True Copy of the Draft in **Exhibit P7**, an AllStates Trust Bank Plc.'s Reply Letter to the EFCC dated the 4th of February 2005.

In this **Exhibit P7**, the Draft in the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000), was dated the 20th of July 2001 and made payable to "Pinnacle Commercial". This Draft had affixed on it the Stamp of the AllStates Trust Bank, Abuja Branch, Clearing Unit dated the 27th of July 2001, marked "RECEIVED" and another Stamp of Habib Nigeria Bank Limited affixed on the 27th of July 2001, marked "CLEARING".

The Court observes a disparity especially with the name "Pinnacle Commercial" who in **Exhibit P7** took benefit of the Draft of Two Hundred and Fifty Million Naira (N250, 000, 000) and the name "Pinnacle Communications Limited" as set out in the Charge Sheet. There is no challenge, directly or indirectly, but an admission by the Defence, that Pinnacle Communications Limited was obliged this Sum being a Contractor with the Government of Plateau State. The Defendant in his Extra-Judicial Statement in **Exhibit P13A** stated that he knew the Mr. Lucky Omonuwa the Chairman/ Chief Executive Officer of Pinnacle Communications Limited, which Company was granted a Contract Sum of N997, 000, 000 to refurbish PRTV (*Television Station*).

Further in his Statement in **Exhibit P13C**, the Defendant stated thus:

"Even the disbursement of N250M to Pinnacle was purely on executive discretion, since funds earlier meant for the TV refurbishing has been for Ecological areas. This is management by exception. As long as the ends justifies the means, it is still within the Chief Executive to exercise this function for the overall good of the State." (Sic)

The Defence in regard to this fact, tendered a Host of Documentary Exhibits marked **Exhibits D22 to D33**.

It is important to state that each Documentary Exhibit by their Dates establishes a Trail.

The First Exhibit up for consideration is **Exhibit D22**, dated the 25th of May 2001. This Exhibit was written by Mr. B.L. Omoluwa, the Chairman/Chief Executive Officer of Pinnacle Communications to

the Executive Governor of Plateau State titled, “**EXECUTIVE REPORT AND QUOTATION FOR PLATEAU STATE TELEVISION, FM AND AM RADIO STATION**”. In this Letter, Pinnacle Communications Limited informed the Executive Governor, on the Survey conducted by its Technical Team in regard to the above Subject Matter and a Report was referred to, containing a Minimal Budget that would improve coverage and better reception.

On the face of this Letter, the Defendant as Executive Governor minuted to the General Manager Plateau Radio and Television Corporation (hereinafter referred to as “the PRTV”), on the 28th of May 2001, instructing the General Manager to analyze this Submission and advise along with Previous Submissions.

The Question must be asked, **why** would Pinnacles Communications Limited, a Prospective Contractor with the Plateau State Government, confer with the Executive Governor on what was conducted by its Technical Team on the existing PRTV Television and FM and AM Radio Station? Another Question is, since there were other Submissions, as seen hereunder, from other Prospective Contractors, **what** made Pinnacles Communications Limited believe that its Budget for the Purchase of the Television and FM and AM Radio Station, was minimal or competitive in comparison to the rest?

Further, there is no Document before this Court, showing an Initial Process, where either the PRTV or the Ministry of Information, wrote a Memo directly to the Executive Governor or indirectly, through the Secretary to the State Government, who then had a duty to forward it to the Executive Governor for his Approval to Upgrade the PRTV Television and Radio Station.

According to **DW13**, Dr. Patrick Datum, the erstwhile Commissioner of Information, he stated that Capital Projects would usually have a Memo. He then narrated the Procedure for the Award of Contracts at his Ministry either through Competitive Bidding or a Search for the Relevant Contractor, in the event the Items are not commonly available. Usually, a Technical Committee is set up, who makes Recommendations directly to the Office of the Governor or through the Office of the Secretary to the State Government or through him. The Ministry reviews the Recommendations, and then writes to the Executive Governor or Submits a Memo to the Executive Council (herein referred to as “EXCO”), who approves. A Ministry could also present its Recommendations for Approval by the EXCO and none of the Approval from either the Governor or EXCO, was determined by the Contract Sum involved. Upon Approval, Payment Order, Approval or an Award Letter is conveyed to the Contractor and depending on the Agreement, the Project commences. For Purchase of Equipment, the Award Letter would include all the requirements such as the Name of the Contractor, Amount awarded and Payments. His Ministry was not responsible for generating a Letter for the Award of Contract, as it was the duty of the Ministry of Finance and Economic Planning, to issue the Award Letter as well as make Payments.

In this instance, all that is before the Court as a Starting Trail is **Exhibit D22**, which appears to be the CATALYST that kick-started an Administrative Process. The buck started with the Defendant, as Executive Governor, when he received this **Exhibit D22** and acted on it by Minuting the Letter to the General Manager of the PRTV, on the 28th of May 2001.

The next line of communication is **Exhibit D24**, dated the 29th of May 2001, written by Mr. Joseph Ari (KSM), the General Manager of the PRTV to the Executive Governor. The Reference Number is **REF NO: CN/565/VOL.V/772** titled, “**RE: URGENT NEED FOR THE UPGRADING OF PRTV EQUIPMENT**”

In this Letter, Mr. Joseph Ari, referred to numerous Submissions made in regard to the above Subject Matter, and he reminded His Excellency on the need to effect the Turnaround of the Broadcast Equipment in order to forestall unforeseen eventualities.

In this Letter, amongst other Submissions that were considered, his Team of Engineers studied and recommended Pinnacle Communications Limited, whose Quotation was in the Sum of One Billion, Eighty-Six Million Naira (N1, 086, 000, 000). Mr. Joseph Ari expressed his Corporation's confidence in Pinnacle Communication's Competence and Technical Know-how, and further recommended its Submission for Approval.

Exhibit D23 is an Internal Memo dated also the 29th of May 2001, from the Director of Engineering, Mr. Israel Dabel, to the General Manager of the PTRV. This Memo shows that it was through this Directive from the General Manager, that his Team of Engineers studied all the Submissions and recommended Pinnacle Communications Limited. The Team recommended this Company's due to its detailed and encompassing Scope of Work and the fact that it had carried out similar Projects in Taraba and Adamawa State. Further, Pinnacle Communications Limited was a Recipient of the Harris Award, a Major Transmitter Manufacturing Company.

Attached to this Memo, are Two Executive Reports and Quotation Reports of Pinnacle Communications Limited for Plateau State Television and Plateau State Radio, made in the Month of May 2001.

In the First Executive Report and Quotation for Plateau State Television, the Total Cost for TV Expansion was the Sum of Seven Hundred and Twenty-Two Million, Nine Hundred and Fifty Thousand Naira (N722, 950, 000). Right next to this Sum is the Inscription, Less 10%, and the Sum of N650, 655, 000 was handwritten, signed by the Defendant and dated the 2nd of June 2001. Further included in this Report, are the Material Terms, stated as follows:

“COMPLETION OF WORKS:

24Weeks from Payment of First Installment

PAYMENT TERMS:

80percent on Award of Contract, Sum to be secured by an Advance Payment Bond to be issued by Reputable Insurance Company

10percent on Delivery of Equipment

10percent on Commissioning

FACTORY INSPECTION AND TRAINING

Contractor to be responsible for a One Week UK Factory Inspection and Training of Two Officials of the State Government”

As regards the Second Executive Report and Quotation for Plateau State Radio, the Material Terms were exact same except that the Training was to be conducted on Site by the Contractor. The Total Cost for Radio Expansion was the Sum of Three Hundred and Sixty-Four Million, Six Hundred and Ten Thousand Naira (N364, 610, 000). Right next to this Sum, is also the Inscription, Less 10%, and the Sum of N328, 149, 000 was handwritten and signed by the Defendant on the 2nd of June 2001.

The Question to be asked is that, since the Team of Engineers from the PRTV had studied all the Submissions, which included the Quotations Fixed by each Company, and hadalso recommended the Quotation of One Billion, Eighty-Six Million Naira (N1, 086, 000, 000) **why** thenwas there a need to whittle down these Sums. Was the Whittling down of the Sum between Pinnacle Communications and

the Plateau State Government or was this a Unilateral Act? There is nothing before the Court to show that further Negotiations occurred between Pinnacle and the Plateau State Government. All the Court can see, particularly in **Exhibits D31**, is another Correspondence with **REF N0:CN/565/VOL.V/855** dated the 9th of April 2002, from the General Manager of PRTV to the Executive Governor, wherein the Total Contract Sum was stated to be N978, 807, 000. In other words, Pinnacle Communications Limited acceded to the handwritten figures and not to the Quotations it had earlier submitted to the Plateau State Government.

The next line of communication was from Harris Systems Limited, a United Kingdom Company, dated the 30th of May 2001, written to the Government House of Plateau State titled, "**RE: PINNACLE INVESTMENTS LIMITED**". This Letter mentioned the fact that Pinnacle was discussing the Re-Engineering and Expansion Project of Plateau State Broadcasting Corporation as well as Harris Systems' involvement with Pinnacle in States such as Kwara, Ekiti, Adamawa and Taraba on the provision of Television, AM and FM Radio Projects. Further, Harris Systems stated its strong working relationship with Pinnacle especially in the Supply of Products and Comprehensive Technical and Aftersales Services.

It is worthy of note, that the Letter written by Harris Systems Limited, did not have affixed on its face a Stamp or Minute evidencing receipt by any Relevant Government Official of Plateau State or that any Relevant Officer of the Plateau Government acted it upon. The only apparent Stamp is that of the Certification that shows that the Letter emanated from the Custody of the Ministry of Information of Plateau State.

This Letter from Harris Systems had other Attachments, amongst which, was a Memo dated the 30th of May 2001, written by Mr. Ezekiel Gomos, the Secretary to the State Government, to the Executive Governor titled, "**RE: UPGRADING OF PLATEAU RADIO AND TELEVISION EQUIPMENT**". The Opening Paragraph of this Memo referred to the Executive Governor's Directive and in response, the Secretary to the State Government, established the fact that Pinnacle Communications had successfully executed Projects in Kwara, Adamawa and Ekiti State and was currently executing a Television Project in Taraba State.

This Memo bore Several Minutes, which were illegible, and the Legible Minutes states thus: -

"TV, N650, 655, 000, Radio, N328, 169, 000 = N978, 807, 000."

Further, the Executive Governor is seen to have Minuted, "**Approved for Tender...**" to the Secretary to the State Government.

Now, this Memo appears to have surfaced from the blues and the prompting of the Memo shows it arose as result of a Directive from the Executive Governor. From the testimony rendered by **DW13**, Dr. Patrick Datum, the Former Commissioner of Information, the Prescribed Channel is that such a Memo could either directly emanate from the PRTV to the Executive Governor or indirectly, where a Memo from the PRTV is sent to the Secretary to the State Government, who will in turn, then communicate it to the Executive Governor.

From the Documentary Trail considered thus far, it demonstrates the direct communication between the PRTV and the Executive Governor, which did not pass through the Secretary to the State Government. It appears also that this Memo, interloped into an ongoing communication between the Executive Governor and the General Manager of the PRTV. This fact is as seen in **Page 4 of this**

Exhibit D32, which shows yet another Correspondence written by the General Manager PRTV to the Executive Governor dated the 6th of June 2001 with **REF NO: CN/565/VOL.V/775**.

In this Letter titled, “**RE: SUBMISSION OF PROPOSALS FOR THE UPGRADING OF PRTV EQUIPMENT**”, the General Manager informed the Executive Governor that after thoroughly considering all the Submissions, they realized that the Scope of Work proposed by Ibrahim Ventures, Westcott, Delvin and Northgate were Limited, with some laying emphasis only on Television while neglecting Radio Services. Therefore, Pinnacle Communications was the Preferred Choice and the Letter of Harris testified to their Competence.

The next line of communication is **Exhibit D26**, an Award of Contract “**PLTB- 003/2001 SUPPLY OF BROADCAST EQUIPMENT FOR THE UPGRADING OF PLATEAU RADIO AND TELEVISION CORPORATION**” dated the 5th of June 2001 from the Ministry of Finance and Economic Planning with **REF NO: S/PLTB-150/VOL.II/643**, signed by Mr. Sani A. Yahaya, Secretary, State Tenders Board, addressed to the Chairman/Chief Executive Officer of Pinnacle Communications Limited.

The Award states,

*“I am directed to inform you that the State Tenders Board having **considered your tender for the above Contract**, decided to award to you the said Contract for the sum of Nine Hundred and Seventy Eight Million Eight Hundred and Seven Thousand Naira Only (N978, 807, 000)
2. Would you please call at the Ministry of Information, Jos, in order to sign the Contract Documents.”*

The Award was copied to all the Ministries for their information and the Court’s Comment would be set out anon.

Strangely and out of the blues dropped **Exhibit D25**, a Letter with **REF NO: PCL/PLSG/07-01/Q02**, dated the 18th of June 2001 written by Pinnacle Communications Limited to the Secretary to the State Government, Government of Plateau State, titled, “**RE: LETTER OF INTENT-CONTRACT FOR THE SUPPLY, INSTALLATION AND COMMISSIONING OF EQUIPMENT FOR PRTV**”. This Letter referred to the Secretary to the State Government’s Letter of Intent contained in **REF NO: S/SSG/A/257/X** dated the 2nd of June 2001. Further in it, Pinnacle stated that it was awaiting a Formal Letter of Award of the Contracts for the State Television and Radio. It also requested the State Government to approve the release to its Custody, the International Passports of the Commissioner of Information, General Manager, Controller of Engineering of PRTV and other Relevant Government Functionaries for VISA purposes.

On the face of this Exhibit is an affixed Received Stamp of 2nd July 2001 from the Office of the Secretary to the State Government. Further, Four other “Relevant Officers” were included to the above-mentioned Government Officials, such as the Secretary to the State Government, Chief of Staff, Mr. Daniel Dariye, and Mr. Zephaniah, making a Total of Seven Officers and all Seven Officials were approved on the 2nd of July 2001, to Travel. Meanwhile, the Contract under consideration mentioned that Pinnacle Communications was responsible for a One Week UK Factory Inspection and Training of only Two Staff of the State Government, namely Mr. Joseph Ari, the General Manager of the PRTV and Mr. Israel Dabel, the Director of Engineering and their Approved Estacode were contained in **Exhibits D27 and D28** for the Sum of N721, 600.

It is worthy of note that the Reference Number on the Letter, does not show any connection with the Series of Reference Numbers in the Documentary Exhibits considered by the Court. Further, the Letter had referred to the Secretary to the State Government’s Letter of Intent, and also stated that Pinnacle

was waiting for a Letter of Award of the Contract. These Set of Facts in this Letter, appear not to show any relationship or connection or relevance to the Documents leading up to the Award of Contract dated the 5th of June 2001.

This **Exhibit D25**, as presented by the Defence, had neither a Head nor Tail. It appears to be a Stranger among the Lot presented before the Court. It is more like a Single White Sheep amongst a Herd of Black Sheep. This Exhibit appears lost, and perhaps wonders what it is doing under the gaze of the Court. It's Purpose, could only mean that the Secretary to the State Government was in another Contract with Pinnacle Communications Limited regarding the Purchase, Supply, Installation and Commissioning of Equipment for the benefit of the PRTV and definitely, not for the Upgrading of PRTV's Television and AM and FM Radio Stations.

The set of circumstances that remain constant throughout the Documentary Exhibits is the fact that the Communications were strictly between the General Manager of PRTV and the Executive Governor, Chief Joshua Chibi Dariye, the Defendant. During Trial, the Defendant chose to keep himself away from the Witness Box, Mr. Lucky Omoluwa the Chairman/Chief Executive of Pinnacle Communications or its Representative were not called or summoned to testify, either by the Defence or most importantly by the Prosecution, and further, the General Manager of the PRTV, Mr. Joseph Ari was also not called or summoned by the Defence.

Starting off with the General Manager of the PRTV, his evidence was crucial as his name featured throughout the Exhibits, which establishes a Trail of Communications between himself and the Defendant. He also would have explained in great detail the involvement of the State Tenders Board in the Award of the Contract, as well as explained the Process that led to the whittling down of the Quotation initially presented by Pinnacle Communications Limited, in its Executive Report and Quotation. Most importantly, he is presumed to have knowledge on the Source of Funds for the Contract, as the Purchase of the Upgrading of the PRTV Television and Radio Station as well as the Request of Payment ended up on his desk.

DW12, Mr. Israel Dabel, the Director of Engineering of the PRTV, during his testimony, stated that he was not aware of the Funds Allocated for the Purchase of the Upgrading of the PRTV Station, he also was not aware of the Amount paid by the Plateau State Government or knew the Procedure of Payment to the Contractor, and he finally, did not know any Financial Aspects of the PRTV Contract.

The Court observes from his testimony that it does not tally with the Documentary Exhibits considered by the Court, when he stated that a "Team" and mentioned the names of the Team Members that visited the Harris' Factory in the United Kingdom. Meanwhile, the Visit for Inspection and Training at Harris Factory, only involved himself, as Director of Engineering and Mr. Joseph Ari, the General Manager. The fact that they visited Harris UK was fully captured in the Approved Estacode Allowances contained in **Exhibits D27**, written by the Secretary to the State Government, Mr. Ezekiel Gomos, on the 8th of August 2001.

The Court further notes that the Estacode was paid by the Plateau State Government and not by Pinnacle Communications Limited, the Contractor, who had earlier in the Executive Report and Quotation stated that the Contractor would be responsible for this Visit, Inspection and Training of Two Officials at Harris Factory in the United Kingdom.

Apart from that, the Court also notes from the testimony of Mr. Israel Dabel, that what the Team inspected at the Harris Factory in the United Kingdom, were Television Transmitters and ONE Radio Transmitter. But as seen from the Approved Quotation of Pinnacle Communications, in its Executive Report and the Quotation attached to **Exhibit D23**, the PRTV Internal Memo, had made provision for Six (6) Transmitters to be stationed at Rayfield, Mangun and Dang Kang in Plateau State. Therefore, someone needed to have entered the Witness Box to testify in this regard, and the Contractor would have been called or summoned to shed more light but this was never done. According to this Witness by the Month of December 2002, the Plateau State Government, was yet to receive delivery of their Equipment. This was a surprise, because the Execution of the Contract was estimated to be within Twenty-Four (24) Weeks, and not the One and a Half Years, it took from the Date of Award, the 5th of June 2001, where the Plateau State Government failed to honour its Financial Obligations.

From the evidence before the Court, Plateau State Government had only paid the Sum of Three Hundred and Fifty Million Naira (N350, 000, 000), which is barely 80 percent of the Initial Contract Sum it was expected to pay and surely, it was in breach. As a matter of fact, after receiving the Equipment, they were not installed where they ought to have been installed, as the only installation made was in Mangun, where one AM Radio Transmitter was installed and tested.

On thing that is certain, is the fact that the PRTV who reposed too much confidence in Pinnacle Communications Limited, as well as in its Government, had their confidence deflated.

DW13, Dr. Patrick Datum, the Erstwhile Commissioner of Information, got into the show after the Contract with Pinnacle Communications Limited had been concluded, as he assumed this Role, in the Month of February 2002. Little would be expected of him in terms of knowledge of the Source of the Funds for the Payments of this Contract, his Participation or Level of Involvement in the Bidding Process, or even, the Preparation of the Contract Agreement, amongst others. Through this Witness, he confirmed only the Procedure for Request of Payment, which responsibility was that of the Agency, that is, the PRTV. Further, his evidence concerning the Responsible Ministry to Award Contracts, appears credible, and he stated that it was the responsibility of the Ministry of Finance and Economic Planning to do Awards. His Testimony as well as the Award of Contract in **Exhibit D26A**, contradicted the evidence of **DW12**, Mr. Israel Dabel, the Director of Engineering of the PRTV.

Further, according to Dr. Patrick Datum, for the Award of Contracts at the Ministerial Level, the key Participants were the State Tenders Board, the Technical Committee, the Executive Governor or the Executive Council and thereafter, he narrated the Procedure.

His narration appears to show a Procedural Gap and Bypass. A Bypass because from his testimony, none of the Documentary Exhibits made any allusion whatsoever to the Office of the Commissioner of Information. From the Documentary Exhibits considered by the Court, this fact speaks for itself, as the Communications were strictly between the General Manager of the PRTV and the Defendant, as Executive Governor.

Further, there is a Gap, in the sense that, there is nothing before the Court, to show the involvement of the State Tenders Board other than in the Award of the Contract. There was also no shred of evidence that a Technical Committee was constituted either at the Ministerial Level or the Agency Level.

What is **ONLY** apparent is the fact following a Directive from the Executive Governor dated the 28th of May 2001, addressed to the General Manager of PRTV, a Team of Engineers working at the PRTV, sat down on the 29th of May 2001, and in ONE DAY and considered all the Submissions made by Contractors. It is interesting to note, that the **ONLY** Submission tendered before this Court, was in regard to Pinnacle Communications Limited. The Court was absolutely interested in seeing the rest of the Submissions.

Apart from that, the Award of Contract issued by the State Tenders Board, raises a Presumption of Regularity that Due Process had been followed, that is, that all the Bidders had been prequalified to participate in the Tender. But yet again, not a Single Bidding Document, either from the Board or Technical Committee has been placed before this Court, and neither was any Member called or summoned to testify in this regard. The only attention grabbing fact is that **DW12**, Mr. Israel Dabel, the Director of Engineering of the PRTV, kept in his Custody, the Award Letter issued to Pinnacle Communications Limited on the ground that it had not paid the N45, 000 Tender and Registration Fee, as seen in **ExhibitD26B**.

Question! How then did Pinnacle Communications Limited qualify in the first place? Someone has jumped the gun. It is either there was no Bidding Process or the State Tenders Board and the Technical Committee or the Board or Committee, were constituted by a bunch of Individuals, who knew nothing of a Bidding Process. An invisible hand was likely at work. Pinnacle Communications Limited had secured a Contract from the Plateau State Government for a Whopping Sum of Nine Hundred and Seventy-Eight Million Eight Hundred and Seven Thousand Naira (N978, 807, 000) without paying a Shilling for it.

How very fortunate for Pinnacle but how very unfortunate for the Government of Plateau State, in particular and the People of Plateau State, in General.

As regards the Contention of the Prosecution, that the Sum of N250 Million was utilized to Purchase an Apartment in London, England, he had summoned **PW9**, Detective Peter Clark, Retired, who testified that he arrested the Chairman/Chief Executive of Pinnacle Communications Limited, Mr. Lucky Omoluwa at the Heathrow Airport and had taken him to the Police Station for an Interview. During an interview at the Station, Mr. Omoluwa was confronted with the fact that the Award of the Installation of Televisions in Plateau State was a kickback given to him, to purchase for the Defendant Flat 28, Regents Plaza Apartment, 8 Greville Road, London NW8, in the United Kingdom at the Sum of **£395, 000 (Three Hundred and Ninety Five Thousand Pounds)**. According to Detective Peter Clark, Mr. Omoluwa denied this fact but Mr. Omoluwa's Driver by name Mr. Wagdi Mikhail, had told him that on a particular day, he drove Mr. Omoluwa and the Defendant to view the Flat at Regent Plaza.

According to this Witness, sometime in September 2001, Pinnacle Communications purchased the Flat at Regent Plaza for the Defendant using a Pseudo-Name through Rowberry Morris Solicitors, from its United States Dollar Account with the Barclays Bank.

Now, it is expected that the Prosecution lead Positive Proof of the **REAL INTENTION** for the Funds of N250 Million given by the Defendant to Pinnacle Communications Limited. The Defendant had both in Typed and Handwritten Instructions set out this Sum for the Benefit of Pinnacle Communications. He had also in his Extra-Judicial Statements in **Exhibit P13C**, stated thus: -

“Even the disbursement of N250M to Pinnacle was purely on executive discretion, since funds earlier meant for the TV refurbishing has been for Ecological areas. This is management by exception. As long as the ends justifies the means, it is still within the Chief Executive to exercise this function for the overall good of the State.”(Sic)

Chief Joshua Dariye, appears to imply that the Budgeted Funds for the Refurbishing of the TV Stations had been utilized for Ecological Purposes and so, when the Funds for the Ecological Purposes arrived, he employed “Management by Exception Strategy”, (whatever that means), to allocate the Ecological Funds for the Use of the TV Station. The First thing that comes to mind, is that he was referring to the Question of Virement, in which case, there has to be Documentary Evidence to back this up. There was none adduced by the Defence through all the Documentary Exhibits they tendered before the Court.

Now, from the Documentary Evidence tendered from **Exhibits D22 to D33**, Eleven Documents, NONE had anything to do with this Management by Exception. More importantly, the Dates and Sequence of Events and their Narrations, just did not tally. It raised the Presumption that there was hidden somewhere another Contract for the Supply of TV and Radio.

It also appears that the Only Letter of Award furnished in **Exhibit D26A** was signed on the 5th of June 2001, which presupposes that the Contract Document had not been prepared as at June 2001. As at August 2001, the Tender Fee and the Registration had not yet been paid, which again presupposes that the Contract had still not yet been entered into. It is clear that Mr. Israel Dabel, collected this Award Letter in **Exhibit D26B** on behalf of Pinnacle Communications. The Conclusive Sentence in **Exhibit D26A** required Pinnacle Communications to call at the Ministry of Information, Jos, to **SIGN** the Contract Agreement.

The Date on **Exhibit P7**, particularly the Cheque Issued out to Pinnacle Communications for the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) was issued on the 20th of July 2001. That means, the Money was allocated to Pinnacle Communications before it paid the Tender Fee, before it paid the Registration Fee both in the Sum of Forty-Five Thousand Naira (N45, 000) and before this Company signed the Contract Agreement.

As at 6th of August 2001, there was NO Contract signed between Plateau State Government and Pinnacle Communications Limited, to warrant any payment for the Contract. The Defendant had also confirmed that he paid the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) to Pinnacle Communications for the Supply of Equipment to PRTV on the 20th of July 2001. Therefore, by the Logical Sequence of Dates and Events, the Payment he authorized cannot be for this Contract.

The Relevant Commissioner of Finance, Dr. Patrick Dakum, who testified as **DW13**, as well as the Accountant General of the State, did not testify about this Payment to Pinnacle Communications and ought to have known about it.

There is also the fact that by **Exhibit D30** dated the 5th of March 2002, Pinnacle Communications wrote to the Government demanding for the Payment of 80% of the Entire Contract Sum as agreed by the Parties. It is clear that there was a Further Formal Contract where it was agreed that the Contractor be paid 80% of the Entire Contract Sum as Initial Payment. This 80% was calculated by the Contractor to be Seven Hundred and Eighty Three Million, Forty-Five Thousand, Six Hundred Naira (N783, 045, 600). The Letter acknowledged on the 5th of March 2002, claimed that only the Sum of Three Hundred and Fifty Million Naira (N350, 000, 000) had been paid to the Contractor, as approved by the Government of Plateau State. Further, the Letter did not refer to any Payment of Two Hundred

and Fifty Million Naira (N250, 000, 000) to Pinnacle Communications for the Supply of Broadcast Equipment for PRTV.

Now, it is the Duty of the Accountant General and the Relevant Ministry to Disburse Funds to Contractors and the Witnesses who gave evidence on Government's Disbursement, confirm the fact that, it was not for the Governor to Disburse Funds directly to Contractors. Mr. Cyril Tsenyil, the Present Accountant General of Plateau State had testified on the Procedure for paying Contractors, to include the Accounts Department of Ministries, Parastatals and Agencies and it was for the Accountant General, to disburse the Funds of Plateau State Government. Further, there is evidence led by the Defendant's own Witness, Mr. Paul Datugun, **DW7**, the Central Cashier, who stated that only the Accountant General controlled the Incomes and Expenditures of all Ministries, Parastatals and Agencies and more importantly, he had stated that No Government Official, including the Governor, could sideline the Central Cashier, in order to pay any Contractor.

Since the Defendant, had paid the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) in respect of the PRTV Equipment to Pinnacle Communications, his Commissioner of Information ought to have known this Fact and the Defence, ought to have called the Relevant Commissioner, who would have had knowledge of the Payment made by the Defendant or produced Records of this Payment.

It is worthy of note that the Draft Covering the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) paid to Pinnacle Communications, emanated from the Central Bank of Nigeria's Cheque meant for Ecological Purposes, that is, it was meant for Reclamation and Channelization. The Defendant in both Handwritten and Typewritten Instructions had instructed the All States Trust Bank Plc., to issue a Draft in favour of Pinnacle Communications, contrary to the Directive in the Central Bank of Nigeria Cheque and contrary to the Purpose in the Payment Voucher from the Ecological Funds Office in Abuja as seen in **Exhibit P14**. By the Evidence rendered by Detective Musa Sunday, **PW1**, this Sum was traced to Pinnacle Communications, and the Company confirmed receipt of the Funds on the ground that it was a Contractor with the Plateau State Government.

The Purpose of the Funds was diverted from Ecological Purposes to TV and Radio Services and there had got to be a very good reason to justify the Diversion. The Prosecution had attempted to explain the Purpose for this Diversion, to be for the Purchase of a Flat in London, by the Chairman/CEO of Pinnacle Communications for the benefit of the Defendant. He had based his Submission on the fact that this Flat was purchased in September 2001 and also on the Statements obtained by the Metropolitan Police from Mr. Lucky Omoluwa and the Defendant. He had referred to Bank Statements from Knightsbridge, Tape Recordings of the Defendant obtained during his Arrest, BUT had not furnished any of these Evidence before the Court. The fact that the Dates of 20th July 2001 and September 2001 are Close in Time, does not naturally say, that the Payment, was for that Purpose.

Had the Prosecution tendered the Initial Deposit sent to Rowberry Solicitors and their Bank Account, or even the Statement of the Driver, Mr. Wagdi, and summoned Mr. Lucky Omoluwa or his Cousin, and furnished their Bank Statements, perhaps, and only perhaps, could claim to prove the Direct Linkage between the Payment of the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) made on the 20th of July 2001 to the Purchase of the Flat in London at some uncertain date in September 2001.

He failed woefully on this Score.

What he was able to establish however, was that the Funds meant for Ecological Purposes were Misappropriated and Disposed of contrary to the Mandate on the Payment Voucher from the

Ecological Funds Office in Abuja and contrary to the Financial Rules and Regulations of his State. The Evidence that the Principal Financial Accounting Officers were in the Dark about this Payment, and the Manner in which it was routed to Pinnacle Communications, shows a Dishonest Intent on the Part of Chief Joshua Dariye.

Even if his evidence was to be believed, the Draft issued in favour of Pinnacle Communications, on the Direct Instruction of the Defendant, ought not to have happened, as it is expected that the Draft for Payment to Pinnacle Communications, ought to have emanated from the Ecological Funds Account of Plateau State or from any of the Plateau State Governments in General. The AllStates Trust Bank Plc., had no business to pay Pinnacle Communications and the Court finds that the Defendant, as a Public Officer, being entrusted with Dominion and Control over the Ecological Funds, granted by the Federal Government of Nigeria, and which was meant to Solve the Ecological Problems in Plateau State for the Reclamation and Channelization of Problem Areas, committed Criminal Breach of Trust in respect of the Sum of Two Hundred and Fifty Million Naira (N250, 000, 000) by wrongfully paying Pinnacle Communications from an Account other than the Plateau State Government Account. This Payment amounted to an Unlawful Disposal of the Funds, committed in a Dishonest Fashion, contrary to his Oath of Office and the Financial Instructions, Rules and Regulations of Plateau State and is found **Guilty** as charged under **Count 23**.

THE 2ND SET OF CIRCUMSTANCES- MONIES FROM THE ACCOUNTS OF PLATEAU STATE GOVERNMENT AND ACCOUNTS OF THE ACCOUNTANT GENERAL OF PLATEAU STATE

For the ease of understanding the Evidence to be presented, it is initially necessary to categorize the Offences of Criminal Breach of Trust in **Counts 8, 10, 13, 15, 17, 19 and 21**, dealing with the Funds belonging to Plateau State Accountant General and Funds belonging to the Government of Plateau State, under Two Subheadings, namely: -

1. Funds belonging to the Accountant General of Plateau State, as contained in **Counts 8, 10 and 19**; and
2. Funds belonging to the Plateau State Government as contained in **Counts 13, 15, 17 and 21**.

Under the First Subheading, the **Funds belonging to the Accountant General of Plateau State**, as contained in **Counts 8, 10, 17 and 19**, which are in respect of the Sums of **Two Hundred and Four Million Naira (N204, 000, 000)** and the **Two Sums of Fifty-Three Million, Six Hundred Thousand, Sixty Hundred and Forty-Three Naira, Five Kobo (N53, 600, 643.05)** respectively, will be treated. As regards **Count 17**, even though this Sum of **Two Hundred and Seventy-Three Million Naira (N273, 000, 000)** is properly categorized under the Second Subheading, the Transactions between it and **Count 8**, are from the same Source and will be treated together.

Under the Second Subheading, the **Funds belonging to the Plateau State Government** as contained in **Counts 13, 15 and 21**, in respect of the Sums of **Ten Million Naira (N10, 000, 000)**; **Twenty-Five Million Naira (N25, 000, 000)**; and **Twenty-One Million Naira (N21, 000, 000)** respectively, will also be treated.

The Prosecution in his Presentation of Supporting Evidence on all the above Counts, called **Four (4) Witnesses** to harness the Allegations, while the Defence, in Rebuttal, presented a total of **Ten (10)**

Witnesses, and their Evidence, both Oral and Documentary, Specific to these Charges will be set out for Analysis.

PW1, Detective Musa Sunday, stated that his Team investigated Diamond Bank Nigeria Plc. (then Lion Bank Plc.) due to the heavy inflows of Funds into Ebenezer Retnan Ventures Account, where it was discovered that Cheques bearing different amounts from the Plateau State Government Accounts, domiciled with the Lion Bank, were paid into Ebenezer Retnan Ventures' Account.

From his Analysis of the Plateau State Government Lion Bank Plc. Statement of Account, he requested Diamond Bank Plc. to furnish him with the Instruments, which they complied and forwarded the Cheques. These Cheques were tendered into evidence as **Exhibit P11**. In Court, he analysed **Exhibit P11** the then Lion Bank Cheques, which had been initially paid in favour of the AllStates Trust Bank Plc., but which had subsequently been repaid into Ebenezer Retnan Ventures' Account, as follows: -

- 1. The Cheque of Three Million Naira (N3, 000, 000) from Lion Bank to AllStates Trust Bank Plc. was cleared into the Account of Ebenezer Retnan Ventures and the source of the Funds of Three Million Naira (N3, 000, 000) was the Plateau State Accountant General's Account domiciled in Lion Bank.**
- 2. The Lion Bank Cheque covers the Bank Draft of Five Million Naira (N5, 000, 000) and it was payable to AllStates Trust Bank Plc., the source was from the Plateau State Accountant General's Account paid into Ebenezer Retnan's Account.**
- 3. The Cheque of Two Million Naira (N2, 000, 000) was payable to AllStates Trust Bank Plc. with the source being from the Plateau State Accountant General's Account payable to Ebenezer Retnan's Account.**
- 4. The Cheque for the Sum of Fifteen Million Naira (N15, 000, 000) dated the 24th of November 2001, was made payable to AllStates Trust Bank Plc. and cleared into Ebenezer Retnan's Account.**
- 5. The Cheque's date is obscure but PW1 thought it could be the 6th of April 2000 and was for the Sum of Eleven Million, Seven Hundred and Fifty-Five Thousand Naira (N11, 755, 000.00) payable to AllStates Trust Bank Plc. from the then Lion Bank Account of the Accountant General of Plateau State and was payable into Ebenezer Retnan's Account.**
- 6. The Cheque dated the 23rd of October 2001 was for the Sum of Ten Million Naira (N10, 000, 000) paid to the AllStates Trust Bank Plc. from the Plateau State Accountant General's Account and was paid into Ebenezer Retnan's Account.**
- 7. The Lion Bank's Cheque was dated the 7th of May 2001 for the Sum of Five Million Naira (N5, 000, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**
- 8. The Lion Bank's Cheque dated the 9th of August 2000 for the Sum of Ten Million Naira (N10, 000, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Accountant General of Plateau State Government's Account.**

9. **The Lion Bank's Cheque dated the 29th of November 2000 for the Sum of Fifty-Three Million, Six Hundred Thousand, Six Hundred and Forty-Three Naira, Five Kobo (N53, 600, 643.05) was paid to AllStates Trust Bank Plc. and was further paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**
10. **The Lion Bank's Cheque was dated the 17th of January 2001 for the Sum of Eight Million Naira (N8, 000, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**
11. **The Lion Bank's Cheque was dated the 17th of January 2001 for the Sum of Six Million Naira (N6, 000, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**
12. **The Lion Bank's Cheque was dated the 8th of January 2001 for the Sum of Six Million, Three Hundred Thousand Naira (N6, 300, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**
13. **The Lion Bank's Cheque was dated the 24th of November 2001 for the Sum of Twenty-One Million Naira (N21, 000, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**
14. **The Lion Bank's Cheque was dated the 17th of January 2001 for the Sum of Six Million Naira (N6, 000, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**
15. **The Lion Bank's Cheque was dated the 24th of November 2001 for the Sum of Four Million Naira (N4, 000, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**
16. **The Lion Bank's Cheque dated the 29th of October 2001 for the Sum of Ten Million Naira (N10, 000, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**
17. **The Lion Bank's Cheque with an unclear date in March 2001 in the Sum of Four Million, Nine Hundred and Fifty-Nine Thousand, Eight Hundred and Twelve Naira, Eighty-Six Kobo (N4, 959, 812.86) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account; and**
18. **The Lion Bank's Cheque dated the 24th of August 2001 for the Sum of Three Million, Two Hundred Thousand Naira (N3, 200, 000) was paid to AllStates Trust Bank Plc. and was paid into Ebenezer Retnan's Account and the source was from the Plateau State Government's Account.**

The other Cheques and Drafts mentioned were repetitions and were traced to the AllStates Trust Bank Plc., who then paid these Sums into Ebenezer Retnan Ventures' Account. He stated that all the

Drafts paid into Ebenezer Retnan Ventures Account were raised in the Name of AllStates Trust Bank and not in the Name of Ebenezer Retnan Ventures.

According to Detective Musa Sunday, the Sum of **Two Hundred, and Four Million Naira (N204, 000, 000)** was traced into the Account of Ebenezer Retnan Ventures' Account with AllStates Trust Bank Plc. and its Origin was found to be from the Plateau State Accountant General's Account domiciled in Diamond Bank. The Team then asked the Bank to furnish this Cheque, which they did through a Covering Letter.

The Certified True Copy of the Diamond Bank Plc.'s Letter dated November 24th, 2004 together with the attached Statement of Account, which included the Request for a Bank Draft and a Photocopy of the Cheque of **Two Hundred, and Four Million Naira (N204, 000, 000)** was sought to be tendered into evidence by the Prosecution. G.S. Pwul SAN objected to the admissibility of the Last Page of this Document, which was the Cheque, on the basis that the Certification seen on the Document was miles away and further down in the Cheque and therefore irrelevant. Rotimi Jacobs SAN, responded to this Objection by pointing out the requirement of **Section 104 of the Evidence Act 2011** and the Objection was overruled with the Documents admitted as **Exhibit P12**.

In the course of their investigation, the Team found that there was no Contract of any kind between Plateau State Government and Ebenezer Retnan Ventures.

In the course of investigating the Accounts, and the Account Holder, who was the Defendant, the Team discovered that part of the Monies were used by the Defendant to purchase Properties and Interim Forfeiture Orders were obtained in regard to those Properties.

As regards **Exhibit P12**, he stated that it relates to a Diamond Bank Draft for the Sum of Two Hundred, and Four Million Naira (N204, 000, 000) issued from the Account of the Accountant General of Plateau State, and was initially payable into the AllStates Trust Bank Plc. but eventually ended up being paid into Ebenezer Retnan Ventures' Account. The Instruction for these Payments was by the Accountant General, then Mr. Shem Damisa, Mr. Nuhu Ali Madaki, the then Deputy Director, Treasury and Mr. Silas Von But, the then Deputy Director Inspectorate II.

These Officers were invited to the EFCC to explain the jobs executed by Ebenezer Retnan Ventures, but they could not produce any Document or Contract Documents explaining why this Sum of Two Hundred and Four Million Naira (N204, 000, 000) was paid into Ebenezer Retnan Ventures' Account. Their failure to show any reason, led to the institution of Criminal Charges against them.

The Defendant was then invited and volunteered his Statement at the Commission, making some Additional Statements. Detective Musa Sunday testified that the Administrative Cautionary Words were read to him, whereupon he read it and signed under the Cautionary Words, making his Statement in his own Handwriting. He signed the Pages of his Statements and he, PW1, countersigned as Witness to these Pages. These Statements made on the **12th of June 2007, the 13th of June 2007 and the 15th of June 2007** were tendered into Evidence with No Objection whatsoever raised by the Defence and were all admitted as **Exhibits P13A, P13B and P13C** respectively.

Further investigations revealed that the Salary of a Sitting Governor as at Year 2007, was the Sum of Two Hundred and Fifty Thousand Naira (N250, 000) Monthly.

Under Cross-Examination, Detective Musa Sunday stated that there was no Complaint from Plateau State Government over any Loss of Funds.

He further stated that **Exhibits P13A, P13B and P13C** were Voluntary Statements made by the Defendant without duress, and were obtained under freewill conditions. Therefore, he did not consider them as Confessional, otherwise he would have taken the Defendant together with his Statements before a Superior Officer for Endorsement.

During their investigations at Lion Bank, the Data on those Cheques were perused and the Managing Director, Mr. Mike Abdul, made Statements to the EFCC and also forwarded Documents. The Senior Counsel representing the Defendant, then tendered through this Witness, the Statement made by Mr. Mike Abdul, without any Objections as **Exhibit D3**. In this Statement, Mr. Mike Abdul had explained that the Cheques were not from the Accounts of Plateau State Government, but during investigations, it was discovered that they were.

Detective Musa Sunday, when questioned further whether the Team discovered that the Payments made by Lion Bank traceable to Ebenezer Retnan Ventures Account with AllStates Trust Bank Plc., were for Payments for his Resignation as Board Member of Lion Bank, when he became Governor of Plateau State or whether they were Commissions for introducing the Accounts of Julius Berger Plc., Anambra State Government and General Engineering Limited, responded that these Commissions, were not part of what was recovered and marked as **Exhibit P11**, the Itemized list of Lion Bank Cheques.

He did not personally conduct any investigations at the Direct Labour Agency but came across the Name when the Defendant was making his Statement and it was incorrect to say that this Agency had any connection with the Sum of N204, 000, 000.

He was told by the Defence Silk that this Sum together with the Sum of N53, 000, 000 were used to purchase Equipment for the Direct Labour Agency and he responded that his investigation did not reveal that fact, which was why the EFCC filed Charges against the then Accountant General of Plateau State, Mr. Nuhu Madaki and Others, who were Signatories to the Plateau State Government's Accounts.

He was referred to **Page 11 of Exhibit P13A**, where the Defendant had claimed that the above Sums were Reimbursements for the Procurement of Equipment he had bought using his own Account, for the Direct Labour Agency. To this, Detective Musa Sunday, replied that the then Accountant General, Mr. Nuhu Madaki could not prove this fact by presenting a Payment Voucher in regard to these Payments, which would have had other Documents or Approvals attached to it, justifying the Payments. They were therefore automatically charged to Court for allowing Government Funds to go into the Private Individually Owned Company Account of the Defendant, even though it was not a Registered Company.

Detective Musa Sunday stated that he did not personally visit the Direct Labour Agency to confirm whether the Equipment was eventually bought. When some Members of his Team led by Mr. Iliyasu Kwarbai visited Jos, Plateau State, they were beaten and attacked by the Defendant and his Team. The Inspector General of Police, Force Headquarters investigated this Attack and issued a Report. With this, he could not tell whether any other Member of the Team visited the Direct Labour Agency. He also did not see any Letter of Request from this Agency seeking Equipment and could not remember whether one Mr. Emmanuel Agati, the Commissioner of Finance, provided a Letter of Written Approval for the Payment of N204, 000, 000 to the Agency and did not ask Mr. Agati to provide the Vouchers.

With this piece of evidence, the Defence concluded their Cross-Examination and there was no Re-Examination.

PW4, Mrs. Mobolanle Folaranmi, the Public Servant and Assistant Director with the Claims Resolution Department of the Nigeria Deposit Insurance Corporation (herein after referred to as NDIC) also tendered in this regard, the Statement of Account of Ebenezer Retnan Ventures, which was admitted as **Exhibit P15C**.

PW5, Cyril Tsenyil, the Accountant General of Plateau State testified under Oath that from the Year 2000 he was the Personal Assistant to the Speaker of the House of Assembly of Plateau State. He was invited by the EFCC on the 2nd of June 2015 through a Letter, which contained a List of Account Numbers evidencing transactions dating back to the Year 2000, and was asked to bring the Documents together with the Cheques evidencing certain transactions, the Payment Vouchers and the Bank Statements. He engaged his Staff to search for the Requested Documents, which could not be found and he wrote to Diamond Bank to avail him with the Statements of those Transactions. Before he got possession of the Documents from the Bank, he reported the progress of his search to the EFCC who asked him to produce some Staff who were present during the reported Transactions, and one of them was Mr. Paul Datugun, General Manager, Direct Labour Agency. They were not able to trace any Voucher relating to the Cheques from their Records.

He explained that the role of the Accountant General is to ensure that the Defined Channels through which Payment Vouchers are generated, follow Due Process, in that there must be an Approval by the Executive Governor or an Accounting Officer of a Ministry, Department and Agency, whose Approval is sent to the Director of Treasury to Process the Approval for Payment. The Director of Treasury then sends it onwards to the Account (Other Charges) or Account (Salaries) depending on the case, to raise the Payment Voucher. After the Auditor checks this Payment Voucher, it is passed back to the Accountant General, to check whether the Payment Voucher together with the Attachments such as the Initial Approval, etc., satisfied the requirements, whereupon he authorizes Payment either through the Medium of a Cheque or by e-Payment Instructions. He added that the Accountant General would not pay out Government Monies without the Vouchers.

He was questioned as to the basis in which a Governor of a State can lend his State Money or assist his State in buying things, and his response was that he did not know of any basis, or of any modality for lending the State Money. A Governor approves Payment of all the State's Expenditures.

Mr. Cyril stated that the modalities for borrowing State any Money are firstly that the Ministry, or Agency or Department needing to borrow Money will first of all raise a Memo to the Executive Governor of the State intimating him of the need to borrow a certain amount, and once Approval is obtained from the Governor, that Ministry will go on to the next level by approaching either a Financial Institution or Bank, seeking such Loan. The Lending Institution would need to see the Executive Council's (EXCO) Resolution and also that of the House of Assembly's Resolution in a Democratic Setting. He added that the Repayment of this Sum borrowed, would not be to a Third Party or Stranger to the Loan but to the Creditor directly. He stated further that since he assumed Office as the Accountant General of Plateau State, he had never heard of Ebenezer Retnan Ventures lending the Plateau State Government, any Money.

Under Cross-Examination by the Defence, he stated that the first time he came across the List of Cheques was when they were shown to him by the EFCC and at the time the Transactions took place, he was not the Accountant General of Plateau State. Therefore, he would not know whether the conditions for their Payments were met or not and whether the then Accountant General was

satisfied that all Procedures for their Payments were fulfilled. He heard as every Citizen did, that the EFCC visited the Ministry of Finance Headquarters. He did not know of any circumstances where the Governor would make purchases or spend Government Money out of an Emergency or Unusual Exigencies.

However, he was aware of the Term, "Approval in Anticipation of Ratification", by the EXCO, which means the Governor need not wait for the Usual Procedure before Approving. To his understanding, an Approval could be gotten in advance pending the Certification of that Approval by the EXCO and this would normalize the Earlier Approval given by the Governor. The Accountant General is principally concerned with the Governor's Approval to Process Payment and once that Approval is sighted, it would be Processed.

He did not think that it was proper for a State Governor to borrow his State any Money and did not know of any State Governor that borrowed his State any Money.

PW6, Mr. Celestine Idiaye, the Banker working with Diamond Bank, Central Area, Abuja, is the Designated Cloister Control Manager in the Internal Control Unit of the Bank. The EFCC requested from his Bank the details of some Old Lion Bank Accounts, based on the fact that Diamond Bank had acquired the Old Lion Bank. The Accounts in question were as follows: -

1. The Accountant- General's Account;
2. Plateau State Water Board Account;
3. Plateau State Investment Account; and
4. Accounts Payable Accounts/ Project Account.

Some of these details were accessed, confirmed, certified and sent to the EFCC together with their Certificates of Identification and he tendered the Statement of Account of the Accountant General of Plateau State, as **Exhibit P16**; the Statement of Account of the Accountant General, Capital Project, Jos as **Exhibit P17**; and the Statement of Account of the Accountant General/ Accountant General Capital Project, Jos as **Exhibit P18**.

All the above were admitted without any Objections by the Defence. There was no Cross-Examination of this Witness by the Defence and this testimony, concluded the Presentation of the Evidence led in this regard by the Prosecution.

DW1, Adonye Roberts, formerly a Banker with the AllStates Trust Bank Plc., and once an Account Officer managing the Accounts of Ebenezer Retnan Ventures Account, stated that he received Instructions from the Defendant either through Letters or Cheques.

DW2, Honourable Geoffrey Teme, Former Majority Leader of the Plateau State House of Assembly in 2003, presently works with the Plateau State Government as a Legislative Liaison Officer. As regards the Direct Labour Agency, this Witness testified that the Director of the Direct Labour Agency was invited to brief the House of Assembly's Committee on the mode of purchase, and they inspected the Equipment. According to him, had something been amiss, it would have been contained in their Report.

Under Cross-Examination by the Prosecution, he was unaware of the Procedure for disbursing Public Funds but stated that no Withdrawal of State Funds could be made without the knowledge of the Accountant General of the State, who handles the State's Finances. He was also aware that a Payment

Voucher would need to be raised by the Permanent Secretary, before any amount is withdrawn from that Account.

He was not sure when the Direct Labour Agency Law was passed or when the Agency itself was set up, as he was not a Legislator at that time nor a Member when the Equipment were purchased by the Agency.

He agreed with the Prosecution that what he had earlier testified as to the Summoning of the Head of the Agency and his evidence pertaining to the Procurement of the Equipment, were not reflected in the House of Assembly Committee Report. He also agreed with the Prosecution that the Committee's **Recommendation 5**, which had found the various Allegations against the Defendant to be baseless and unsubstantiated, was a wrong recommendation. However, he disagreed that **Recommendation 6**, which exonerated the Defendant was not wrong, though he later flipped by saying it was wrong the Defendant was exonerated on the Allegations of the Ecological Cheque.

He further stated that the House of Assembly adopted the Report at Plenary, and even though there was a Resolution, which ought to be contained in another Paper, there was no evidence of such Resolution in **Exhibits D6 or D7**.

According to him, his own Personal Company did not execute any Contract for the Plateau State Government, and around September 2006, when his Company was awarded a Contract by one of the Local Governments in Plateau State, he had already resigned as a Board Member of his Company even though he was still the Sole Signatory of the Account.

There was no Re-Examination.

DW3, Mr. John Mike Abdul, a Former Deputy Governor of Nasarawa State from Years 2007 to 2011, and now a Businessman and Politician, testified that he and the Defendant were once Co-Workers at Lion Bank Plc. Whilst the Defendant eventually served on the Board of Directors as a Director, he rose through the Ranks to become the Managing Director and Chief Executive Officer of the Bank.

At the time he served as the Managing Director of Lion Bank Plc., the EFCC requested the Bank to supply information on the Mandate of some of Plateau State Government Accounts, which they obliged. Thereafter, the EFCC wrote another Letter demanding explanations on certain Cheques. He could not meet up with the Request at the time, because the Bank had just lost the Chairman of the Board, and had also only just moved its Headquarters from Jos to Abuja. On his resumption after the funeral, he received another Letter from the EFCC demanding for Certain Instruments that were issued.

He was invited to the EFCC Office, where he tried to explain his inability to provide the requested information on time since he had just resumed and needed time to put it together. The EFCC did not accept his explanation, so they conveyed him to their Lagos Office around the 10th of March 2004, where he made a Statement, which he identified as **Exhibit D3** in Court.

His Second Statement dated the 1st of February 2006 was written long after he left the services of Lion Bank. Whilst in EFCC Custody, the then General Manager Lion Bank replied the EFCC's Letter dated the 15th of October 2004, through a Letter dated the 11th of November 2004, explaining Certain Issued Instruments. The Letter of Explanation from the Bank was tendered without any Objection and admitted as **Exhibit D8**. Another Letter from the EFCC requesting further information was tendered without Objection as **Exhibit D9**. A Staff named Mr. Bismang replied and he tendered this Letter dated the 11th of November 2004 without Objection, which was admitted as **Exhibit D10**.

When he read the content of **Exhibit D10**, he reacted by asking whether a thorough investigation was conducted before writing the Letter, and the Staff in question explained that due to the pressure from the EFCC for a response, they could not travel to Jos and only collected the information by phone. Due to this pressure, errors were noted in the Letter and a Clarifying Letter dated either the 14th or 15th was dispatched to the EFCC. This Letter was admitted with an overruled Objection as **Exhibit D11**.

Exhibit D11 corrected the errors relating to **Three Drafts: 0081503, 0081504 and 0081502**. He stated that the first Letter of response had incorrectly reflected that the Drafts were issued from the Plateau State Water Board, as they were in fact issued from the Accounts Payable. He was shown **Pages 7, 8 and 9 of Exhibit P11**, a Letter from Diamond Bank Plc. to the EFCC dated the 17th of July 2006, and at **Page 7** he illustrated the above contention, that the Water Board had nothing to do with these Drafts. Even though the Beneficiary of the Drafts was AllStates Trust Bank Plc., the Money was *ab initio* meant for Chief Joshua Dariye, on whose instruction the Drafts were issued. On **Page 8**, as regards the **Draft Ending503**, he explained that the Money, the Sum of Six Million Naira (N6, 000, 000), came from Account Payable belonging to the Defunct Lion Bank Plc. with the Beneficiary being the AllStates Trust Bank Plc. It was also on Chief Dariye's Instruction that the Draft was issued, and the Money did not come from Plateau Investment and Property Ltd and further, was never debited from them. On **Page 9**, regarding **Draft Ending504** in the Sum of Six Million Naira, the same scenario as above played out, as the Source was from the Account Payable at Lion Bank.

Mr. Abdul's only Letter of Explanation to the EFCC dated the 15th of December 2004 was tendered and admitted as **Exhibit D12** without any Objection. In it, he had explained the Payments made to Chief Joshua Dariye as being Marketing Commissions for his Assistance in Securing the Accounts of Julius Berger Nig Plc., Transproject Nig Ltd, Industrial & General Engineering Ltd, and Anambra State Government, and he established a nexus between **Page 7 of Exhibit P11 and D12**.

According to him, the Defendant was justified to instruct the Payment of his Marketing Commission to AllStates Trust Bank Plc. for onward payment to his own Personal Account. To the best of his knowledge, the Sum of Six Million Naira (N6, 000, 000) was not siphoned from the Account of Plateau States Government. As regards the **Draft No. Ending 71277**, this represented a Parting Gift to the Defendant for successfully serving as a Director of the Bank for over Two Years, and it was payable from Lion Bank Account Payable to AllStates Trust Bank Plc., Account Payable.

In respect of the **Draft No. 81571** for the Sum of Three Million Naira (N3, 000, 000), dated 22nd of February 2001; **Draft No. 81628** for the Sum of Five Million Naira (N5, 000, 000) dated the 31st of May 2001, issued in favour of AllStates Trust Bank Plc.; **Draft No. 81695** for the Sum of Three Million Naira (N3, 000, 000) dated the 5th of September 2001; **Draft No. 81731** for the Sum of Four Million Naira (N4, 000, 000) dated the 11th of December 2001; **Draft No. 81730** for the Sum of Fifteen Million Naira (N15, 000, 000) dated the 11th of December 2001, Mr. Mike Abdul explained that all these Payments represent Marketing Commissions and Expenses in regard to when Lion Bank Plc. issued out Public Offer for Shares, in the Months of October through to December 2001. Chief Joshua Dariye had assisted the Bank to raise up to N2.28Billion from the Capital Market.

Again, as regards **Draft No. 81933** for the Sum of Two Million Naira (N2, 000, 000) and **Draft No. 81934** for the Sum of Five Million Naira (N5, 000, 000), both dated the 27th of April 2004, issued to AllStates Trust Bank Plc. in favour of Chief Joshua Dariye, these Sums, represented Commissions for his Assistance in Recovering Various Difficult or Bad Loans from Three Companies, and he added that Chief Joshua Dariye, was Primary Beneficiary of the Stated Drafts.

His Statement in **Exhibit D3** was made after he left the Services of Lion Bank Plc., and he reasserted the fact that Plateau State Water Board and the Plateau State Investment and Property Ltd, did not pay any Money into the Account of the Defendant.

Under **Cross-Examination**, the Prosecution, in a bid to ascertain the relationship between Mr. Abdul and the Defendant and also to pin down with precision their working relationship, questioned him extensively and Mr. Mike Abdul was able to tell the Court through the barrage of questioning that he did not remember when the Defendant joined Lion Bank as a Staff. He did not know the Date, the Month, the Year or the Period in which he served, all he knew was that the Defendant was employed as a Manager in the Internal Audit Department of the Bank for some Months and had left the Bank to work in Benue Cement. He could not also say with precision whether the Defendant left Benue Cement to become a Director in Lion Bank, or whether he left Lion Bank in 1989.

Mr. Mike Abdul stated he was a Managing Director from the Years 1998 to 2005, but could not say the Date or Month, except he referred to his Letter of Appointment. He named some Members of the Board of Directors and at the time he was appointed, he could not remember when the Defendant became a Director, whether he was a Director when he was the MD/CEO, or when the Defendant resigned as Director of the Bank, as it was the sole responsibility of the Company Secretary and Legal Adviser to know the Management of the Board of Directors.

He could not remember whether between the Months, 29th May 1999 and 30th December 1999, when the Defendant retired from the Board, that there was a Serving Governor engaged as a Director of their Board, but he knew that based on the Provisions of Companies and Allied Matters Act, that such a Director must resign his Appointment. He also was not aware whether the Defendant was campaigning for Political Office between 1998 and 1999. According to him, he could not recall whether the Defendant mentioned that he was a Director between 1998 and 1999, and could also not remember when the Defendant was appointed, or whether he served on the Board for Two Years.

The Prosecution then showed him, his remark in **Exhibit D12**, wherein he had represented that the Sum of Two Million, Five Hundred Thousand Naira (N2, 500, 000), was paid to the Defendant as a Director, who had served for over Two Years, and in reply, he could only say that he had obtained the Records from the Company Secretary.

He could not recall how many times Board Meetings were held, even though he was aware of the Statutory Provisions regarding Board Meetings. As at May of 1999, he could not remember how many Months he had served as a Director.

He set out the Ratio of Shareholdings in Lion Bank and how the Bank metamorphosed from a Limited Liability Company to a Public Company and could not remember whether the Defendant purchased Shares under the Public Offer. The Defendant, had sourced for Money for the Bank when Mr. Mike Abdul was Managing Director and was then a Serving Governor when Julius Berger, Transproject and Anambra State Government, all opened their Accounts with Lion Bank. He stated that the Defendant assisted the Bank to raise Money for the Public Offer when he was Governor. However, he did not know if he used his Position as Governor to do so. When the Defendant instructed the Bank to issue Drafts in favour of AllStates Trust Bank Plc., the Name of the Beneficiary Account was not furnished.

According to him, it was General Practice in the Banking Industry for Individuals who had solicited businesses for Banks to be paid Commissions and he did not know whether doing so to a Public Servant, constituted Gratification. To the best of his knowledge, what he did was Legal and as

Managing Director, he had a responsibility to his Bank, to ensure growth, to stay afloat and to protect investments.

Mr. Mike Abdul, detailed his Sources of Income when he was Deputy Governor of Nassarawa State, and as a Public Servant, he could not engage in businesses but could only indirectly partake. He was never solicited by any Bank nor paid any commission whilst he, was Deputy Governor of Nassarawa State.

Further, he reiterated the point that **Exhibit D10**, the Letter dated the 11th of November 2004 authored by his Subordinate, the then General Manager, Credit and Marketing Division of Lion Bank, was written in error as regards the Three Drafts. He was then shown **Exhibit D11**, in regard to the Draft Numbers mentioned, which had no Amount or Date stated, and he answered that he failed to state these Dates because those details were contained in an Earlier Letter.

The Prosecution then questioned him in regard to the Cheque dated the 25th of January 2001, issued by the Plateau State Investment Property Company Ltd, as well as the Draft of Six Million Naira purchased from the **Plateau State Water Board Account Number 013001612**. Also, in the same stream, he was showed the **Draft No. 81504** in **Exhibit D12** also dated the 25th of January 2001, which he identified and confirmed. When shown **Exhibit P11 at Page 9**, he re-identified the **Draft No. 81504** but stated the date was 17th January 2001. He gave a similar response in regard to the Six Million Naira **Draft No. 81503** in **Exhibit D10**, as well as the Cheque used to pay the Commission of Eight Million Naira and sought to justify the Disparity in the Dates, on the basis that at that time, the Bank had just moved its Headquarters and he was in EFCC custody in Lagos for Three Days when the flimsy mistake was made.

After his return, he wrote a Memo dated the 15th of December 2004 to the Board of Directors, wherein he explained all that had transpired, and the Memo was tendered by the Prosecution without any Objection and admitted as **Exhibit D13**. When asked if he mentioned the Three Errors in his Memo, he stated that the Letters were annexed to the Memo, but he did not state in the Memo that there was an Error. He did not take part in correcting the Errors in the Letter of the 10th November 2004, but his Officers did, in another Letter dated the 14th of November 2004.

He could not remember providing information on the Account Payable of the Three Cheques. He confirmed writing to the Director of the State Security Service (SSS), which the Prosecution tendered without Objection and was admitted as **Exhibit D14**, wherein he had chronicled Cheques in favour of AllStates Trust Bank Plc., but could not say if all the Cheques were issued in favour of Joshua Chibi Dariye.

Again, he was shown **Exhibit D10**, where an Instruction to issue a Cheque of 53.6 Million Naira from the Accountant General's Account was made, and he confirmed the Cheque to be the same Draft contained in **Exhibit P11 at Page 12**. He explained that at the time he wrote **Exhibit D14**, he was aware that the EFCC and SSS were investigating the Defendant, and had informed the EFCC that he had earlier supplied information to the SSS.

He did not know that the Cheques were meant for the Defendant, as the Account Signatories instructed Lion Bank to issue Drafts in favour of AllStates Trust Bank Plc., and their instructions were in accordance with their Mandate. He confirmed from **Exhibit D14**, that other Account Holders from Lion Bank, issued Drafts to AllStates Trust Bank Plc. on the instructions of Plateau State Government, such as: -

- a) *Eleven Million, Seven Hundred and Fifty-Five Thousand Naira (11,755,000.00) from the Accountant General's Office;*
- b) *Draft No. 71116 for the sum Ten Million Naira (10,000,000.00) from Zitta Holdings Ltd;*
- c) *Draft No. 71144 for the sum of Forty Million Naira (40,000,000.00) from Transproject Nig Ltd;*
- d) *Draft No. 71266 in the sum of Fifty-Three Million, Six Hundred Thousand Naira (53,600,000.00) from the Accountant General's Office;*
- e) *Draft No. 81715 in the sum of Ten Million Naira (10,000,000.00) from the Accountant General's Office;*
- f) *Draft No. 81729 in the sum of Twenty Million Naira (21,000,000.00) from the Accountant General's Office*

Mr. Mike Abdul was unaware that these above Detailed Cheques were paid into the Defendant's Account, but would not be surprised if these Monies were so paid. He stated that the Defendant had Three Accounts with Lion Bank, but none of these Commissions were paid into any of his Lion Bank Accounts. It was based on his Unwritten/Oral Instructions that the Drafts were raised in favour of AllStates Trust Bank Plc. According to him, the usual practice is when there is an Owner of an Account and a Third Party is paying him, the Owner can request for the Draft to be issued in his own name, although there could be an exception. He denied that these Drafts served the purpose to conceal the True Identity of the Defendant.

Mr. Mike Abdul stated that he approached the Defendant with a List of Clients he wanted the Defendant to aid the Bank with, and had promised a Commission. He and the Defendant did not enter into any Agreement and the Board was unaware of both the discussion and the Operational Cost, as he did not report to the Board, the outcome of their discussions. The Drafts were not issued directly by him, and there were Different Procedures for issuing Drafts and Documents to back them up.

According to him, Payments for Operational Expenses such as: - Accrued Interests, Marketing Expenses and Tax Liabilities are paid by the Operations Personnel, once Funds accrue and are available in the Accounts Payable, General Ledger, which is a Sundry Account, and the Monies contained in both Accounts, do not belong to the Bank, as the Commission/Amount, when accrued is reflected in the Account Payable, which he then decides and directs how much is to be paid as Commission.

Julius Berger who got Contracts from Advanced Payment Guarantees, had opened an Account with Lion Bank, and the Bank, as a result, had a good Turnover and they continued to maintain a good relationship thereafter. Quite a Number of Plateau State Parastatals, had Funds in the Sundry Account, but none from the Plateau State Government. However, he did not remember if Ebenezer Retnan Ventures, the Defendant's Account, had Occasional Activity of Lodgment or Withdrawals, but it was not a Dormant Account. He was told to read **Paragraph 3 of Exhibit D13**, wherein he stated that, at the Date **Exhibit D13** was written, the Account was Dormant.

The reason for his invitation to the EFCC Office on the 10th of November 2004 was in respect of the Letter demanding for Certain Documents. The Letter of the 4th of November 2004 was the first Letter written by the EFCC to the Bank, but was served while he was not in the Office. The Lion Bank's Letter of the 11th of November 2004 was in response to 4th of November 2004.

The Cheques issued in favour of the AllStates Trust Bank Plc. were issued from the Account Payable, Lion Bank, under his instruction and he, personally delivered them to the Defendant, at the

Government House in Plateau State. According to him, the Branch Manager carried out the instructions of the Account Holders for all Drafts issued on other Current Accounts that were domiciled with the Jos Branch. Further, he pointed out that the Location of the Issuing Branch of the Draft could be seen on the face of the Draft, with Copies of the Draft kept in the Same Location. He was shown **Page 3 of Exhibit P11**, and he identified the Issuing Branch of the Draft to be Abuja, and explained that perhaps, it was issued by Lion Bank Jos, but payable only for Clearance in Abuja.

The Drafts for the Sums of Two Million Naira (N2, 000, 000.00) dated the 20th of April 2004 and Eight Million Naira (N8, 000, 000.00) at **Page 7 of Exhibit P11** followed the same pattern as above. The Originals of all the Drafts should be at the Abuja Head Office of Lion Bank, and he did not know where they were cleared and paid, and into which Account, whether into Ebenezer Retnan Ventures' Account or otherwise. Mr. Mike Abdul's Statement to the State Security Service (SSS) was tendered and admitted without Objection as **Exhibit D15** but he denied lying when he made the Statement.

As regards Lion Bank Plc.'s Public Offer of Shares, Chief Joshua Dariye, was not an Agent and as at the Date Chief Dariye was paid the Commission, the Public Offer had not closed.

Exhibit D12 was shown to Mr. Mike Abdul with specific reference to the Payment in a Draft of Three Million Naira (3,000,000.00), made to the Defendant on the 5th of September 2001, a Period before the Public Offer of October to December 2001 and he explained this off, as a Pre-Marketing Commission, even though it was not stated in **Exhibit D12**. He agreed that he had written **Exhibit D12**, when facts were fresh in his mind and stated that the Defendant did not assist them in achieving the Entire 2.28Billion realised from the Public Offer and further, the Money given to the Defendant was not from the Proceeds of the Public Offer.

In answer to the question of whether the Bank uses Vouchers on their Account Payable, he replied that the Bank raises Entries. He was then shown **Exhibit D3**, his Statement dated the 10th of November 2004 and was referred to the Three Transactions from Account Payable, which were not from Plateau State Government Current Account, but were processed from Vouchers and Account Statements. He could not recall the Statement or whether he supplied the EFCC with the Document. Through this Witness, the Prosecution tendered with an Overruled Objection, a Telex/Fax evidencing the Requested Documents from the EFCC as **Exhibit D16**.

Items 5 to 8 in Exhibit D16 were referred to, and Mr. Mike Abdul, named the Beneficiaries, which showed that Plateau State Investment Company, Plateau State Water Board, the Accountant General and Transproject were the Account Holders, but he denied assisting the Defendant to manipulate the Documents.

Another Letter written by him to the EFCC dated the 25th of October 2004 was tendered and admitted as **Exhibit D17**. He could not recall whether the Statements and Cheque lodgments of the Account mentioned in **D17**, were furnished to the EFCC and finally, he denied manipulating the System.

Under **Re-Examination**, he stated that **Exhibit D13** was his own initiative to brief the Chairman of the Board of Directors on the Current State of Affairs. As regards **Exhibit D14**, which is Series of Drafts, he did not see them, because they were issued on Current Accounts and he did not know the Payee. There was no reaction in regard to this Letter from the Recipient.

As regards the Last Paragraph of **Exhibit D15**, he did not know Ebenezer Retnan Ventures prior to the Date of his Testimony, adding that Ebenezer Retnan Ventures did not have an Account with Lion Bank.

From **Exhibit D16**, he could not say who authored the Telex Message and could not recall acting on the Telex.

As regards **Exhibit D17**, Two Accounts belong to the Defendant, and the Third, Nanpe Associates, he stated they also belonged to the Defendant, and were all Dormant Accounts, adding further that he did not receive a Reply from the EFCC.

DW4, Engineer Danjuma Walman working with the Plateau State Government, Ministry of Works and Transport testified that the Direct Labour Agency was a Parastatal, under the Ministry of Works and Housing. This Nomenclature has now been changed to Plateau State Road Maintenance Agency. In the Year 2000, he was the Principal Mechanical Engineer in charge of the Central Mechanical Workshop, Ministry of Works and Housing and was privileged to head the Unit from 1995 to 2007. He was responsible to the Headquarters for duties of Maintenance of Vehicles, Plants and Machineries.

In Year 2000, Nine Vehicles and Seven Plant Equipment from Julius Berger were brought to the Central Mechanical Workshop, where he was in charge for security reasons. There were Delivery Notes for the Plants but none for the Vehicles. He carried out the Written Directive to release these Vehicles and Plants to the Direct Labour Agency. The Typed Handing Over Note, which had Columns, was signed by him as the Handing Over Officer and was received by the Taking Over Officer, the Secretary of the Direct Labour Agency, Mr. Binkul E. Zhinkul (now Late) and Mr. G. Dadel, a Civil Engineer, now Retired, all participated in the Handing Over Note and he tendered the Delivery Note from Julius Berger without any Objection as **Exhibit D18**.

He could not say how the Equipment was purchased from Julius Berger but could say that the Direct Labour Agency took Custody of the Equipment and had been working on Projects since 2000.

Under **Cross-Examination** by the Prosecution, Engr. Walman gave an extensive background of his work and educational history with the Plateau State Government and is presently the Director of Planning, Research and Statistics, Ministry of Works and Transport.

Towards the End of 1999, he received Equipment and the Handing Over Notes were made in March and April, and went on to give details of his Schedule of Duties. He was in charge of the Workshop and the Financial Disbursements. If Funds were released from the Headquarters, it would be the Mechanical Engineer that would disburse the Funds for all Repair Works. The Workshop Manager would usually receive Mechanical Equipment and then liaise between the Technicians and himself in the Workshop. He testified that he was not the person that received the Vehicles and Equipment from Julius Berger, which were all received on the same day, adding that his Section does not buy Equipment.

According to him, the Equipment were brought from the Headquarters and sent to his Unit on the 30th of October 1988 or 1999, as he was unsure of the Year, and the Ministry of Finance was in charge of Payment for the Equipment. The Equipment was with his Unit for about Two Months and subsequently moved to the Direct Labour Agency. He denied knowledge of the Payment. The Works Manager signed the Delivery Note in **Exhibit D18**.

The Prosecution then drew out the inconsistencies in the Dates, Signature and Name on **Page 9 of Exhibit D18**, the Delivery Note. On **Page 9**, Mr. Bodang signed on January 1st 1999, while on **Page 8**, the Date on the Delivery Note was 4th of December 1999 and on **Page 7**, from the Delivery Note from Julius Berger dated the 4th of December 1999, it was signed as received by Mr. Bodang on the 7th of December 1999. He tried to explain the Disparity in the Dates, by conjecturing that perhaps there

were disadvantages of movement for example, a Truck could breakdown and that would account for why they were not received on the same date.

He agreed he was wrong when he had earlier stated that the Equipment arrived on the same Date and Month. He also agreed with the Prosecution that since he was not the Person who received the Equipment, he was not in a position to state the Day and Month the Equipment was received and further agreed that the Officer who received them, did not state his Name, Sign or Date it. He handed over the Delivery Note to the Direct Labour Agency, who is in Custody of them, stating further that he had never worked for this Agency, only collaborating in areas of need. If he needed both the Delivery and Hand Over Notes, he would go to the Direct Labour Agency. He was shown **Page 1 of Exhibit D18**, whereupon he identified it to be his Handover Note dated the 27th of April 2000, a Period of Four (4) Months from December 1999.

From this Handover Note, the Name of Julius Berger was not indicated as it only stated that it was received "**from supplier**". He had been instructed by the Director of Mechanical Engineering to forward the Equipment to the Direct Labour Agency, who had gotten the Directive from the Commissioner.

Of the Entire Ancillary mentioned in the Delivery Note such as Tyres, Landings, Wheels, Battery and Electrolytes, the Name of Julius Berger was not mentioned except in regard to the Excavator. The Prosecution took him through the differences in the Dates of Delivery for these Items, where it showed that he released the above Items to the Direct Labour Agency on 15th of June 2000. **In Page 5** he released some on the 1st of June 2000, and in **Page 4** he released some on the 11th of May 2000. In trying to explain these above latent disparities, he stated the Items were Auxiliary Equipment handed over at a later date, which did not come together with the Plant. According to him, the Handover Note did not cover the Ancillary Items in **Pages 3 to 6 of Exhibit D18**.

Under **Re-Examination**, Engr. Walman stated that the Ministry kept Records, and **Exhibit D18** was gotten from his Records.

DW5, Mr. Stephen Igmala, the Acting General Manager of the Plateau State Road Maintenance Agency, formerly known as the Direct Labour Agency, had been in the Direct Labour Agency for the past Sixteen Years. In answer to **Exhibit D18 at Pages 1 to 12**, the Handover Notes, addressed to the General Manager, Direct Labour Agency, he stated that he only became aware of the Handover Notes after the Transactions.

In June 2000, the Ministry of Works gave them the List and the Equipment, which are still in use till date. He had no idea, when or how the State Government paid for them, and his Office, did not receive any EFCC Investigators in Jos, Plateau State, visiting to inspect their Equipment. However in March 2016, he was invited to the EFCC Headquarters in Abuja.

Under **Cross-Examination** by the Prosecuting Senior Counsel, he stated that he became the Acting General Manager of the Plateau State Road Maintenance Agency since June 2005, a Period of approximately One Year and Three Months. He agreed that the Period of his Acting, was over the Six Months stipulated period mandated under the Civil Services Rules.

He acknowledged writing his Statement when he visited the EFCC around March 2006 and reaffirmed his position of not knowing how the Equipment were procured, stating that he was not the Person who received the Equipment, but it was the Secretary of the Direct Labour Agency who did. The Equipment were fairly used, and included Tyres and Tubes. Further, he stated that since the Year

2000, the Agency had not procured any other Equipment, except for Minor Purchases of Diesel and Engine Oil, as well as replacing some Tyres and Tubes and all these, were effected through Direct Purchases from the Market. He was referred to **Items 15, 16 and 17 at Page 2 of Exhibit D18**, whereupon he described the Current State of Fitness and the Use of each of the Items mentioned therein. He agreed with the Prosecuting Counsel that his Agency had more Equipment than what was listed in **Exhibit D18**.

There was no **Re-Examination** of this Witness.

DW7, Mr. Paul Datugun, testified that in 2005, whilst assigned to the Ministry of Education, he observed pandemonium when EFCC Staff loaded Documents into Hilux Vans parked outside the Ministry of Finance. Upon his Transfer to the Ministry of Finance in January 2006, as Central Cashier, he stated that his Predecessor in Office, Late Bala Kwafud, informed him that the EFCC Officials had packed all the Documents from 1999 to 2005, when they invaded the Office of the Accountant General in the Ministry of Finance. He tendered into evidence the Subpoena issued by the Court as **Exhibit D19**. He could not produce the Documents requested for in the Subpoena, because they had been taken away by the EFCC, and when invited by the EFCC to produce Certain Listed Cheques, he had informed them that Documents were not handed over to him.

The Copy of his Statement to the EFCC was tendered and admitted as **Exhibit D20**.

Under **Cross-Examination**, he testified that as Revenue Cashier, he collects Revenues due to be paid to the Government, and he issues out Receipts and pays the Revenue into the Government Account. The Ministry of Finance receives Records of Expenditures and Revenues from all Ministries and both the Ministry of Finance and the Accounts Department of the Relevant Ministry, would retain a Copy of such Records. Monthly Returns and Expenditure are also rendered to the Ministry of Finance. He distinguished the Office of the Accountant General from that of the Ministry of Finance by stating that, whilst the Ministry of Finance controls its own Revenue and Expenditure, while the Accountant General's Office, controls all the Expenditure and Revenue of all Ministries, including that of Government House. He agreed that all Records contained in the Accountant General's Office will also be with the Ministry. He could not accurately tell the distance between the Ministry of Education Building (where he was working in 2005) and the Ministry of Finance, even though he could say, it was some Metres away. He also could not say the Month, Date and Time of the Invasion.

He did not see the particular Documents or their contents, allegedly carted away by the Operatives of the EFCC in Bagco Bags. He also did not see the Inventory of the Documents carted away, and neither did the Late Kwafud give the Inventory to him. He was not aware that the Accountant General was invited by the EFCC and charged to Court. He had spent a Week searching for the Documents at the Expenditure Control, without being able to identify them.

He testified that all Payments to Contractors must be made by his Office, the Central Cashier, and explained the Process to be that the Approval will come from His Excellency, through his Commissioner of Finance to the Accountant General, who will then forward same to the Director, Expenditure and from there to the Central Cashier for Payment. It was not possible for the Permanent Secretary, the Commissioner for Finance or even the Governor to sideline the Central Cashier and pay the Contractor directly. Therefore, it is the Accountant General's Duty to Disburse to Contractors and added that the Payment Ledgers, i.e., Cash Books is in his custody.

There was no **Re-Examination** for this Witness.

DW8, Mr. John Gozen Gobak, a Non-Executive Chairman of the Government owned Agricultural Services, Training and Marketing Limited, described his various roles and positions of appointment through the Defendant's Tenure till date.

Under Cross-examination, Mr. John Gozen Gobak, when questioned about Two of his Personal Companies, he stated that he never operated them, complying with the Code of Conduct, and never did any business with the Plateau State Government.

Most of his work whilst serving under the Defendant, did not pertain to issues that involved finance, and he never handled the Funds of Plateau State Government.

In describing the Process of Award of Contract for the Ministry, he stated that there is a Ministerial Tenders Board, who considers the Contract and the Amount involved, to determine whether the Contract Sum is within the powers of the Ministry. Where it is found to be above, Recommendations are made initially, to the State's Tenders Board, and then to the State Executive Council, for Approval. This Council consists of Commissioners and Members of the States Executives. The Council's Approval will go back to the State's Tenders Board, who will then publicly advertise for Bids. The Winner of the Bid would then be given the Contract to perform, and the Relevant Ministry, would supervise the performance of the Contract, with the Ministry of Finance, making Payments. He testified that he had never partaken in any of these Processes.

Aside of the Ministry of Finance making Payments, an Accounting Officer or Commissioner of Finance may make Payments if guided by the Civil Service Rules and the Directives given. He did not know the Particulars of the Charges the Defendant was facing, and stated that he detests Corruption.

When asked whether it was permissible for Revenues to be paid into a Private Account, he stated he had not come across such, but in the event it happens, a Committee will be set up to investigate whether it took place, and if so, the circumstances that led up to it.

According to him, he never had any reason to use Public Funds for Private Use. Finally, he stated that he will always be grateful to the Defendant for the Appointments he gave him and Loyalty demands, that he will give him Support. However, he was Loyal to the Defendant to the extent that the Defendant was Loyal to Nigeria.

There was no Re-Examination of this Witness.

DW9, Honourable Banahel Joseph Andong, the Acting District Head and Traditional Ruler of Monguna District, Jos, was also involved in the passing of the Direct Labour Agency Bill into Law. According to him, the Ministry of Works, Housing and Transport was the Parent Ministry and Supervisor of this Agency and he attended the Commissioning Ceremony of the Earth Equipment, which Plateau State Government bought from Julius Berger Construction Firm. This Equipment was moved to the Direct Labour Agency's Office. His Committee, supervised the work carried out by the Direct Labour Agency on Several Roads, adding that the Inspections were few and far between, due to Lack of Funds to go round the Projects. He explained that the Memo sent for Approval was only Partially Approved and did not know the Source of Funding of the Equipment purchased. He only heard about the Incident at the House of Assembly, from his friends.

Under **Cross-Examination**, he stated that he and some other Members of the APC Party formed the Plateau State Integrity Group, which had called for the probe of Mr. Jonah Jang, in their bid to free the State from Corruption. This Group, as well as himself, had never spoken against the Defendant.

He agreed that he could speak against an Administration he was part of, if not pleased. He was from the Same Local Government Area as the Defendant, and was of the Same Political Party and had served under him. While Serving in the House Committee on Works etc., one of his Roles was to see that Budgets were properly implemented, and all the Contracts awarded and executed, were duly appropriated for, under the Appropriation Law. He was also to expose Corruption in Ministries, if aware. He stated that the Direct Labour's Budget was appropriated for, agreeing that the Take-off Grant for the Purchase of Equipment etc. were Appropriated for by the House of Assembly, and he witnessed the Commissioning of the Equipment. He did not take part in the Purchase of the Equipment, but was aware that there was House of Assembly Appropriation for Erosion Control, when he was still a Member of the House. Some of the required Funds were released and he agreed that the Defendant did not solve all the Erosion Problems of the State whilst he was in Office. He did not know any Contractor handling the Erosion Issues or how they were paid. He also did not know that all Monies, Revenues of Plateau State Government were to be paid into Plateau State Government Account, and did not know how the Government receives Monies, but only knew of Statutory Allocations, which are received through Mandates and which are paid to the Plateau State Government Account.

According to him, it depends on Circumstances, Arrangements and Written Memos before Government Funds could be paid into a Personal Account. Whilst at the House of Assembly, he only knew of Salaries and Loans being paid into his Account, and he collected Cash for Committee Works. He added that the Entire Allocation of the House of Assembly would not be paid into his Personal Account, because he is not the House of Assembly. The Allocations of Funds meant for the Administration of Local Government Affairs were also not paid into his Personal Account, and there was never any Forum that would warrant that. However, if it were possible, he would do it as a Custodian. He was aware that the House of Assembly cleared the Defendant from wrongdoing but he did not participate in this Process. There was no **Re-Examination** of this Witness.

DW10, Mr. Gideon Mitu, the Deputy Director, Expenditure and Social Division from the Federal Ministry of Budget and National Planning and former Permanent Secretary, Abuja Liaison Office of Plateau State, stated that he was aware in Year 2001 of the Emergence of the Direct labour Agency, and was also aware of the Procurement of Earth Moving Equipment from Julius Berger Plc., as he participated in its Inspection together with Relevant Technical Committee Officials of the Ministry of Works before the Equipment were bought. He believed that the Defendant, in company of his Exco, might have inspected the Equipment. He was also involved in the Fax Correspondences in respect of the Purchase, and had submitted the Hard Copies to the State Ministry of Works. However, he had no part to play, in pricing the Equipment, and was not involved in the Delivery of Payment. He also did not know how much the Equipment went for. He could only remember Three (3) of the Purchased Equipment.

Under Cross-Examination by the Prosecution, he stated that he was not part of the Payment Process for the Purchase of Julius Berger Equipment, explaining that Payments was never routed through the Liaison Office, but it was a Direct Dealing, between the Ministry of Works and Julius Berger.

DW14, Honourable Aminu Agwan Zang, confirmed knowing Direct Labour Agency, when as Special Assistant to the Governor, it was his duty to go round some of the High Impact Projects and gave feedback to him. The then President, Chief Olusegun Obasanjo was to visit Plateau State, so Detailed Tours of these Projects were embarked upon especially in the Southern Senatorial Zone. Through the Ministry of Works and Direct Labour Agency, Heavy Infrastructural Works made inaccessible places in Plateau State, now accessible.

He was familiar with the word “Virement”, which is an Interim Transfer of Funds, to be utilised for Purposes other than originally meant for, with a view to returning the Funds, and stated that the Funds were utilised for Government Purposes.

According to him, he would not pay State Funds into his Personal Bank Account, and where it occurs, he would write a Memo. Further, depending on the circumstances, State Funds could be paid into the Governor’s Account, and in this instance he would not be surprised to know the Defendant paid State Funds, into his Personal Bank Account.

Now, after a very careful consideration of the evidence adduced before this Court in regard to **Counts 8, 10, and 19**, the Court finds that the Root Source of these Funds in these Counts, is the Amount stated in **Count 17** and therefore, they will all be considered in One Stream, starting from the Evidence led in regard to **Count 17**.

From a careful look at the Accountant General’s Statement of Account in **Account Number 0152130000105 at Page 8 of Exhibit P16**, which is *pari material* to **Exhibit P12 at Page 7**, it can be seen that on the 6th Day of April 2001, the Sums of Two Hundred and Four Million Naira (N204, 000, 000) and Sixty-Nine Million Naira (N69, 000, 000), were deposited in Cheque Form from Different Accounts Ending **031** and **032**, into the above stated Account Ending **105**. The Sum Total of these Deposits, amounted to Two Hundred and Seventy-Three Million Naira (N273, 000, 000) and as of the 12th of April 2001, can be identified as being held in a Fixed Deposit Account.

By **Exhibit P12 at Page 10**, the Accountant-General and the Deputy Director Treasury of Plateau State Government, in a Letter dated the 2nd of May 2001, wrote to the Manager Diamond Bank Ltd, Jos Branch, stating the following: -

“REQUEST FOR BANK DRAFT FOR N204, 000, 000. 00

Please issue Bank Draft in favour of AllStates Trust Bank Plc. payable in Abuja for the Sum of N204, 000, 000 (Two Hundred and Four Million Naira) only from our short term deposit account meant for Ecological Fund

2. Please treat as urgent...”

This Letter reinforces the point that the Funds in the Sum of Two Hundred and Seventy-Three Million Naira (N273, 000, 000) emanated from a Short Term Deposit Account, which was assigned for Ecological Purposes. On the Body of this Letter, the Manager ordered by his Minutes, the Termination of the Fixed Deposit and Transfer of the Principal and Accrued Interest to the Account Ending **105** belonging to the Plateau State Accountant General.

It is worthy of note that this Act of Transfer from one Account to Another by the Accountant General is a Prerogative, which he could Administratively Exercise, as long as it was a maneuver within the Accounts of the Plateau State Government.

The Questions to be asked are, **what** and **who** prompted the Gathering and Movement of this Sum of N273, 000, 000 from one Account to Another?

As evident from **Exhibit P12 at Page 10**, by the Instruction of the Accountant General and the Deputy Director Treasury to issue a Bank Draft from this Money in the Fixed Deposit, the Termination of the

Fixed Deposit, automatically ensued. There must have been a Pre-Communication between the Accountant General, Mr. Shem Damisa, and the Branch Manager, to terminate the Sum of N273Million, but the Document, if it exists, is not before the Court.

The Purpose for the Termination can be clearly seen on this Same Page, where the Bank Manager, was instructed to Issue a Bank Draft in the Sum of Two Hundred and Four Million Naira (N204, 000, 000) in favour of AllStates Trust Bank Plc., payable at Abuja. The Destination where the Draft was ordered to be paid to, raises an Eyebrow, because it could easily have been paid in favour of the Jos Branch of the AllStates Trust Bank Plc., where the Plateau State Government had its Account Domiciled. The Beneficiary and Purpose for this Action, was not stated in the Letter.

The Bank complied on the 3rd of May 2001, and raised a Diamond Bank Draft as seen in **Exhibit P12 at Page 11**, covering this Amount.

Therefore, by the Request made by Mr. Shem Damisa, the Accountant General, it is not plausible that he would wake up one beautiful morning and began to initiate either a transfer of Government Funds from one Bank Account to Another or from Bank to Bank, as any lodgment in any Account or Bank, is Controlled Funds. Any movement of Funds, in whatever form, must not only be authorized but the reasons must also be known and in fact, documented. This is the best way to hold a Government Accountable. Mr. Shem Damisa, the Accountant General, who gave this Instruction is not a Co-Defendant, neither is Mr. Nuhu Madaki, the Deputy Director Treasury, his Co-Signatory, is a Party or Parties in this Trial. Therefore, no definite pronouncement can be said in his regard. But consequent to the Instruction in **Page 10 of Exhibit P12**, the Diamond Bank issued a Draft payable to the AllStates Trust Bank Plc., Abuja in the Sum of Two Hundred and Four Million Naira (N204, 000, 000) as seen in **Page 9 of Exhibit 12**.

There is no evidence before the Court showing that this Sum was lodged into the Account of the Plateau State Government with the AllStates Trust Bank Plc., either in its Jos Branch or in its Abuja Branch. Finding its whereabouts perhaps could provide the answer, as this is the only missing jigsaw from the lot. It is only after ascertaining its whereabouts would the Court infer as what to say concerning the Sum of N273Million in **Count 17**.

According to **PW1**, Detective Musa Sunday, under Examination in Chief, he stated that this Sum of Two Hundred, and Four Million Naira (N204, 000, 000) was traced into the Account of Ebenezer Retnan Ventures' Account with AllStates Trust Bank Plc. and the Origin of this Payment was traced from the Plateau State Accountant General's Account domiciled in Diamond Bank. These Officers were invited to the EFCC to explain the jobs executed by Ebenezer Retnan Ventures, but they could not produce any Payment Voucher or show any Jobs executed nor did they show any Document or Contract Document explaining why this sum of Two Hundred and Four Million Naira (N204, 000, 000) was paid into Ebenezer Retnan Ventures' Account. Consequent upon their failure to show any reason, led to their being charged to Court.

Also, from **Exhibit P15C**, the Statement of Account of Ebenezer Retnan Ventures, the Sum of Two Hundred and Four Million Naira (N204, 000, 000) was paid into this Account by a Cleared Diamond Bank Draft. By his Extra-Judicial Statement, the Defendant had expressly acknowledged that Ebenezer Retnan Ventures Account was his OWN Account and it is its Statement of Account, that was the Crucible into which the Funds of the State was paid into.

By the Movement of this Money, it is clear that the Sum of Two Hundred and Seventy-Three Million Naira (N273, 000, 000) lost its Original Form and Content. From being a Short Term Fixed Deposit Sum, part of the Money had been disposed of, for the Use of Ebenezer Retnan Ventures. The Defendant was expected at this Point, to produce a Payment Voucher, justifying this Withdrawal to a Private Company. There was no such Voucher or any explanation as to the Specific Sum of Two Hundred and Seventy-Three Million Naira (N273, 000, 000). Further, even though the Defendant did not testify, he did not mention this Figure in his Extra-Judicial Statements, and during the Trial, the Defence adduced NO evidence through ANY Witness in regard to this Specific Sum. He was fully aware of this Allegation but did not address it.

There is also the fact that the Sum of Two Hundred and Seventy-Three Million Naira (N273, 000, 000), was for a Defined Purpose, which was for Ecological Purposes. It was NOT in evidence that Ebenezer Retnan Ventures performed any Ecological Services to the Plateau State Government or that Due Process was followed in regard to the Withdrawal from this Amount.

In the absence of contrary evidence justifying the Payment, it can be safely assumed that there was a Misappropriation of this Fund as well as the Disposal and its Use, which was diverted from its Origin Purpose to cater for Ecological Purposes. The Defendant, as the Chief Executive Officer approving every Expenditure of Plateau State, is found to have sanctioned its Disposal in a Circuitous Manner that only be described as Dishonest and is therefore found as a Public Officer, to have been entrusted with Dominion and Control over the Sum of Two Hundred and Seventy-Three Million Naira (N273, 000, 000) forming part of Plateau State Government, which he Misappropriated in Violation of his Oath of Office thereby committing Criminal Breach of Trust in respect of **Count 17**.

As regards **Counts 8, 10 and 19**, the evidence adduced was the same and would be treated in One Stride.

Learned Silk, Kanu Agabi SAN, representing the Defence, submitting on this Issue, stated that the Prosecution misunderstood the Allegations as he alleged Abuse of Office as opposed to Misappropriation. He stated that based on this faulty misconception, that the Prosecution proceeded to apply the evidence of the Witnesses called and the Exhibits tendered, and therefore every Submission made by him, is of no moment. According to him, the Foundation of **Count 8** was faulty and every Evidence and Submission made thereon is bound to fail.

Further, as regards **Counts 8, 10 and 19** in general, he submitted that the Evidence of Sergeant Musa Sunday was inconsistent with these Counts. He referred to the Contradiction in his Evidence, when he stated that Ebenezer Retnan Ventures was a Registered Company as opposed to the fact that it is an Unregistered Company and not in Existence. He also referred to the Testimony of Mr. Bamanga Bello, on the Status of the Venture and urged the Court not to pick and choose, which of the Two Pieces of Evidence to believe.

Learned Senior Counsel also referred to the Judgment delivered by My Learned Brother, Liman J., in **CHARGE NO: FHC/KD/144C/2004 in FEDERAL REPUBLIC OF NIGERIA VS AWE ODESSA& 5 ORS**, to state that His Lordship had exonerated the Defendant from Criminal Breach of Trust by stating, that the Disbursements was an Official Act of the Government of Plateau State.

Turning to the Extra-Judicial Statement of Chief Joshua Chibi Dariye himself, in **Exhibit P13A**, the Defendant had stated: -

“The issue of N53.6m and N204m that left Plateau State Govt Account Represents reimbursement of my a/c for which I had used my a/c to Procure equipments mostly from Ms Julius Berger which were being auction for the use of our Direct Labour Agency and there is evidence for this approval and Payment. Since these Equipments were going on Auction, I thought acting this way will not only Sustain the Vision of the Direct Labour Agency; but it was a Cost Savings to the State.”

“As per our Letter dated 29.03.01, this confirms the Procurements of Earth Moving Equipment for N204Million and N53.6m for the Direct Labour Agency. The domiciliation to AllStates Trust Bank is just for the clearing of my a/c for which funds have been Utilised for these Payments and Procurements.

Items procured as per approval are: -

			Qty		
1	CAT Bulldozer	D8H	1	35,000,000	35,000,000
2	CAT Bulldozer	D6H	2	N15M	30,000,000
3	CAT Bulldozer	D146	3	10M	30,000,000
4	Excavator	D235B	4	15M	45,000,000
5	Wheel Loader	966D	4	14M	56,000,000
6	Duetz Compressor	SL40 DS-1	3	4M	12,000,000
7	Duetz Roller	D412	3	4.5M	13,000,000
8	Duetz Dumper	D3475	3	N4.5	13,000,000
9	Tipper Trucks	M Benz	10	N3.5	35,000,000
10	Tipper Trucks	10W MAN	5	N3M	15,000,000
11	Parker Pickup	Mercedes	3	N1.5M	4,500,000
12	Peugeot	504SR	3	2.5M	7,500,000
13	Peugeot	505 Saloon	4	2.3M	9,200,000
14	Tipper Truck	Mercedes 6W	3	3.2	9,600,000
15	Delivery Truck				3,217,250
	from Kaduna and				
	Abuja				

Total Approval 319,017,250

It can be seen that the Total reached by the Defendant as approved is not the Same Total as the Total Sum of Two Hundred and Four Million Naira (N204,000,000) and the Sum of Fifty Three Million, Six Hundred Thousand, Six Hundred and Forty-Three Naira, Five Kobo (N53,600,643.05), which is the Sum of Two Hundred and Fifty-Seven Million, Six Hundred Thousand, Six Hundred and Forty-Three Naira, Five Kobo (N257,600,643.5).

However, it can be seen that the Defendant has directly stated that the Purpose for the Payments of these Sums into Ebenezer Retnan Ventures Account, was to serve as a Reimbursement for using his own Money to Purchase the Equipment for the Direct Labour Agency.

This does not qualify as a Virement and since there was NO urgency explained, as to why he used his Own Funds in the first place, it can therefore be seen as a Loan the Defendant granted to his State.

To Support his Contention, the Defendant called for Supporting Evidence from his witnesses. Before this Court is **Exhibit D20**, a Witness Summons dated the 13th of October 2016 with an Appearance

date of the 17th of October 2016, addressed to the Accountant General Plateau State, to testify and produce the Ledgers, Cheque Release Register, Payment Vouchers, Cash Books, Bank Statements, Receipts and Approvals.

All these Documents were in regard to Payments, which are reflections of the Counts under this Head, which emanated from the Accountant General's Account or other Accounts belong to Plateau State Government.

DW7, Mr. Paul Datugun, the Subpoenaed Witness tendered his EFCC Witness Statement dated the 16th of February 2016, as **Exhibit D20**. In this Statement, he narrated his responsibility, as Central Cashier and mentioned Series of Cheques. According to him, all the Summoned Documents were carted away by the EFCC, who again invited him to produce Certain Cheques, and he had informed them that these Documents were not handed over to him. Further, Mr. Bala Kwafud, now deceased, who was the Central Cashier when the Raid occurred, had told him that, all the Documents from Years 1999 to 2005 in the Office of the Accountant General were carted away by the EFCC. According to this Witness, he had observed the carting away of Documents by the EFCC, when he was in the employ of the Ministry of Education.

No Inventory of the Documents alleged to have been carted away were created, even though he was the Custodian of the Payment Vouchers, Cheque Books, including the other Documents contained in the Subpoena, addressed to the Accountant General, Plateau State, Ministry of Finance. Further, as a Civil Servant, he knew the appropriate channels to follow through, which his Superiors could recover the Documents alleged to be in the Custody of the EFCC, either by a Legal Action or otherwise. The question must be asked, what was searched for and why the Search, since the documents were already carted away? He ought to have said so, at the earliest, in **Exhibit D20**, his Witness Statement to the EFCC and his Superior, Mr. Cyril Tsenyil, the Accountant General, would have testified to this fact. Rather, in the Penultimate Paragraph of his own Statement, all he said thus,

"ALL these I have check all my Records and I have not see any such transaction. I have check all the Payment Vouchers, Statement of Account, Cheque Stores but now I could not found such transaction with the State Government." (Sic).

He knew that the Ministry of Finance and the Office of the Accountant General were Self-Accounting having its own Records of Revenue and Expenditure and any Record could be obtained from the other, but he still chose to be indolent. According to him, his Office made All Payments to Contractors, and it was the Duty of the Accountant General to disburse. According to him, it was IMPOSSIBLE for the Permanent Secretary, Commissioner of Finance or even the Governor to sideline his Office in order to directly pay a Contractor. Further, the Penultimate Paragraph of DW7's Written Statement, works against the Defendant, as it suggestive the fact that there were no Transactions with the Plateau State Government in regard to the Sums of contained in the Cheques.

DW10, Mr. Gideon Mitu, a Permanent Secretary in the employ of the Plateau State Government in the Year 2000. Mr. Mitu stated that in the Year 2001, he became aware of the emergence of the Direct Labour Agency, and the Procurement of Earth Moving Equipment from Julius Berger and he was part of the Technical Committee that inspected the Equipment **before** the Government bought them. However, **Exhibit D18**, the Hand Over Note, appears to tell a different story as to when the Direct Labour Agency came into existence. **Exhibit D18**, dated the 27th day of April 2000, written to the General Manager, Direct Labour Agency, clearly shows that the Direct Labour Agency was in existence, a Period before the Note was written, having also an Administrative System in place.

According to him, he had been involved in the Fax Correspondences in respect of the Purchases but did not play any part in the Pricing and Delivery of the Equipment and did not know how much was paid for them. He could only remember Three (3) of the Purchased Equipment stating finally, that it was a Direct Dealing between the Ministry of Works and Julius Berger Plc.

If indeed, it was a Direct Dealing between Julius Berger Plc., and the Ministry of Works, the Question must be asked, What was the business of Ebenezer Retnan Ventures to participate in their Relationship?

By sheer twist, **DW9**, Honourable Banahel Andong, the Member of the House of Assembly representing Bokkos Constituency, one of the areas affected by Erosion, who took part in the Passing of the Direct Labour Bill into Law as well as the Commissioning of these Vehicles, Plants and Equipment, stated that the Purchase of these Items were appropriated for by the Plateau State House of Assembly. In fact, he agreed with the Prosecution that the Take-Off Grant for the Purchase of Equipment were Appropriated by the House of Assembly. According to him, the Equipment were bought from Julius Berger and moved the Direct Labour Agency's Office and he also supervised their Works. However, he did not know the Source of the Funds to Purchase the Equipment and did not know how the Government receives Funds but only knew of Statutory Allocations.

Now, if the Testimony of Honourable Andong is to be believed, to what end was the Loan by Ebenezer Retnan Ventures, since the Plateau State Government in its Budget, had already appropriated Funds. In the grand scheme of things, Loans are usually sought by Person or Persons who need them and not by those who do not. Loans cannot be foisted on anyone, who ought to know what Steps to take to get it. PW5, the Present Accountant General of Plateau State had already elaborately set out these Steps. His testimony was not shaken under Cross-Examination as to the Channels to be followed and he had also stated that he had never heard an instance, where a Person lends money to a State. It is noted, that the Borrowing Institutions related by this Witness, did not include an Individual, as he had only explained the instances of borrowing from a Financial Institution or a Bank. It is not in evidence that the Defendant's Ebenezer Retnan Ventures, is a Financial Institution or Bank.

Therefore, as happened in this case, it is expected that there be some form of FORMALITY about the Loan by Ebenezer Retnan Ventures to the Plateau State Government. It cannot be a unilateral decision and act carried out by Ebenezer Retnan Ventures. They had to have reached out to someone in Government, who would have explained the process of receiving loans from Financial Institutions.

Mr. Cyril Tsenyil, the Present Accountant General of Plateau State had stated further, that even when an Approval is made in Anticipation of Ratification, the Later Approval, would normalize the Earlier Approval, and it is for the Accountant General, upon sighting the Governor's Approval, to Process Payment for these Monies, which the Defendant, has aptly described as Repayment for the Loan he granted his State.

The Court will recall the testimony rendered by Detective Musa Sunday, who stated that his own investigation revealed that Ebenezer Retnan Ventures had NO Contractual Relationship with the Plateau State Government. His Team had questioned the then Substantive Accountant General, Mr. Shem Damisa, the then Deputy Director, Treasury, Mr. Nuhu Madaki and the then Deputy Director Inspectorate II, Mr. Silas Von-But, to ascertain the Contractual Relationship between Plateau State Government and Ebenezer Retnan Ventures but they could not produce any Jobs executed, or Contract Agreements, when they were confronted with this fact, which is astonishing to say the least. These top Government Officials could not explain how they ended up endorsing Cheques and Effecting Payments in such a huge amount for a Purpose, they had no clue about!!

The Court expected to see either a Loan Agreement or a Contractual Agreement in respect of these monies, which upon a perfunctory calculation, Total a Grand Sum of N257, 600, 643.05, (Two Hundred and Fifty-Seven Million, Six Hundred Thousand, Six Hundred and Forty-Three Naira, and Five Kobo).

As a consequence of these highly irregular payments, the Chief Financial Officers of Plateau State, in the persons of the Accountant General, the Deputy Director, Treasury, and the Deputy Director Inspectorate II, who are all accountable for State Funds, are charged before a Court of Law. This is because they had no valid explanation to offer and could not justify these Expenditures by ANY RECORDS.

Since, the Plateau State Government had already Budgeted Monies for this Procurement of Equipment, and since by the testimony of Honourable Andong, that after the Technical Committee had inspected the Items from Julius Berger, the State Government then "**bought and paid**", the Court finds that the burden was then on the Defendant to prove, that the Direct Labour Agency had a Deficit in its Budget, and further, he needed to explain why the Agency had to be up and running.

In any event, even assuming the Budget was in Deficit, a Channel still had to be followed. It is noted that the Payment for this Equipment was not a Part-Payment but Full-Payment.

If true, the Defendant had "Loaned" his Government Money, this could possibly not have been a Silent Act but none of the Defence Witnesses could tell the Source of these Funds. At least DW4, a Principal Officer from a Unit of the Ministry of Works must have known or heard something that a loan was granted by the Defendant. The same goes to DW5, a Principal Technical Officer from the Direct Labour Agency, for whom the Defendant had a great vision for, would have said something. DW10, who was part of the Technical Committee that inspected the Equipment before they were procured could not say how they were bought and from whom the Sums of Monies were sourced.

There also had to be Meetings, Formal Communications of Loan and Formal Acceptance by the Government. All the Documents that would emanate from the Meetings, Formal Communications and Formal Acceptance, would all be documented, especially when preparing the Payment Voucher through which Public Funds would be expended in order to reimburse the Defendant. The Defendant, as Executive Governor on a Monthly Salary of N250, 000, surely had the burden to produce a Statement of Account sufficient in the Sums he claimed to have loaned his State.

Before this Court is **Exhibit D17**, a Lion Bank Reply Letter dated the 25th of October 2004, written by the Managing Director of Lion Bank, Mr. Mike Abdul, addressed to the Executive Chairman of the EFCC titled, "**RE: INVESTIGATION ACTIVITIES CASE OF CONSPIRACY, OFFICIAL CORRUPTION AND MONEY LAUNDERING.**"

In this Letter, Three Accounts belonging to Chief Joshua Chibi Dariye, were stated and the Status of each Account was contained in this Letter.

Firstly, is Account Number **0011010060197**, Account Name Dariye Joshua C., opened on the 23rd of August 1990, had a Balance of **N26, 478.77**, its the Status "**DORMANT**", and the Account went Dormant on the 6th of January 1996. It is certain that the Loan did not emanate from the First Account, since it had been stated as Dormant since the 6th of January 1996.

Secondly, is Account Number **0012010008111**, Account Name, Dariye Joshua, opened on the 21st of August 1990, had a Balance of **N2, 154, 918.40**, its Status was "**DORMANT**", and it went Dormant on the 3rd of July 2002.

Thirdly and finally, is Account Number **0012010008433**, Account Name, Nanpe Associates, opened on the 10th of October 1990, had a Balance of **N54, 950. 90**, its Status was “**DORMANT**”, but this went Dormant on the 31st of August 2004.

Had the Loans granted to the Plateau State to procure Julius Berger Plc. Machinery emanated from the Second and Third Accounts, this fact would surely have been revealed at the onset or in his Extra-Judicial Statement to the EFCC.

Now, at this juncture, it is important to reintroduce the Defendant’s Extra-Judicial Statement in **Exhibit P13 Page 11**, wherein he stated thus, “***The Issue of N53.6M and N204 that left Plateau State Government Account represents reimbursement OF MY ACCOUNT FOR WHICH I HAD USED MY ACCOUNT TO PROCURE EQUIPMENTS (SIC) MOSTLY FROM MS JULIUS BERGER***”

This Excerpt, speaks Volumes, by pointing to **ONLY ONE DIRECTION**, which is that, it is ONLY the Ebenezer Retnan Ventures Account that would vindicate his assertions. The Account Opening Package for Ebenezer Retnan Ventures in **Exhibit P3**, shows that the filled-in date was the 16th of December 1999 and the Proposed Deposit was in the Sum of N250, 000. Also before the Court in regard to the Ebenezer Retnan Ventures Account, is **Exhibit P15C**, its Statements of Account Starting from the 22nd of December 1999 through to the 31st of October 2004. In this Statement of Account, it showed that the Account was opened on the 22nd of December 1999.

As regards the Sum N204Million, from the 22nd of December 1999 through to when this Sum was credited on the 17th of May 2001, **NO** such Sum or **ANY** Sum made Payable to the Julius Berger featured in the Description of Transactions.

Similarly, from the 22nd of December 1999 through to when the Sum of N53, 600, 643.056 was credited on the 6th of December 2000, **NO** such Sum or **ANY** Sum made Payable to the Julius Berger featured in the Description of Transactions.

Now, as to the Truth of the Purchase of this Equipment for Direct Labour Agency, the Court will turn its gaze to the Testimony of **DW4**, Engineer Danjuma Walman. He is a Staff from the Ministry of Works and Transport, the Parent Ministry of the Direct Labour Agency. He stated that in Year 2000, he was the Principal Mechanical Engineer in charge of the Central Mechanical Workshop. He tendered the **Hand Over Note** in **Exhibit D18** and he identified his Signature with one Mr. Dabel, who together, were the Handing Over Officers, whilst Mr. Binkur, the Secretary from the Direct Labour Agency was the Taking Over Officer.

Engr. Walman stated that these Vehicles and Equipment were delivered to the Central Mechanical Workshop of the Ministry of Works in the Year 2000 but later flip-flopped, by changing the Date of Delivery to be the Year 1999, claiming that he did not personally receive them.

It appears that **Exhibit D18** pinned down Engr. Walman to the date his signed the Hand-Over, which was stated to be the **27th of April 2000**. But, from the Delivery Notes in **Exhibit D18**, it shows that Julius Berger delivered Certain Equipment to Plateau State through the Ministry of Works, who received them **in the Year 1999**.

The Delivery Notes issued by Julius Berger were the 30th of October 1999, the 10th of November 1999, the 4th of December 1999, the 7th of December 1999, the 13th of December 1999 and another the

13th of December 1999 and they were all Stamped as Inspected, Loaded and Taken Away by the Buyer in 1999.

The Handing Over of Certain Equipment from the Central Mechanical Workshop, Ministry of Works and Housing, Jos to the General Manager of the Direct Labour Agency started from the 27th of April 2000, the 9th of May 2000, the 11th of May 2000, 1st of June 2000, and the 15th of June 2000.

The explanation put forward by Engr. Walman, as to the Disparity of Dates from one Delivery Note to the other was attributed to be because of a breakdown suffered by one of the Transporting Trucks. However, this still would not change the fact that the Plateau State Government received all the Vehicles in the Year 1999.

Exhibit D18, the Hand Over Note reads thus:

“Sequel to the Directive by the Honourable Commissioner that Plants and Vehicles meant for your Agency be handed over to you.

Attached is the List of these Plants and Vehicles being handed over to you. A total of Nine (9) Vehicles and Eight (8) Plants.

Also attached as Documents for the Plants as were received from the Supplier and a Consignment of Tyres in various sizes and tubes.”

Page 2 of Exhibit D18 listed Seventeen (17) Vehicles and Plants for the Direct Labour Agency and also attached to the Hand Over Note are Delivery Notes from Julius Berger Nigeria Plc.

The First Delivery Note was in regard to Two (2) Vehicles, whose Receiver was Plateau State Government and it was dated the 4th of December 1999. The Vehicle was fully described and Mr. Bodang, a Staff from the Ministry of Works, signed it for.

The Second Delivery Note was dated the 30th of October 1999 and the Receiver was Ministry of Works, Jos in respect of Two (2) Vehicles. The First Vehicle was stated to have been sold to the Ministry of Works. Mr. Bodang, a Staff from the Ministry signed it on the 10th of November 1999.

The Third and Final Delivery Note was in regard to Three (3) Vehicles, it was dated the 13th of December 1999, and the Receiver was Plateau State Government.

From the above Delivery Notes, the Total Number of Vehicles delivered to the Plateau State from Julius Berger were Seven (7) in Number and all the Notes were made in the Year 1999. The Delivery Note did not account for the remaining Two (2) Vehicles nor did it account for the Entire Seven (7) Plants stated to have emanated from Julius Berger.

Engr. Walman, as the Principal Mechanic Engineer in Charge of the Central Mechanical Workshop, is the Maker of **Exhibit D18**, and he was the Chief Compiler of both Hand Over Note and the Delivery Notes for the purposes of this Trial. He asserted the fact that Julius Berger supplied the Nine Vehicles and Eight Plants, but, the Hand Over Note, appears not to specifically mention the name “Julius Berger Plc.” as the Supplier nor did the List identify what Vehicles or that Plants were delivered by this Company.

Rather, it stated “**Supplier**”, which is a Generic Term, as any Supplier could emanate from anywhere other than from Julius Berger Plc. Any Contractor with the Plateau State Government, either for a Reward or for Gratuitous Reasons, could supply the Vehicles and Plants listed in the Hand Over Note.

When he was confronted with this fact as per the Hand Over Note, he stated that Item supplied by Julius Berger featured **ONLY** in regard to **One Excavator**.

If so, what then was the purpose of presenting this **Exhibit D18**, in the first place?

Surely, Mr. Walman, an Engineer, the Man in Charge of the Central Mechanical Workshop, is a Professional, he ought to have known from Sheer Common Sense that, "a Person to whom a thing is delivered, can only hand over that thing which was delivered to him."

To put it succinctly, so that he can understand, is the common adage, which says, "**You cannot give, what you have do not have!!!**"

The Hand Over Note and the Delivery Note compiled by Engineer Walman can best be described as a Solemnized Marriage of Convenience between the Hand Over Note and the Delivery Note, where both Parties know fully well that the Marriage was not Compatible.

The Delivery Notes and Hand Over Note only shows a Sequence of Events. The Two Notes demonstrate a Custom that for ANY delivery of Machinery, Earth Moving Equipment, Vehicles and Plants by any Company, including Julius Berger Plc., it was accompanied by a Delivery Note to an Identifiable Recipient. In this instance, the Recipient was the Plateau State Government or the Ministry of Works and Transport, who through a Directive from the Honourable Commissioner, the Central Mechanical Workshop prepared a Hand Over Note, which transferred the Machinery to the Direct Labour Agency.

Further, the Two Notes ground the fact that the Vehicles and Plants were in the Custody of the Ministry of Works in the Year 1999 with the handing over to the Direct Labour Agency taking place in Year 2000.

From the evidence before the Court, there is NO other Delivery Note from Julius Berger wherein any other Vehicle or Plant or Equipment was delivered to the Plateau State Government either in the Year 1999 or thereafter. From the Hand-Over, the Items that were subsequently supplied to the Direct Labour Agency, were classified as Other Consignments, which included Tyres, Tubes, Landing, Rim, Jacks, Wheel Spanner, Battery and Electrolyte and all these, were supplied in the Year 2000.

DW5, Mr. Stephen Igmala, the Acting General Manager, corroborated this fact, when he stated that his Agency did not procure any other Equipment except Minor Purchases such as Diesel, Engine Oil, Tyres and Tubes and all these Items were bought through Direct Purchase from the Market. Further, he had no Idea when the Payments were made and more importantly, stated that he did not receive the Equipment including Tyres and Tubes.

The Defendant in his Extra-Judicial Statement in **Exhibit P13 Page 11**, stated that, "*The Issue of N53.6M and N204 that left Plateau State Government Account represents reimbursement of my account for which I had used my account to procure Equipments (sic) mostly from Ms. Julius Berger, **which were being auction for the use of our Direct Labour Agency and there is evidence for this Approval and Payment. Since these Equipment were going on auction, I thought acting this way will not only sustain the Vision of the Direct Labour Agency but it was a Cost Savings to the State.***"(Sic)

The Defendant further stated that: -

"As per the Letter dated 29.03.09, this confirm the procurement of Earth Moving Equipment for N204Million and N53.6M for the Direct Labour Agency. The domiciliation to AllStates Trust Bank is for

*the Clearing of Account for which funds have been utilized for these payment and procurements. The items procured as per **Approval** are:"*

The Defendant then listed out a Total of Fifteen Items Procured, the Quantity, the Amount per Quantity and the Total for each Item and the Grand Total of Approval was the Sum of N319, 017, 250.

From this Sum of N319, 017, 250, it shows that from what Chief Joshua Dariye had loaned in the Sums of N204Million and N53.6Million to the Plateau State Government, and what he had been Reimbursed, was a Part-Payment and not Full-Payment. Therefore, Plateau State Government still owed him Money.

Now, from the above Excerpts of the Defendant's Extra-Judicial Statement, Two Questions shoot out. One, is the Fact of an Approval and the Second, is the Fact of the Reimbursements of the Advances in the Sums of N204Million and N53.6Million granted to Plateau State Government from his Ebenezer Retnan Ventures Account.

On the Question of Approval, culling from the Testimony of **PW5**, Mr. Cyril Tsenyil, the Accountant General of Plateau, where he stated that for any Public Expenditure, a Payment Voucher is raised and the Final Approver is the Executive Governor, after Due Process and Appropriate Channels have been followed. Further, where the Procurement is through a Loan, this Witness had stated the First Port of Call to be the Executive Governor through a Memo raised by the Relevant Agency. In other words, either a Memo, or a Copy of the Memo containing the Executive Governor's Approval would be in the Custody of the Direct Labour Agency, the Borrower for Record Purposes.

Therefore, the Court expected either the Memo or Copy of the Memo seeking a Loan and the Approval of the Loan from the Defendant to the Direct Labour Agency be tendered by the Defence and not the Handing Over Note, which says nothing in regard to a Loan or how the Items in the Handing Over Note were purchased or procured.

The Prosecution's Contention through its Witnesses, particularly PW1, Detective Musa Sunday and PW5, the Accountant General, is to the effect that NO Payment Voucher exists as Proof of any Loan or Contract with the Defendant, in his capacity as Executive Governor of Plateau, either Personally, or through Ebenezer Retnan Ventures, into whose Account, these Sums of N204 Million and N53, 600, 643. 056, belonging to the Office of the Accountant General of Plateau State, were paid into. The evidence of these Witnesses remained unchallenged by the Defence.

Since according to the Defendant there was an Approval, the burden was on him to produce his Approval. It is certain that an Approval of this nature would obviously be in Writing and would have been Public Knowledge or in the Public Domain to all Citizens of Plateau State. More so, an Approval in hand, would certainly have served as a Collateral Security for his own benefit, in the event the Government of Plateau State fails to pay him back his Money.

However, there is a Resounding and Excruciating Silence as to the fact that Approval emanated from either the Defendant or through his Witness.

Further, since it was stated that the Technical Committee had inspected the Equipment before it was bought, it can only mean that the Inspection took place in Year 1999 and not Year 2000. It can also ONLY logically mean, that the Defendant paid for the Equipment in Year 1999. The Earliest Delivery Date was the 30th of October 1999. The Latest Delivery Date was the 13th of December 1999.

The Court notes, that it can ONLY, be that Chief Joshua Dariye made the Payments before any Equipment were delivered to the Ministry of Works. However, he ONLY opened the Account of Ebenezer Retnan Ventures on the 22nd of December 1999, with a balance of the Fine Sum of **Zero Naira (0.00)**.

The Entire Sum of N204Million in the Draft was cleared and the Proceeds found it way into the Account of Ebenezer Retnan Ventures on the 17th of May 2001 and the Balance in the Ebenezer Retnan Ventures Account before the Lodgment of this Sum, was Zero Naira "0.00". A look at the Ebenezer Retnan Ventures' Statement of Account admitted as **Exhibit P15C**, this Account as at the 16th of May 2001, was in Debit Balance in the Sum of Minus One Hundred and Sixty-Three Million, One Hundred and Seventy-Nine Thousand, Seven Hundred and Seventy-Two Naira, Eighty Kobo (N-163, 179, 772.80). On the 17th of May 2001, a Diamond Bank Draft in the Sum Two Hundred and Four Million Naira (N204, 000, 000) was cleared into this Account of Ebenezer Retnan Ventures, which put back the Account to a Credit Balance of N40, 820, 277.20 and on the same day a Cash Withdrawal of the Sum N500, 000 was made in favour of Ebenezer Retnan and other deductions were made thereon.

Similarly, for the Sum of N53, 600, 643. 056, which emanated from the Accountant General's General Capital Project Account, this Money also found its way into the Account of Ebenezer Retnan Ventures on the 6th of December 2000 and at the Time of Lodgment of this Money, the Balance in Ebenezer Retnan Ventures Account was, Zero Naira "0.00".

At this Stage, it is important to take in one stride, **Counts 10 and 19**, which deal with the Two Sums of Fifty-Three Million, Six Hundred Thousand, Sixty Hundred, and Forty-Three, Five Kobo (N53, 600, 643.05). According to the Defendant in his Extra-Judicial Statement in Exhibit P13C dated 15th of June 2007, he stated thus:

"There is no hard and fast rule to the use of money for the security. I had to use my discretion to utilize this Sum of N48M for Security just when I used my discretion in applying monies for the purchase of Direct Labour Equipment of N53.6M and 204M."

These Sums appear to be exactly the same and the Offences of Criminal Breach of Trust were alleged to have occurred on the 29th of November 2000. The only difference between the Two Counts is that the Funds in **Count 10** was alleged to have formed part of the Funds in the Account of Plateau State Accountant General Office, while in **Count 19**, the Funds were alleged to have formed part of the Funds of Plateau State Government.

From the testimony of PW1, Detective Musa Sunday, he stated that Diamond Bank was among the Banks investigated and upon a Request to the Bank, he was furnished with Instruments and Cheques relating to then Lion Bank, which were admitted as **Exhibit P11**. A careful at **Exhibit P11**, it is dated the 17th of July 2006, and it is a Reply Letter written by Diamond Bank Plc. to the Executive Chairman of the Economic and Financial Crimes Commission for the Attention of Umar M. Sanda. The Letter mentioned Listed out Certified True Copies (front and reverse side) of Lion Bank Cheques, their Numbers and Sums of Monies per Cheque. The Letter also stated that other Cheques were to be made available when retrieved.

PW1, in his analysis of **Exhibit P11**, he identified a Lion Bank Cheque at **Page 12 of Exhibit 12**, which was dated the 29th of November 2000 in Sum of Fifty-Three Million, Six Hundred Thousand, Sixty Hundred and Forty-Three, Five Kobo (N53, 600, 643.05) amongst other Payments, and he stated that this Cheque was paid to the AllStates Trust Bank Plc., which was then paid into Ebenezer Retnan Ventures Account.

A look at this Cheque in **Page 12 of Exhibit P11**, it reveals that the Cheque Number ascribed to it was the **Number 71266**. Juxtaposing this Cheque with the Statement of Account of Ebenezer Retnan Ventures in **Exhibit P15C**, it is evident that this Sum of Fifty-Three Million, Six Hundred Thousand, Sixty Hundred and Forty-Three, Five Kobo (N53, 600, 643.05) was lodged in the Account of Ebenezer Retnan Ventures. The Narration in the Statement of Account reads, "LION BANK CHQ 71266 CLRD", which tallied with the Cheque in **Page 12 of Exhibit P11**.

It is worthy of note that prior to the lodgment of this Sum of Fifty-Three Million, Six Hundred Thousand, Sixty Hundred and Forty-Three, Five Kobo (N53, 600, 643.05), the Account of Ebenezer Retnan Ventures from the 27th of November 2000 till when the Cheque was lodged, the Account had consistently been in Debit.

DW3, John Michael Abdul, the erstwhile Managing Director of Lion Bank Plc., through whom were tendered **Exhibits D10 and D14**, Correspondences dated the 11th of November and 1st of December 2004 respectively, confirmed that Cheque Number **00071266**, in the Sum of N53, 600, 643.05 emanated from **Account Number 011042346**, Jos Branch, and the Accountant General of Plateau was the Account Holder.

It is this Statement of Account belonging to the Accountant General of Plateau State, titled "Capital Project Account" that is admitted into evidence as **Exhibit P18**. This Statement of Account is a Computer Generated Statement accompanied by a Certificate of Identification from Mr. Celestine Idiaye a Staff of Diamond Bank Plc., from the Internal Control Unit. He confirmed the Content of this Statement after verify that the Bank System through which the Statement was generated was operating properly and the information supplied to this Computer was in the ordinary course of those activities.

According to the Defendant in his Extra-Judicial Statement in **Exhibit P13A Page 11**, he admitted the lodgment of these Sums of N204Million and N53, 600, 643.05 and in Proof, he called a Retinue of Witnesses and tendered Documentary Exhibits in Proof, which shall now be considered and the Defendant's reason would be considered thereafter.

Therefore, of the Two Identical Sums of N53, 600, 643. 056, evidence was only led in respect of One, **00071266**, emanating from **Account Number 011042346**, Jos Branch, in **Count 10** and the Accountant General of Plateau was the Account Holder.

As regards the Second Sum of N53, 600, 643. 056, in **Count 19**, no evidence was led to explain how this Identical Sum was removed from the Funds belonging to the Plateau State Government and without further ado, the Court finds the Prosecution failed to prove this Count and the Defendant is accordingly **Discharged and Acquitted** on this **Count 19**.

It is worthy of note that the Dates these Sums of N53, 600, 643. 056 and N204Million left the Account set a timeline as to test the fact that it was from this Account. From the surrounding circumstances, it had to be at the Defendant's behest that the Fixed Deposit in the Sum of N273Million was transferred into the Current Account of the Accountant General's Account.

Consequently, the Entire Sum of N204Million, was paid into NO other Account but into the Account of Ebenezer Retnan Ventures, an Account he was the ONLY Signature and immediately the Funds cleared into his Account on 17th of May 2001, he wrongfully gained the Funds and Used it as his Own. The Statement of Account shows that on this same 17th of May 2001, a Cash Withdrawal in the Sum of N500, 000, was made in favour of Ebenezer Retnan Ventures. On the 18th of May 2001, a Cash

Withdrawal made to Mr. Shehu in the Sum of N12Million and thereon. These acts of disbursements clearly demonstrate that the Defendant dishonestly converted to his own Use this Sum of N204Million.

As regards the Sum of N53, 600, 643.056, as seen from the Statement of Account, the Statement of Account speaks for itself, as it showed that the Defendant made several disbursements after this Sum of Money was lodged into his Account, which he dishonestly converted to his own Use to carry out Banking Transaction to other Beneficiaries other than the Plateau State Government.

The Ordering of Drafts by the Defendant only shows a Modus Operandi, which is that the Attorney General of Plateau State would raise a Draft in the name of AllStates Trust Bank Plc., which stealthily finds its way into the Defendant's own Account with Ebenezer Retnan Ventures. The Defendant knew that through this Modus, neither the Accountant General of Plateau State nor any other Subsequent Accountant General of Plateau State not even, the Plateau State Government, would be able to trace the whereabouts of the Proceeds into the Account of Ebenezer Retnan Ventures, who is not a Contractor with the Government, in any form, either a Lender or a Contractor, as the case warrants.

From the evidence adduced, the Defendant is **not** in denial that these Sums belonging to the Accountant General's Account, were paid into the Account of Ebenezer Retnan Ventures but that they were Reimbursement, which fact, Oral and Documentary Evidence before the Court, say otherwise. Even if, on a careless assumption that the Defendant was entitled to any Reimbursement, he ought to have followed Due Process instead of constructively and surreptitiously terminating the Fixed Deposit Sum of N273Million in order to take hold or possession of the Sum of N204Million and N53, 600, 643.056.

Therefore, in Conclusion the Defendant as a Public Officer, is found to have been entrusted with the Funds belonging Plateau State Government, holding same for the Benefit of the Citizens of Plateau State, breached this Trust by dishonestly Converting to his Own Use, causing the Disposal of these Funds and by the Expenditures from his Account with Ebenezer Retnan Ventures, used the Funds for his own Personal Benefit. The Manner in which these Funds were routed, when viewed Objectively, showed his Dishonest Intent to commit the Offence of Criminal Breach of Trust and he is accordingly found Guilty as Charged on **Counts 8 and 10**.

As regards, **Counts 13 and 15**, Chief Joshua Chibi Dariye is said to have committed Criminal Breach of Trust on the 25th of March 2003 and on the 14th of April 2003, in respect of the Sum of Ten Million Naira (N10, 000, 000) and the Sum of Twenty-Five Million Naira (N25, 000, 000), which formed part of funds of Plateau State Government.

It is the contention of the Prosecution that in **Exhibit P15C**, the Statement of Account of Ebenezer Retnan Ventures, particularly on the 25th of March 2003, the Narration showed that the Defendant made a Cash Payment in the Sum of Ten Million Naira (N10, 000, 000) into the Account. Further, on the 14th of April 2003, a First Bank Cheque of Twenty-Five Million Naira (N25, 000, 000) was credited into the Account. According to him, both Sums of Monies were drawn from the Accountant General's Account with Diamond Bank Plc. and paid into the Account of Ebenezer Retnan Ventures.

These contentions made in regard to **Counts 13 and 15** are rather interesting. This is because none of the Prosecution Witnesses not even **PW1**, Detective Musa Sunday testified or produced Documentary Exhibits in their regard.

In **Count 13**, there was no Oral or Documentary Evidence as to where, when and how the Defendant obtained the Cash Payment from the Government of Plateau State before or on the 25th of March 2003, which he subsequently lodged into his Ebenezer Retnan Ventures Account. The fact the Defendant personally this Sum of Ten Million Naira in Cash into his Account does not by any shade equate to a Criminal Intent or that the Money deposited in Cash amounted to Criminal Breach of Trust.

In regard to **Count 15**, PW1, Detective Musa Sunday made no mention of the fact that **First Bank Plc.** was one the Banks approached during the course of their investigation. He also did not lead evidence or produce any Cheque, especially this First Bank Cheque in the Sum of Twenty-Five Million Naira (N25, 000, 000), said to have formed part of the Funds of the Government of Plateau State. Further, such evidence, Oral or Documentary, was not established through PW5, Mr. Cyril Tsenyil, the Accountant-General of Plateau State, the Custodian of Plateau State Government Account.

The evidence in regard to **Counts 13 and 15**, only appear to have emanated from Learned Silk's Written Addresses, where he urges the Court to Convict the Defendant, an Offer, the Court humbly resists due to his Lazy Prosecution of these Counts.

The Defendant is found Not Guilty as Charged for the Offences in **Counts 13 and 15**, and is his accordingly **Discharged and Acquitted.**

As regards **Count 21**, the Defendant, Joshua Chibi Dariye is alleged to have committed on the 24th of November 2001, Criminal Breach of Trust in regard to the Sum of Twenty-One Million Naira (N21, 000, 000), which formed part of the Funds of the Plateau State Government.

PW1, Detective Musa Sunday, yet again in his Analysis of **Exhibit P11**, the Compendium of Front and Reverse Side of Certified True Copies of Lion Bank Cheques, stated that this Lion Bank Cheque of the Sum of Twenty-One Million Naira (N21, 000, 000) was initially paid to AllStates Trust Bank Plc., and subsequently paid into Ebenezer Retnan's Account and the Source of this Sum was from the Plateau State Government's Account.

A careful look at this **Exhibit P11 particularly at Page 21**, is the Certified True Copy of the Cheque, which on the face of it, is a Draft of Lion Bank of Nigeria Plc. Jos Branch, dated the 24th of November 2001, bearing Draft Number **81729**, in the Sum of Twenty-One Million (N21, 000, 000) to the Order of AllStates Trust Bank Plc. Payable at the Lion Bank of Nigeria Plc., Abuja Branch. On the Reverse Side of the Draft, is a Stamp dated 11th of November 2004 with an Endorsement Instruction, stating, "**PAY INTO EBENEZER RETNAN VENTURES**" and the Defendant's Signature is affixed to the Instruction.

The Defendant admitted this Endorsement in **Exhibit P13C**, his Extra-Judicial Statement to the EFCC of the 15th of June 2007, and further stated inter alia that, "*I shall however confirm with my Bank the source of these income since I do not readily have any Records in hand to substantiate those lodgments.*"

The Defendant by his own showing, has expressly pointed to his Account with Ebenezer Retnan Ventures to evidence the lodgment of this Sum. From **Exhibit P15C**, the Statement of Account of Ebenezer Retnan Ventures, it is clear that this Lion Bank of Nigeria Draft Number **81729** in the Sum of Twenty-One Million (N21, 000, 000) was cleared into the Account on the 14th of December 2001.

DW3, Mr. Michael Abdul, the erstwhile Managing Director of the Defunct Lion Bank of Nigeria Plc., tendered amongst other Exhibits the following, namely: -

- a) **Exhibit D10**, a Lion Bank Reply Letter dated the 11th of November 2004, containing a List of Thirteen Accounts from where Cheques were issued. The Exhibit further sets out the Date, Cheque Number, Amount, Account Number and the Account Holder.
- b) **Exhibit D14**, another Lion Bank Reply Letter dated the 11th of November 2004, containing a List of Cheques, with Each Cheque identified by its Date, Cheque Number, Amount, Account Number and the Account Holder.
- c) **Exhibit D16**, is a Telex/Fax dated the 3rd of November 2004 from Lion Bank Plc.

During Trial, **DW3**, Mr. Michael Abdul, dissociated himself from this Sum as well as his Bank, which he stated, did not originate from his Bank's Account Payable. According to him, in his Evidence in Chief and under Cross-Examination, **Exhibit D10** contained Errors in regard to Cheque Numbers **00081503** and **00081504** in the Sums of Six Million Naira (N6, 000, 000), which Sums, emanated from the Account Payable of Lion Bank Plc.

Further, this Witness tendered **Exhibit D14**, a Lion Bank Reply Letter written by him as Managing Director dated the 11th of November 2004, which clarified the Errors in **Exhibit D10** and therefore, this **Exhibit D14**, should be worthy of belief. The Bank also readdressed these Two Errors in **Exhibit D11**, a Lion Bank Reply Letter dated the 14th of November 2004, written Mrs. E.M. Williams and Mr. Maksen E. Bishmang, wherein they attributed the Errors to "Pressure" in a bid to urgently meeting up with the EFCC's Request.

Now, from the above facts, evidence and circumstances, it is clear that apart from the Two Errors made in regard to Cheque Numbers **00081503** and **00081504**, all other information contained therein is the Gospel Truth, as authenticated by the Staff of Lion Bank, in **Exhibit D11**, which incidentally was Co-authored by Mr. Maksen Bishmang, the Staff of Lion Bank responsible for the Two Initial Errors.

The Court therefore, can rely on its Content as well as those in **Exhibits D11, 14 and 16**, when determining the Offence of Criminal of Breach contained in **Count 21**.

From the analysis as presented above, **Count 21** is premised on this Draft, with Draft Number **81729** dated the 24th of November 2001. The Account Number from which this Draft was issued, featured throughout **Exhibits D10, D14 D16**, which clearly showed that it emanated from Account Number **011042346**, and the Account Holder, was the "ACCOUNTANT-GENERAL OF PLATEAU STATE".

DW3, Mr. Mike Abdul in his testimony under Cross-Examination, corroborated the SOURCE of this Sum of Twenty-One Million, when he confirmed *inter alia*, that from **Exhibit D14**, other Account Holders from Lion Bank issued Drafts to AllStates Trust Bank Plc. on the instructions of Plateau State Government, from the Accountant General's Office and he stated that he would not to be surprised if these Cheques, in **Exhibit D14** were paid into the Account of the Defendant.

Further, this Exhibit captured the Date of Lodgment of the Draft into the Account of Ebenezer Retnan Ventures to be the 14th of December 2001. From the Statement of Account of Ebenezer Retnan Ventures in **Exhibit P15C**, the Narration of the 14th of December 2001, revealed that this Lion Bank Draft Number **81729**, was cleared into the Account and the Court notes that prior to the lodgment, the Account Balance of Ebenezer Retnan Ventures was, "**0.00**".

From the Documentary Evidence and the Testimony particularly rendered by the Defence, above, it is not in doubt that the Source of the Two Million Naira (N21, 000, 000) was the Account of the Accountant-General of Plateau State, which Sum belonged to the Government of Plateau State and

upon issuance in Draft, the Proceeds in the Drafts found their way into the Account of the Defendant with Ebenezer Retnan Ventures.

The Question that necessarily follows is, was the Exit of the Sum of Twenty-One Million (N21, 000, 000) lawful?

It is worthy of note that during the Cross-Examination of PW1 by the Defence, no mention was made as to the Sum of Twenty-One Million (N21, 000, 000) and no evidence, Oral or Documentary, was adduced by the Defence to justify the payment of this Sum into the Account of Ebenezer Retnan Ventures.

The only defence put forward through DW7, Mr. Paul Datugun, is the fact that the Payment Vouchers, Ledgers, Receipts, Approvals, particularly in regard to this Sum Twenty-One Million (N21, 000, 000), was carted away by the EFCC.

His Boss, Mr. Cyril Tsenyil, the Accountant General of Plateau State had testified that he instructed DW7, his Subordinate, to search for Cheques, amongst others, but they were not able to trace any Payment Voucher relating to the Cheques from their Records. There is nowhere on Record, DW7, informed his Superior, PW5, the Accountant General, that the Payment Vouchers or Cheques were among the Documents carted away by the EFCC as informed by Late Kwafud. The evidence rendered by DW7 as per his Statement to the EFCC corroborates what his Boss had stated before the Court.

Since the Defence got wind of this fact that the Documents to harness a relationship between the Government of Plateau State and Ebenezer Retnan Ventures, who benefitted the eventual lodgment of the Sum of Twenty-One Million Naira (N21, 000, 000), were not in the Custody of the Accountant General Plateau State, the Summons ought to have been addressed to the EFCC, who is alleged to have carted away with the Payment Vouchers or Cheques, including other relevant Documents.

It was ridiculous and superfluous therefore, to Summon these Documents knowing fully well the Documents would not be found, where they ought to be found.

It is settled fact from the Evidence of PW1, Detective Musa Sunday, and PW5, the Account General of Plateau State, that Ebenezer Retnan Ventures was not a Contractor to the Plateau State Government.

The Evidentiary Burden swung to the Defence to show what the Defendant carried out with the Government of Plateau State, as a Contractor with his Government or what transaction was carried out with Ebenezer Retnan Ventures to warrant the drawing of a Two-One Million Naira (N21, 000, 000) Draft Payable to AllStates Trust Bank Plc., which was subsequently cleared into its Account.

The Defence through its Witnesses have established the Procedure to be followed in order to pay a Contractor. On point are the testimonies of **DW9**, Honourable Banahel Joseph Andong, the Acting District Head and Traditional Ruler of Monguna District and **DW13**, Dr. Patrick Dakum, a former Commissioner for Information in Plateau State. The gamut of their testimonies is to the effect a Memo initiates a Process, which must be approved by the Executive Governor or the Executive Council, before Payment is made. Such payment is made only to a Successful Bidder or upon a Search of a Relevant Contractor, upon being awarded a Contract with the Government. Further, DW13, Dr. Patrick Dakum, had stated that sighting a Letter of Award was Proof of a Subsisting Contract and it was the responsibility of the Ministry of Finance and Economic Planning to generate a Letter of Award of Contract. Ebenezer Retnan Ventures did not produce any Formal Letter of Award addressed to it from this Ministry through the Defendant, who did not testify or through any of his Witnesses called in his Defence. By their evidence, it is not shown that Ebenezer Retnan Ventures was a Successful Bidder or

Credible Contractor to whom an Award Letter was issued in the Sum of Two-One Million Naira (N21, 000, 000).

Rather, the sum total of the evidence adduced by the Defence is to show a Modus Operandi, of instructing the Office of the Accountant General to issue a Draft Payable to the AllStates Trust Bank Plc., who in turn, at a subsequent date, clears the Draft into the Account of Ebenezer Retnan Ventures. The Defendant must have orchestrated the exit of this Sum by instructing the Office of the Accountant General to issue a Draft, which Instruction was carried out. The issuance of this Draft from the Account of the Accountant-General of Plateau States indicates an intention to conceal the End or Final Beneficiary of this Sum of N21, 000, 000, from the Plateau State Government, **in General**. When the Twenty-One Million Naira (N21, 000, 000) Draft was issued in favour of the AllStates Trust Bank Plc., on the face of the Draft, it is logical to expect that the AllStates Trust Bank Plc. was the End Beneficiary, unless a Further Instruction accompanied the Draft.

However, the Defendant got his hand grubby with filthy lucre, when on the Reverse Side of the Draft, he Further Instructed that the Sum of Twenty-One Million Naira (N21, 000, 000), be paid into the Ebenezer Retnan Ventures, which instruction he signed.

From the evidence adduced before the Court, it is improbable that the Sum of Twenty-One Million Naira (N21, 000, 000) would exit the Account of the Accountant General without the instruction coming from the Defendant. With his instruction to the Accountant General to issue the Draft, this constitutes Sufficient Proof Beyond Reasonable Doubt that he Misappropriated this Funds and he did so Dishonestly. He wrongfully gained for himself, exclusive benefit of the Entire Sum in the Draft, by Converting to his Own Use the Monies in the Draft, as established in his Statement of Account with Ebenezer Retnan Ventures and the Court finds that he do so dishonestly.

The Defendant, Chief Joshua Dariye, is accordingly found Guilty as Charged for this Count of Offence in **Count 21**.

The **Fourth and Final Issue** for determination is: -

Whether the Prosecution established the Guilt of the Defendant beyond a Reasonable Doubt for the Offences of CRIMINAL MISAPPROPRIATION brought under Counts 3, 9, 11, 14, 16, 18, 22 and 22”.

Learned Silk, representing the Defendant, defined Criminal Misappropriation under stated **Section 308** punishable under **Section 309 of the Penal Code**, and thereafter, made a Summary on each Count for Ease of Reference.

He noted that where Particulars of the Alleged Misappropriation are not pleaded, the Allegation is a non-starter. The allegation of dishonest misappropriation must be pleaded with utmost particularity. He cited in support the cases of **PDP VS INEC & ORS (2012) LPELR-9712; UKEJE & ANOR VS UKEJE (2014) LPELR-22724 PER OGUNBIYI JSC PAGE 39 AT PARAS C-E**.

Learned Senior Counsel further submitted that the Defendant is alleged to have dishonestly misappropriated Funds in the Accounts of the Accountant General of the Plateau State, Plateau State Water Board or Plateau State Government. However, the Counts of Offences were inherently defective in that the Funds alleged to have been misappropriated were not in the possession of the Defendant at the time of the alleged Criminal Misappropriation. To establish misappropriation, the alleged misappropriated Funds must be in the possession of the Person who is alleged to have misappropriated it and the Charge must state this fact and the Prosecution is duty bound to prove

that the Defendant was in actual possession. Learned Silk made reference was made to the case of **HEMBE VS FRN (2014) LPELR-22705 PAGE 78 PARAS A-B PER AKOMOLAFE-WILSON JCA**. A Person cannot be charged with Criminal Misappropriation when the alleged misappropriated Property was not in his possession nor can a Charge of this Offence arise when it is alleged that the Property was fraudulently acquired.

In addition, there was no proof of Dishonesty, as defined in **Section 16 of the Penal Code**. On the assumption that indeed the Defendant misappropriated the Funds as alleged, this ought to have been clearly indicated that the Defendant did so with the intention of causing wrongful gain to himself or another or causing loss to the State. Failure to state these details meant that the element of dishonesty as contained in the Counts had not been proved. Learned Silk also placed reliance on the case of **IFEANYI VS THE STATE (2014) LPELR-22984 (CA) PER SANUSI JCA AT PAGES 32- 36**, where misappropriation and convert to owns use was distinguished and what the Prosecution needed to establish and the co-existing ingredients that must be simultaneously proved in order to sustain a conviction. Failure to prove these details means that the element of dishonesty was not proved.

Further, the Charge was bad for duplicity, in that, having charged the Defendant in **Count 8** with the Offence of Criminal Breach of Trust for the Sum of N204Million, it was incorrect to charge him yet for dishonest misappropriation over the same Money.

Learned Silk, referred to the testimony of PW1, who had testified that throughout the investigation, there was no complaint from Plateau State Government on loss of Funds. This Witness had supplied the names of the Officials, such as Shem Damisa, the Accountant General and Nuhu Ali Madaki, the Deputy Director for Inspectorate II, who were alleged to have ordered payments into the Account of Ebenezer Retnan Ventures. These Officials ought to have been called, but were not. Therefore, it cannot be assumed that the payments were unauthorized or that the Defendant wrongfully authorized them or that they acted unlawfully when they made the payments. These Officials ought to have been heard before conclusions could be reached against them. In any event, the Law presumes that where evidence, is available but not called, such evidence is presumed to be detrimental to the Person withholding the evidence.

According to Learned Silk, PW1 had in fact blamed Nuhu Madaki, who was the Accountant General at that time for his failure to produce the Vouchers, which would have explained the purpose of the payments and it was this failure that led to him being charged. The fact that Nuhu Madaki had been charged does not constitute proof against the Defendant nor would this Court believe his inability of producing the Vouchers without first hearing him. Therefore, he needed to have been called and the failure to do so, was fatal. Whether or not Nuhu Madaki and other Officials are standing trial and assuming they are convicted or acquitted, that would not be proof against the Defendant and the Court is not allowed to speculate or presume the existence of what is not before it otherwise it would lead to miscarriage of justice. He made reference to the cases of **AHMED VS STATE (2001) 18 NWLR PART 746 PAGE 672 (SC0; ILORI VS TELLA (2007) ALL FWLR PART 393 PAGE 122 AT PAGE 139 PARAS E-G (CA); UWAJEH VS UWAJEH (2009) ALL FWLR PART 458 PAGE 287 AT PAGE 304 PARAS B-D**.

On the assumption that the evidence of PW1, Sunday Musa, were that, all the Drafts paid into Ebenezer Retnan Ventures were raised in the name of AllStates Trust Bank Plc., (which is not the case), the onus was on the Prosecution to produce the Staff of AllStates Trust Bank, to explain why they paid Cheques raised in the Name of the Bank into the Account of Ebenezer Retnan Ventures. He

contended that it could not be assumed that the actions of the Bankers were wrong or that the Bankers acted on the instructions of the Defendants.

Further, PW5, Cyril Tsenyil, was not the substantive Accountant General when the transactions occurred. This Witness could not tell whether any of the Conditions Precedent to the making of the various payments was met or whether the Correct Procedures were followed. Learned Silk urged the Court to consider **Exhibit D3**, Lion Bank's Letter, stating that the Payment into the Account of Ebenezer Retnan Ventures did not emanate from Plateau State Government. This Exhibit was consistent with the evidence of PW5, the Accountant General of the Plateau State, who had testified that Payments of Monies out the Government's Coffers could not be made without Approval and Vouchers. The Logical Inference therefore is, had the Monies been made out of Government's Coffers, it would have been supported by Vouchers. The Prosecution failed to tender the Authorization and Accompanying Vouchers supporting the Payments in these Counts and this was detrimental to his contention that the Payments emanated from Plateau State Government.

In addition, PW5 did not refer to any instance or Instrument to show that the Defendant dishonestly misappropriated Plateau State Funds. Even when the EFCC carted away all Documents including Payment Vouchers, Treasury Receipts, Cheque Books, Cheque Release Registers, Bank Statements etc., yet not a Single Document was tendered during Trial, which implicated the Defendant and Learned Silk opined that had a Document been tendered linking the Defendant, that Document would have been detrimental to the Prosecution and would have shown that all Payments were legitimately processed and supported by Proper Documentation.

Furthermore, Learned Silk referred to the evidence given in regard to the various Payments, arguing that the Payments were not specified or specifically identified. Even if made, the lodgments could be assumed illegal payments that would warrant convicting the Defendant when there was doubt on the issue. Since PW3, Bamanga Bello, had no opportunity to interview the Defendant, he could not have come to any conclusions, whether adverse or detrimental without an interview. It was insufficient for PW3 to draw his conclusions from Documents available to him and he urged the Court not to act upon the conclusions of the Witness, who arrived at his conclusions without the Defendant being given the opportunity of being heard.

Learned Silk representing the Defence noted that apart from the Investigators who were Staff of the EFCC, no Staff of Plateau State Government were called by the Prosecution to prove the allegations of Criminal Misappropriation. The unchallenged evidence of DW4, Engr. D. Walman and DW5, Steve Igmala show that the monies were used to purchase Earth Moving Equipment, Vehicles and Spare Parts for the Direct Labour Agency (now Road Maintenance Agency). The Prosecution did not visit the Direct Labour Agency to see the Earth Moving Equipment, Vehicles and Spare Parts nor investigate at Julius Berger Plc., as to whether the Earth Moving Equipment, Vehicles and Spare Parts, were actually purchased and supplied as informed in **Exhibit D18**. There is evidence on Record that the Equipment is still presently in use.

Learned Silk referred to the unchallenged evidence of DW11, Prof. Danladi Atu, to the effect that ecological works had been carried out and stated that this was consistent with the evidence of the Commissioner of Finance, who testified before the House Committee, which had commended him and the Finding of the Kaduna Federal High Court Coram Liman J., that there was no Criminal Misappropriation.

Further, the evidence of DW15, Mr. Victor Dilang that he lodged the Cheque into the AllStates Trust Bank's Account is worthy of consideration, as it stood unchallenged and the Prosecution's failure to call him was fatal. He discussed the question of Issue Estoppel, Witnesses and Consistency of Evidence led under this Offence.

According to Learned Silk, the Prosecution acted on the basis of lies, rumours and gossips citing as an example the testimony in chief and under Cross-Examination of PW8, a Police Officer seconded to the EFCC. This Witness had stated that a visit was made to the Plateau State Ministry of Lands and Survey to confirm Properties said to be owned by the Defendant but it was discovered that several of the Properties, one of which was Crest Hotel located at Old Airport Road, Jos, did not belong to the Defendant. This proved malice on the part of the Prosecution. Malice was also evident when Prosecution alleged that the Cheque was paid into the Account of Ebenezer Retnan Ventures.

Learned Silk in his conclusive paragraphs, submitted generally on the fact that no Court has the right to draw conclusions of fact outside the available evidence, referring to the case of **THE STATE VS AIBANGBEE (2008) 8 NWLR PART 1037 PAGE 517 PER OPUTA JSC AND ESO JSC.**

He noted that there were fundamental contradictions and inconsistencies which ought to be resolved in favour of the Defendant citing the cases of **PRINCEWILL VS THE STATE (1994) 6 NWLR PART 353 PAGE 703 AT PAGE 714 PARAS D-E PER IGUH JSC; BASSEY VS THE STATE (2012) 12 NWLR PART 1314 PAGE 209 AT PAGE 239 PER FABIYI JSC; NMA DOGO VS THE STATE (2001) 1 SC PART II PAGE 30 AT PAGE 39 PER EJIWUNMI JSC; IKEMSON VS THE STATE (1989) NWLR PART 110 PAGE 15 AT PARA A; AND IBEH VS THE STATE (1997) 1 NWLR PART 484 PAGE 38 PARAS D-E,** amongst others.

In conclusion, he urged the Court to discharge and acquit the Defendant as the Prosecution failed to prove the Offences beyond reasonable doubt.

Now, the Court finds that Criminal Misappropriation is a Lesser Pedigree Offence of Criminal Breach of Trust and Several Ingredients distinguishes it from Criminal Breach of Trust. Criminal Misappropriation, does **NOT** Particularize Certain Categories of Person, rather, it is all encompassing to include **ALL** Persons, regardless of Status or Office held or occupied. Further, Criminal Misappropriation does not require any form of, Entrustment created or Dominion controlled, over a Property either by way of Contract, Law or Directive or that Violation would probably ensue. Finally, **ONLY Duplex Modes** suffice for this Offence of Criminal Misappropriation, which are **Misappropriation and Conversion.**

Section 308 of the Penal Code, defines Criminal Misappropriation in this manner, **"Whoever Dishonestly Misappropriates or Converts to his Own Use any Moveable Property, commits Criminal Misappropriation."**

To prove this Offence of Criminal Misappropriation the following Ingredients are Pertinent, namely: -

- 1) The Property must have an Owner;
- 2) The Defendant had Reasonable Belief that the Owner could be found by evidence of his Previous Acquaintance with the Ownership of the Property, the Place where the Property is found, or the Nature of the Marks upon it;
- 3) The Property in Question is a Moveable Property;
- 4) The Defendant is already in Possession of the Property and is either Lawfully in Possession or in his Possession;

- 5) The Possession has been come by Innocently;
- 6) There has been a Change of Intention by the Defendant or the Defendant is aware of some New Facts, which makes his Continued Retention of the Property Wrongful and Fraudulent;
- 7) The Defendant Misappropriated the Moveable Property or Converted the Moveable Property to his own Use;
- 8) It is Sufficient that some of the Moveable Property has been Misappropriated or Converted by the Defendant, even though it may be Uncertain the Exact Amount Misappropriated or Converted;
- 9) The Defendant did so dishonestly.

The definitions of the Terminologies of “OWNER”; “PROPERTY”; “MOVEABLE”; “POSSESSION” AND “MISAPPROPRIATION” are already well stated when determining the Offence of Criminal Breach of Trust and reference will be made to those terminologies, where applicable. There is no need to re-state them here.

Suffice to say at this point that a clear understanding of the Principles governing Misappropriation shows that there must be an intentional and illegal use of the Property or Funds, in that there is a wrongful assigning or setting apart of a Sum of Money for a purpose or use for which it should not lawfully be assigned or set apart. The **PURPOSE** for the Entrusted Monies was curved down and deviated from its **SET TARGET** directly to the Defendant’s **PERSONAL BENEFIT OR GAINED ADVANTAGE/BENEFIT**.

The Offences of Criminal Misappropriation as set out in the Charges are under **Four (4) Categories**, namely: -

- A. In **Count 3**, is the Offence of Criminal Misappropriation relating to the **Plateau State Government’s Ecological Fund**, wherein the Defendant, Chief Joshua Chibi Dariye, is alleged to have dishonestly misappropriated the Sum of One Hundred and Sixty Million Naira (N160, 000, 000) by diverting this Sum into the Private Account of Ebenezer Retnan Ventures, an Unregistered Company, owned by him.
- B. **Counts 9 and 11**, deals with the Offences of Criminal Misappropriation relating to Funds in the Account of the **Plateau State Accountant General Office**, which the Defendant is alleged to have dishonestly misappropriated into the Private Account of Ebenezer Retnan Ventures, an Unregistered Company, owned by him; and
- C. **Counts 14, 16, 18, 20 and 22**, deals with the Offences of Criminal Misappropriation relating to Funds in the Account of the **Plateau State Government**, which the Defendant, Chief Joshua Chibi Dariye, is alleged to have dishonestly misappropriated.
- D. Finally, **Count 12**, deals with the Offences of Criminal Misappropriation relating to Funds in the Account of the **Plateau State Water Board**, which the Defendant, Chief Joshua Chibi Dariye, is alleged to have dishonestly misappropriated.

Now, it is important to recall and bring to bear the Oral and Documentary Evidence adduced across Board by the Defence and Prosecution in the Consideration of these Offences of Criminal Misappropriation, and note that they have already been thoroughly set out under the consideration

for the Offences of Criminal Breach of Trust. Therefore, it will be Repetitious to Re-state them again but Reliance is placed by the Court on that Evidence in determining the Innocence or Guilt of the Defendant in regard to these Sets of Offences.

In regard to **Count 3**, the Defendant, Chief Joshua Chibi Dariye is alleged to have dishonestly misappropriated the Plateau State Government's Ecological Funds released by the Federal Government, by diverting the Sum of One Hundred and Sixty Million Naira (N160, 000, 000) into the Private Account of Ebenezer Retnan Ventures owned by him. It is worthy of note this Count of Offence traces its Root Source to the Central Bank of Nigeria's Cheque having a very Clear Purpose and having an Ultimate Set Goal.

Learned Senior Counsel representing the Defendant had submitted that if the Charge of Misappropriation in **Count 1** fails, then this also fails. According to him, having been charged with Misappropriation of the Whole Sum, it is duplicitous to charge the Defendant with diversion of Part of the same Funds. He submitted that no evidence of diversion was proved and the Officials of the Bank ought to have been called to testify as to the Person who made the Payment into the Account of Ebenezer Retnan or who directed that the Payment be made.

Conversely, Learned Senior Counsel representing the Prosecution submitted that this Sum in the Count was to address the Ecological Problems of Plateau State as contained in the Central Bank Cheque. He referred the Court to the admission of the Defendant in **Exhibit 15 A-C**, stating that the Defendant had made the work of the Prosecution to prove this Count, very easy.

Now, before dealing with this Count, it is important to initially resolve the contention that the Count is duplicitous.

Duplicity is the Error committed when the Charge or Count on an indictment, describes two different Offences. It is clear that each Count must allege ONLY ONE Offence to enable the Defendant know with precision what Offence he is Charged with, and it fosters certainty in Criminal Charges and prevents injustice to the Defendant. The exception is of course, where the Law provides One Punishment for the Various Offences but this is usually found in Complex Crimes. In this instance, the Defendant was charged with Criminal Breach of Trust in **Count 2** for this Sum of Money, but it is noted that this **Count 3** deals with Criminal Misappropriation, which is a different Offence entirely from that of Criminal Breach of Trust. They have different Set of Elements/Ingredients to be proved and it does not matter that the Transaction or Evidence is the same. From the Common Law Principles and Case Law, it is clear that, Two Criminal Offences are not to be considered as One Crime because they result in a Single Unlawful Transaction. In any event, for the offence of Criminal Breach of Trust, it is not necessary to prove a Dishonest Misappropriation or Conversion, as proof of ANY of the Remaining Quadruplet Modes, is sufficient to ground the Offence. The Money need not be for the Use of the Defendant and so, going by the Elements of Criminal Misappropriation, it is clear that the Offences in **Counts 2 and 3** of the Charge are not the same Offence.

In any event, there is a Wealth of Appellate Authorities to the effect that they will not interfere on the issue of Duplicity, if it is clear from the Records of Proceedings that the Defendant knew what Charge he was to face, was neither embarrassed nor prejudiced and no miscarriage of justice was occasioned. Reference is made to the Case Law Authorities of **THE STATE VS GWONTO (1983) LPELR-3220 (SC) PER NNAMANI JSC; ONAKOYA VS FRN (2002) LPELR-2670 (SC) PER KUTIGI JSC AT PARAS F-A; ALHAJI MOHAMMED KABIR MAMMAN VS FRN (2010) (CA) PER OMOLEYE JCA AND MUSTAPHA VS FRN (2017) LPELR-43131 (CA PER GARBA JCA) AT PARAS A-C.**

Therefore, this Court finds the contention made by Kanu Agabi SAN to be untenable and is accordingly found unmeritorious.

Now, it is not in doubt that the Sum in this Count forms Part of the Funds granted by the Federal Government to resolve the Ecological Problems in Plateau State and by the Evidence of the Defendant himself, in **Exhibit P13A**, he directed the Officials of the AllStates Bank to deposit the Sum of One Hundred and Sixty Million Naira (N160, 000, 000) to be paid into the Account belonging to Ebenezer Retnan Ventures, a Venture, he had in the same Statement, admitted belonged to him. His reasons for paying this Sum into an Account rendered by him remains untold as he did not testify before the Court to explain his Directives. There is again, the Typed and Handwritten Instructions to the Bank further reinforcing the fact that the Money was paid into Ebenezer Retnan Account. There is no contrary evidence before the Court, to explain whether the Payment of this Fund into this Account was for Services offered or Goods tendered in relation to the Ecological Problems of Plateau State. ASP Philip Dilang had testified before this Court that he was instructed by the Defendant to Lodge the Ecological Funds into AllStates Bank in Abuja and had the Written Instructions for the Disbursements deposited with the Bank. By the mere deposit of this Sum into the Bank Account of Ebenezer Retnan Ventures and not into the Account of Plateau State Government, Conversion of this Fund by the Defendant, had taken place. From the Bank Statement of Ebenezer Retnan, there is no evidence seen from the Withdrawals Column, that this Fund was used for Ecological Purposes for the benefit of Plateau State.

Also from the Statement of Account of Ebenezer Retnan Ventures in **Exhibit P15C**, the Court observes Payments and Withdrawals from these Funds by the Defendant, which further reinforces his Conversion of the Funds to his Own Use and Benefit.

Therefore, in conclusion on this Count, the Court finds that the Sum of N160 Million belonged to the People of Plateau State, by virtue of the Grant given by the Federal Government and is a Moveable Property that legitimately entered into the Possession of the Defendant. However, Chief Joshua Dariye wrongfully and dishonestly changed the Intention of the Purpose for the Funds and Converted it for his own Benefit and Use. Therefore, he is found **Guilty** as Charged under this Count of Offence for Criminal Misappropriation in **Count 3**.

Counts 9 and 11, deals with the Offences of Criminal Misappropriation relating to Funds in the Account of the **Plateau State Accountant General Office**, which the Defendant is alleged to have dishonestly misappropriated into the Private Account of Ebenezer Retnan Ventures, an Unregistered Company, owned by him; and the facts regarding these Counts have already been adequately stated under the Offences for Breach of Trust and there is no need to restate them again. The Sums involved in theses Counts are the **N204 Million and N53, 600, 643.05**.

Learned Senior Counsel representing the Defence on **Count 9**, had submitted that the Sum of N204 Million formed part of the Funds in the Account of the Office of the Accountant General of Plateau State, which was transferred into the Private Account of an Unregistered Company owned by the Defendant. According to him, there was no evidence whatsoever of the Misappropriation alleged or the dishonest intent. No Officials of the Office of the Accountant General was called by the Prosecution to testify as to whether the Sum was misappropriated. PW5, Mr. Cyril Tsenyil, knew nothing about the Case and had merely stated the General Principle that no Payment can be made without due approval and relevant Payment Vouchers. Finally, on this Count, he contended that the Charge alleges that he committed dishonest misappropriation by transferring the Funds but there was no evidence of this.

As regards Count 11, for the Sum of N53, 600, 643.05, Learned Silk representing the Defendant, submitted that there was also no evidence of misappropriation or dishonesty in the evidence led. Further, PW5, Mr. Cyril Tsenyil, knew absolutely nothing about the Case and no Officials of the Office of the Accountant General of Plateau State was called to testify in this regard. This Submission is exact same as that rendered for the Offence under **Count 9**.

Learned Senior Counsel representing the Prosecution submitted corporately for **Counts 9 and 11**, referring the Court to the demonstration of the facts under Criminal Breach of Trust and adopted them for these Counts. According to him the evidence of Sergeant Musa Sunday was clear, that these Sums were transferred from the N273 Million Ecological Fixed Deposit Account of the Accountant General into the Account of Ebenezer Retnan Ventures Account. According to him, it was instructive that the Drafts regarding the Sums were not obtained in the name of the Defendant directly or even that of Ebenezer Retnan Ventures but were obtained in the name of the AllStates Trust bank Plc. and surreptitiously taken to Abuja and lodged into the Account of Ebenezer Retnan Ventures. He stated that the Defendant had concealed his true identity and ownership of Ebenezer Retnan Ventures Account showing a dishonest intent.

Now, as earlier held, the Court finds the supporting facts are already stated on Record in respect of these Two Counts and there is no need to restate them here again.

Exhibit P12 Pages 2 through to 8, the Statement of Account of the Accountant General, Plateau State, Ministry of Finance & Economic Planning, State Secretariat, Jos with **Account NO. 0152130000105** is referred to by the Court, as well as the letter from the then Accountant General of Plateau State, where he had requested for a Bank Draft in the Sum of N204 Million, effectively breaking the Fixed Deposit Account. The Statement of Account belonging to the Accountant General of Plateau State, was titled "**Capital Project Account**" and was admitted into evidence as **Exhibit P18**.

The Tracking and Trailing of these Funds shows definitely that they were initially made out to the AllStates Trust Bank but eventually ended up in the Account of Ebenezer Retnan Ventures. PW1, Detective Musa Sunday, in his analysis of **Exhibit P11**, identified a Lion Bank Cheque at **Page 12 of Exhibit 12**, which was dated the 29th of November 2000 in Sum of Fifty-Three Million, Six Hundred Thousand, Sixty Hundred and Forty-Three, Five Kobo (N53, 600, 643.05), amongst other Payments, and he stated that this Cheque was paid to the AllStates Trust Bank Plc., which was then paid into Ebenezer Retnan Ventures Account.

A look at this Cheque in **Page 12 of Exhibit P11**, reveals that the Cheque Number ascribed to it was the **Number 71266**. Juxtaposing this Cheque with the Statement of Account of Ebenezer Retnan Ventures in **Exhibit P15C**, it is evident that this Sum of Fifty-Three Million, Six Hundred Thousand, Sixty Hundred and Forty-Three, Five Kobo (N53, 600, 643.05) was lodged in the Account of Ebenezer Retnan Ventures. The Narration in the Statement of Account reads, "LION BANK CHQ 71266 CLRD", which tallied with the Cheque in **Page 12 of Exhibit P11**.

DW3, John Michael Abdul, the erstwhile Managing Director of Lion Bank Plc., had also confirmed that Cheque Number **00071266**, in the Sum of N53, 600, 643.05 emanated from **Account Number 011042346**, Jos Branch, and the Accountant General of Plateau was the Account Holder.

The confirmation of these deposits into the Account of Ebenezer Retnan Ventures is also seen in **Page 7 of Exhibit P12**, the Statement of Account of the Accountant General of Plateau State, where by its Description of the Transaction, reveals that it also emanated from a Fixed Deposit. From **Page 8 of Exhibit P12**, the Sum of N273, 000, 000 was stated to be for the Ecological Fund, and this transfer

took place. By the evidence of the Present Accountant General of Plateau State, who testified as PW5, Mr. Cyril Tsenyil, he stated that NO Public Expenditure of Public Funds could be carried out without Payment Vouchers, and he had also stated that the Approving Source for a Memois the Executive Governor. According to him, there ought to have been a Memo and Payment Voucher in respect of these Transactions and importantly, the Funds ought to have been deployed for Ecological Purposes Only. The Court observes that NONE of the Officials of Plateau State, who testified, knew Ebenezer Retnan, as a Contractor to the Government of Plateau State and there was no explanation as to why the Monies were paid into this Ventures' Account.

Further, the Defendant, in his Extra-Judicial Statement admitted as **Exhibit P13 A-C**, stated that these Funds were refunds of Money owed to him by the State since he did not want the Direct Labour Agency to be unduly affected and had earlier on bought some Equipment for the State. He had also stated in **Exhibit P13C** dated 15th of June 2007 and at **Page 11 of P13A**, thus: -

“The Issue of N53.6M and N204 that left Plateau State Government Account represents reimbursement OF MY ACCOUNT FOR WHICH I HAD USED MY ACCOUNT TO PROCURE EQUIPMENTS (SIC) MOSTLY FROM MS JULIUS BERGER, which were being auction for the use of our Direct Labour Agency and there is evidence for this Approval and Payment. Since these Equipment were going on auction, I thought acting this way will not only sustain the Vision of the Direct Labour Agency but it was a Cost Savings to the State.”(Sic)

The Defendant further stated that: -

“As per the Letter dated 29.03.09, this confirm the procurement of Earth Moving Equipment for N204Million and N53.6M for the Direct Labour Agency. The documentation to AllStates Trust Bank is for the clearing of Account for which funds have been utilized for these payment and procurements...”

“There is no hard and fast rule to the use of money for the security. I had to use my discretion to utilize this Sum of N48M for Security just when I used my discretion in applying monies for the purchase of Direct Labour Equipment of N53.6M and 204M.”

Therefore, it was expedient for him to have entered into the Witness Box to testify as to how he had expended the Funds in the First Place.

It is worthy to recall that the Statements of Ebenezer Retnan were analyzed under Criminal Breach of Trust, and the reasoning arrived at there, comes fully into play here. The Officials of the State Government could not explain where the Funds for the Equipment came from and if he had bought on behalf of the State Government, there ought to have been at least ONE Person to corroborate his contention. It certainly could not have been a silent act. Consequently, the Entire Sum of N204Million, was paid into NO other Account but into the Account of Ebenezer Retnan Ventures, an Account he was the ONLY Signatory and immediately the Plateau State Government's Funds cleared into his Account on 17th of May 2001, he had wrongfully gained the Funds and Used it as his. The Statement of Account shows that on this same 17th of May 2001, a Cash Withdrawal in the Sum of N500, 000, was made in favour of Ebenezer Retnan Ventures. On the 18th of May 2001, a Cash Withdrawal made to Mr. Shehu in the Sum of N12Million and thereon. These acts of disbursements clearly demonstrate that the Defendant dishonestly converted to his own Use this Sum of N204Million.

As regards the Sum of N53, 600, 643.056, as seen from the Statement of Account, the Statement of Account speaks for itself, as it showed that the Defendant made several disbursements after this Sum of Money was lodged into his Account, which he dishonestly converted to his own Use to carry out Banking Transaction to other Beneficiaries other than the Plateau State Government.

Further reasoning is as held under Criminal Breach of Trust and the Court finds that these Funds in both **Counts 9 and 11** belonged to the Plateau State Government and were converted by the Defendant to his own use, without any reasonable explanation and the manner of lodging these Sums showed a dishonest intent to misappropriate the Funds.

Without further ado, the Court finds these Counts as proven beyond a reasonable doubt and accordingly, finds the Defendant **Guilty** as Charged for the Offences of Criminal Misappropriation under **Count 9 and Count 11**.

As regards Count 18, for the Sum N273 Million, it is clear that the Sum of N204 Million contained in **Count 9**, was taken from this Sum and the Defendant has already been found culpable in **Count 9**, it would amount to Double Jeopardy to convict him on the Sum Total. The Balance of the N273 Million, that is, N69, 000, 000, was not demonstrated to have entered into the Account of Ebenezer Retnan Ventures and without further ado, this Count is found to be duplicitous in Part, and the Defendant is accordingly found Not Guilty of this Count and is hereby **Discharged and Acquitted** on **Count 18**.

As regards Count 14 for the Sum of N10 Million Naira and Count 16 for the Sum of N25, 000, 000, Learned Senior Counsel representing the Defence had referred to the testimony of PW1, Detective Musa Sunday, who had testified that Plateau State Government did not report any loss of Funds.

Learned Senior Counsel representing the Prosecution also submitted in respect of this Count and his Submission are on the Records of this Court.

Now, the Court finds that the Prosecution did not lead sufficient evidence to ground these Counts and only led Evidence in his Written Addresses, which by any stretch of imagination cannot secure any Conviction. **In Count 14**, no Oral or Documentary Evidence was led as to where, when and how the Defendant obtained the Cash Payment from the Government of Plateau State before or on the 25th of March 2003, which he subsequently lodged into his Ebenezer Retnan Ventures Account.

Regarding **Count 16**, Detective Musa Sunday, made no mention of First Bank Plc. as being one the Banks approached during the course of their investigation. He also did not lead evidence or produce any Cheque, especially this First Bank Cheque in the Sum of Twenty-Five Million Naira (N25, 000, 000), said to have formed part of the Funds of the Government of Plateau State. Further, such evidence, Oral or Documentary, was not established through PW5, Mr. Cyril Tsenyil, the Accountant-General of Plateau State, the Custodian of Plateau State Government Account.

As earlier held by the Court under Criminal Breach of Trust, the Prosecution failed to prove this Counts by leading any evidence thereto and without further ado, the Defendant is found **Not Guilty** under **Count 14** and **Not Guilty** under **Count 16** and he is accordingly **Discharged and Acquitted** in respect of **Count 14** and **Count 16**.

As regards Count 20, for the Sum of N53, 600, 643.05, this is the same as that under **Count 11**, with the exception that the Sum was said to emanate from the Account of the Plateau State Government.

The Count is bad for duplicity and is accordingly Struck Out. There was no evidence to show the difference in this Sum from that in **Count 11**.

The Defendant is accordingly found **Not Guilty as Charged** and is **Discharged and Acquitted** on this Count.

Now, as regards **Count 22**, the Defendant, Joshua Chibi Dariye is alleged to have committed on the 24th of November 2001, Criminal Breach of Trust in regard to the Sum of Twenty-One Million Naira (N21, 000, 000), which formed part of the Funds of the Plateau State Government. This Sum was paid to AllStates Trust Bank Plc., which was subsequently paid into Ebenezer Retnan's Account and the source of this Sum was from the Plateau State Government's Account.

The Defendant's Signature can be seen on the Instruction written on the Certified True Copy of the Draft and a careful look at this **Exhibit P11 particularly at Page 21**, shows that it is a Draft of Lion Bank of Nigeria Plc. Jos Branch, dated the 24th of November 2001, bearing Draft Number **81729**, in the Sum of Twenty-One Million (N21, 000, 000) to the Order of AllStates Trust Bank Plc. Payable at the Lion Bank of Nigeria Plc., Abuja Branch. On the Reverse Side of the Draft, is a Stamp dated 11th of November 2004 with an Endorsement Instruction, stating, "**PAY INTO EBENEZER RETNAN VENTURES**".

Reference is also made to **Exhibit P13C**, the Defendant's Extra-Judicial Statement to the EFCC dated the 15th of June 2007, where he admitted this Endorsement and further stated inter alia that, "*I shall however confirm with my Bank the source of these income since I do not readily have any Records in hand to substantiate those lodgments.*"

The Defendant by his own showing, has expressly pointed to his Account with Ebenezer Retnan Ventures to evidence the lodgment of this Sum. From **Exhibit P15C**, the Statement of Account of Ebenezer Retnan Ventures, it is clear that this Lion Bank of Nigeria Draft Number **81729** in the Sum of Twenty-One Million (N21, 000, 000) was cleared into the Account on the 14th of December 2001.

DW3, Mr. Michael Abdul, the erstwhile Managing Director of the Defunct Lion Bank of Nigeria Plc., had during Trial, dissociated both himself and his Bank from this Sum, which he stated did not originate from his Bank's Account Payable.

From the Documentary Evidence and the Testimony particularly rendered by the Defence, above, it is not in doubt that the Source of the Two Million Naira (N21, 000, 000) was the Account of the Accountant-General of Plateau State, which Sum belonged to the Government of Plateau State and upon issuance in Draft, the Proceeds in the Drafts found their way into the Account of the Defendant with Ebenezer Retnan Ventures.

It was settled, the fact from the Evidence of PW1, Detective Musa Sunday, and PW5, Mr. Cyril Tsenyil, the Accountant General of Plateau State, that Ebenezer Retnan Ventures was not a Contractor to the Plateau State Government and the Court expected the Defendant to explain the purpose of this lodgment into Ebenezer Retnan Ventures Account, but no explanation was forthcoming.

Therefore, the Court finds that the Prosecution has been able to establish beyond a reasonable doubt this Count of Offence and the Defendant is accordingly found **Guilty** as Charged on this Count of Offence of Criminal Misappropriation.

As regards **Count 12**, Chief Joshua Chibi Dariye is said to have committed Criminal Misappropriation in the Sum of Six Million Naira (N6, 000, 000) belonging to Plateau State Water Board on or about the 17th of January 2001.

Learned Silk, representing the Defence had submitted that **No Official** of the Water Board was called to testify on the alleged misappropriation or as to why it was alleged to have been dishonest.

In Proof of this Count, the Prosecution tendered **Exhibit P11**, a Compendium of the Front and Reverse Side of Certified True Copies of Lion Bank Cheques. Attached to this Compendium, is a Reply Letter dated the 17th of July 2006, written by Diamond to the Executive Chairman of the EFCC, titled “**RE: INVESTIGATION ACTIVITIES- CASE OF CONSPIRACY, OFFICIAL CORRUPTION AND MONEY LAUNDERING**”

PW1, Detective Musa Sunday, during his analysis of this **Exhibit P11**, stated that Two Lion Bank Cheques dated the 17th of January 2001, in the Sum of Six Million Naira (N6, 000, 000) each, were paid into the Account of Ebenezer Retnan Ventures.

A look at this **Exhibit P11**, particularly at **Pages 8 and 9**, there are Two Cheques, the Court observes Two Sums in this Amount, which are actually Drafts of the Lion Bank of Nigeria Plc., Jos Branch, having Draft Numbers **81503** and **81504** addressed to the Lion Bank of Nigeria Plc., Abuja Branch and both Drafts were dated the 17th of January 2001. On the face of each Draft, the Sum of Six Million Naira (N6, 000, 000) was issued in favour of the AllStates Trust Bank Plc., which the AllStates Trust Bank stamped as “Received” on the 22nd of January 2001 and thereafter, both Drafts were cleared into the Ebenezer Retnan Ventures Account on the 25th of January 2001, as seen in **Exhibit P15C**, its Statement of Account.

From the evidence adduced, it is the Contention of the Prosecution that the Root Source of the Sum in **Count 12**, had its Origin from the Account of the Accountant General of Plateau State Capital Project in the Sum of N12, 000, 000, as informed by **Exhibit P18**. Thereafter, the Sum of Six Million Naira (N6, 000, 000) was transferred into the Account of the Plateau State Water from where the Draft Number **81504** was issued.

On the other hand, it is Contention of the Defence through its Witness, **DW3**, Mr. Michael Abdul, the erstwhile Managing Director, that these Sums of Six Million in Drafts Numbers ending with **81503** and **81504**, were made in Errors, as the Drafts did not emanate from the Account of Plateau Investment and Property Limited and Plateau State Water Board respectively. According to him, the Two Drafts emanated from the Lion Bank’s Account Payable. Further, the Two Drafts were Marketing Commissions paid to Chief Joshua Chibi Dariye for Soliciting Clients such as Julius Berger Nigeria Plc., Transproject Nigeria Limited, Industrial and General Engineering and Anambra State Government. The Marketing Commissions paid to the Defendant were within his Operational Expenses Limit and it was lawful to do so. Mr. Michael Abdul tendered into evidence **Exhibits D10, D11 and D12** to establish this fact.

At this juncture, it is important to state that from the Charge Sheet, only one Sum of Six Million Naira (N6, 000, 000) was charged and the Source of this Sum was alleged to have originated from the Account of the Plateau State Water Board. **Exhibit D10**, a Lion Bank Plc. Reply Letter, reveals that this Sum of Six Million Naira (N6, 000, 000) was contained in Cheque Number **00081504** dated the 25th of January 2001. This Cheque was stated to have emanated from Account Number **013001612** with

the Account Holder being Plateau State Water Board. The Defendant in his Extra-Judicial Statement, **Exhibit P13C** dated the 15th of June 2007, had referred to this Cheque stating that he would give an explanation after consulting with his Bank.

Now, from this **Exhibit D10**, dated the 11th of November 2004, written by the Maken S. Bishmang, the General Manager, Credit & Marketing Division, wrote a Letter to the Executive Chairman of the EFCC, titled, “**RE: INVESTIGATION ACTIVITIES CASE OF CONSPIRACY, OFFICIAL CORRUPTION AND MONEY LAUNDERING**”. In the Exhibit, Mr. Bishmang, Listed Thirteen (13) Cheques out of Nineteen (19) Cheques and he tabulated their Serial Numbers, Dates, Cheque Numbers, Account Numbers and Account Holders. Also, in this Letter, he noted an Error in Regard to **Serial Number 12**, which he corrected, by stating that a Copy of the Draft would speak for the error. Mr. Bishmang then explained the constraints of furnishing the Remaining Cheques and in the Last Paragraph, he also explained his Bank’s regrets for not replying sooner on the basis of the demise of Alhaji Rayyanu Dalhatu, the Former Chairman and Serving Member of the Board of the Lion Bank of Nigeria Plc.

DW3, Mr. Michael Abdul, the erstwhile Managing Director of the Defunct Lion Bank Plc., also tendered **Exhibit D14**, a Lion Bank Reply Letter written by him as Managing Director dated the 11th of November 2004, which clarified the Errors in **Exhibit D10** and therefore, this **Exhibit D14**, should be worthy of belief. The clarification was also readdressed in **Exhibit D11**, in another Lion Bank Reply Letter dated the 14th of November 2004, written Mrs. E.M. Williams and Mr. Maken E. Bishmang, wherein they attributed the Errors to “Pressure” in a bid to urgently meeting up with the EFCC’s Request.

This New Version as illustrated in **Exhibit D14**, is that this Sum of N6, 000, 000 initially stated to have emanated from the Plateau State Water Board, actually emanated from the Lion Bank Plc.’s Account Payable, as Marketing Commissions issued in a Bank Draft in favour of the AllStates Trust Bank Plc., the Defendant’s Mode of Choice as confirmed by his own Witness, Mr. Michael Abdul.

From Ebenezer Retnan Ventures Account with the AllStates Trust Bank Plc., in Exhibit P15C, there is a lodgment of a Lion Bank Draft Number **81504** for the Sum N6, 000, 000, however, it did not disclose the Source or where it emanated from.

It is worthy of note that this New Version as rendered by Lion Bank Plc., in **Exhibit D14** is pitted against the Documentary Evidence tendered by the Prosecution. During Trial, the Prosecution, in a bid to establish beyond reasonable doubt this Offence of Criminal Misappropriation in **Count 12**, “**supposedly**” tendered into evidence the Plateau State Water Board Account through **PW6**, Mr. Celestine Idiaye, the Cloister Control Manager in the Internal Control Unit of the Diamond Bank Plc.

The Court unapologetically used the word “supposedly” because the Prosecution did not, as a matter of fact, tender this Diamond Bank Statement of Account belonging to the Plateau State Water Board, let alone, was its admissibility put to the test, to determine whether or not it should be admitted into evidence as an Exhibit.

It should be noted that unless a Document is in evidence, the Court cannot act it upon it or ascribe any weight to it. The Phrase, “Being in Evidence”, means a Document must have been tendered and admitted as an Exhibit and a Court must not speculate as to the Contents of a Document, which was not in evidence. Reference is made to the cases of **KOFI GBAJOR VS JAMES OGUNBUREGUI (1961) ALL NLR PAGE 853 AT PAGE 856; STATE VS AIBANGBEE & ANOR (1988) PAGE 609; OLAGBEMIRO VS AJAGUNGBADE III (1990) 3 NWLR PART 136 PAGE 37 AT PAGE 63.**

Without this document, the Prosecution is found to have failed to prove the allegation on the required burden of proof established by the law, and the Defendant is found **Not Guilty** as Charged under **Count 12**, and is accordingly **Discharged and Acquitted**.

In Conclusion, the Court cannot help but Comment on the Visit by Certain Members of the Plateau State House of Assembly, who during the Time of the Defendant's Impeachment, made a Trip to the United Kingdom to Present what they called before the Court, "**MEMO TO RT. HONOURABLE TONY BLAIR, PRIME MINISTER, UNITED KINGDOM ON THE STATE OF EMERGENCY IN PLATEAU STATE, NIGERIA JULY 14, 2004**"

They had apparently forgotten that Nigeria is a Sovereign State and not under ANY FORM OF COLONIAL RULE. They did not achieve their Aim to see the Right Honourable Tony Blair and had only passed this Memo to a Top British Official for onward transmission to Mr. Tony Blair. **DW13**, Dr. Patrick Dakum, the then Commissioner of Information and **DW14**, Honourable Aminu Agwon Zang, a Former Commissioner, could not tell the Court, the Outcome of their Visit, and they returned back to Nigeria without any response on Record.

The Court can only liken their Trip to the Old English Rhyme, which first appeared in a Book called "*Songs For the Nursery*" in 1805, which goes like this: -

*"Pussy Cat, Pussy Cat, where have you been?
I've been to London to Look at the Queen.*

*Pussy Cat, Pussy Cat, what did you do there?
I frightened a Little Mouse under her Chair."*

Absolutely Pointless Visit and a Reckless Squandering of Public funds, exhibiting Ignorance of International Law and Norms!!!

The Court therefore finds as follows: -

As regards **Counts** of the Offences of Criminal Breach of Trust, the Court finds as follows:

COUNT 1 -Guilty as Charged
COUNT 2-Guilty as Charged
COUNT 4-Guilty as Charged
COUNT 5-Guilty as Charged
COUNT 6-Guilty as Charged
COUNT 7-Guilty as Charged
COUNT 8-Guilty as Charged
COUNT 10-Guilty as Charged

COUNT 13- Not Guilty as Charged
COUNT 15- Not Guilty as Charged
COUNT 17-Guilty as Charged
COUNT 19-Not Guilty as Charged
COUNT 21-Guilty as Charged
COUNT 23-Guilty as Charged

As regards the Offence of Criminal Misappropriation, the Court finds as follows: -

COUNT 3-Guilty as Charged
COUNT 9-Guilty as Charged
COUNT 11-Guilty as Charged
COUNT 12- Not Guilty as Charged
COUNT 14-Not Guilty as Charged
COUNT 16- Not Guilty as Charged
COUNT 18- Not Guilty as Charged

COUNT 20- Not Guilty as Charged
COUNT 22- Guilty as Charged

PREVIOUS CONVICTIONS: - NONE

ALLOCUTUS: -

Learned Silk to the Defendant, Paul Erokoro SAN submitted that between 1973 and about Five Years ago, the only Conviction on Grounds of Corruption was when a few Soldiers were charged to Court, otherwise, all the Cases of Bribery and Corruption, were Cases that occurred in the 1960's and Early 50's with very few Convictions, and hardly any Prosecutions under the Military Rule.

It is from this point of view that he pleads with the Court on the Offence by Chief Chibi Joshua Dariye, that theses Offences were committed around 2001, and when the 1999 Constitution (As Amended) just commenced. There was no Education on Financial Regulations, and the Convict was a Pioneer in Governance, and a lot of Mistakes were made.

The Court has noted from the Proceedings before the Federal High Court in 2005 concerning AllStates Trust Bank & Ors, who were found guilty, that the Bank misled the Convict. Though the Convict is a Chartered Accountant, who never worked in the Bank, it was the Bank that said they had Private Banking and waived the Rules.

If the Convict had a fraudulent intent, he would have Changed his Signature and he would not have used his Regular Signature to sign for Ebenezer Retnan Ventures.

When President Olusegun Obasanjo gave his Inaugural Address, he stated that we are running a Government where one Arm of Government is forced to give Bribe to another Arm of Government before it can collect Funds. These are the Truths that we live with daily in the Country.

Learned Silk stated that he did not appreciate the Strategy of the Defence in the matter, and he probably would not have employed such route, but it is the Truth that when a Cheque is given, the State is told to play ball, because it is being favoured among the other States. Even though the Convict was a Governor, he was also a Victim.

The disbursements paid to the People's Democratic Party was not the Convicts decision, why would he? The Court has seen that Investigations are still ongoing.

Perhaps, it is a weak position to stand on, because it can be said that the Governor ought to know better, but these are the Hard Truths. This is our Country, though it is no excuse, but it is Grounds for tampering Justice with Mercy. In this case, the Convict made a fair attempt to give Half of the Money to Plateau State.

Also, the Lawyers who defended the Convict did not do a good job, and made a lot of Mistakes, and he should not suffer as a result, although 40% discharge and acquittal is a Pass Mark. Therefore the Convict is forced to fall at the Court's Mercy, and pray the Court to consider Non-Custodial Sentence.

Finally, Learned Silk appealed to the Court to be quite merciful as the Convict is a Serving Senator, who served his State very diligently, and was the only Governor who was thrown out on Executive Lawlessness because of a State of Emergency.

Learned Silk to the Prosecution, Rotimi Jacobs SAN submitted that Leave to Proffer the Charge was obtained in June 2007, and after the Arraignment, the Court was confronted with Series of Applications filed to stall the Case, until the Supreme Court sent the Case back in 2015. With an average of Eight (8) Years spent, the Court should consider the language and harsh words of the Justices (which has been a reference point) of the Supreme Court in the Case of **DARIYE VS FRN (2015) 10 NWLR 1457**, regarding the Convict's conduct.

Despite their admonitions, the Convict employed delay tactics to stall the Trial. At a time, if the Court did anything there would be accusations of bias.

He referred the Court to the Conduct of the Convict, querying whether the Court would mitigate the Sentence, and whether the Convict is remorseful? By his conduct at the Trial, the Convict showed that he is not a Man of Remorse.

Further, based on the fact that the Offence is Rampant, and the Government is Corrupt as stated by Learned Silk to the Convict, the Court should impose the Maximum Punishment, so that it can serve as a deterrent.

He referred the Court to the Federal Capital Territory Court (Sentencing Guidelines) Practice Direction 2016, which allows the Prosecution to narrate the Aggravating Factors that the Court should consider in Sentencing, and also for the Convict to use its own Mitigating Factors, which he did.

What the Court would consider, as stated in Paragraph 60, is the Higher Position of the Convict in the Society, and in this case, the Convict holds a High Position as a Serving Senator, and formerly a Governor who served for Two Terms. What the Court would also consider, is whether the Convict exploited his Position as a Public Servant, and this, the Convict has done, which the Court has found and he is therefore entitled to an Aggravated Sentence. Thirdly, the Convict was motivated by Pecuniary Gains, and bought Properties, and he urged the Court to issue a Forfeiture Order in respect of these Properties.

Another Aggravating Factor is the disruption of Government Functions, as Plateau State is still faced with Ecological Problems. The Convict prays for Mercy, but showed no mercy since 2007. Learned Silk referred to the Court of Appeal Decision in **FRN VS JOHN YAKUBU YUSUF CA/A/366/C/2013, delivered in 21st March 2018**, where it was held that the Trial Court upon

the conviction of an Accused should impose a Severe Punishment/Sentence to deter the Convict and the General Community from further committing the Crime. Also, the decision in R VS OKEKE stated that where even the Defence admits that the Offences are Common and Prevalent, the imposition of a Severe Sentence, will discourage Persons and show that there Consequences for Illegality. This is the intention.

Finally, the Prisons are only congested with the Ordinary Man in the Street and the Poor, and not with Persons like the Convict, and to accede to the Convict's request is to pat him on the back, saying Go and Sin no more. This can no longer be done with the ACJA and Practice Directions. The Court should also cause the Defendant to Compensate for the Monies meant for the People of Plateau State.

A Lesson must be learnt that Persons should bear the Consequences of their Actions and weigh it properly before they carry it out.

Chief Chibi Joshua Dariye, the Convict then sought the permission of the Court to speak, and this was granted. He then pleaded that he is a Blind Man and not a Lawyer, who did as he was told by his Legal Representation, and the Prosecution cannot predict his State of Mind, and if he, the Convict dies today, it would not solve the Problems of Nigeria.

Finally, he pleaded with the Court to show him Mercy.

SENTENCING

I cannot imagine such Brazen Act of Systematic Looting and Stealing, as what occurred in this Case, is it the transfer of nearly half a Billion from the Ecological Funds Account meant for his State? Or is it the Transfer of Funds from the Account of the Plateau State Government into his Personal Ventures Account?

The Facts of this Case and the Ensuing Events, left a Litany of Woes and a Devastating Trail of Victims, who even though they were Adults capable of making Rational Choices, ended up being scarred. How do we count the Physical, Moral and Sociological Costs of the People involved in this Tragedy of Corruption? There was Dr. Kingsley Nkrumah, the Permanent Secretary under the Ecological Office of the Presidency, who lost his Job and Reputation, was charged to Court and upon the grant of his Bail, left the Country. Then there was Mr. Awe Odessa, the Banker at the AllStates Trust Bank, who lost his Job, was jailed and had his Reputation soiled. His Bank, suffered no less fate when it had its Certificate of Incorporation revoked after being fined. There was also Mrs Joyce Oyebanjo in London who was jailed for Three and Half Years for Money Laundering Offences. The most shocking aspect is that regarding the People of Plateau State, who suffered Financial Losses, and at some period in time, as seen from the Accounts of Ebenezer Retnan Ventures and Plateau State Government Account before the Court, the Defendant, through this Venture was richer than Plateau State.

More importantly, his Family would no doubt have suffered as a Result of the Long drawn out Trauma of the Trial.

It is unfortunate, but there is no Compromise to Corruption. By whatever Shade of Colour, Tribe, Religion and Status, Corruption will forever be Corruption. This Statement is akin to the Law of Gravity, whatever is thrown up, invariably will come down, and sometimes hard. It is rather unfortunate.

Having found the Defendant Guilty as Charged in regard to these **Counts** of the Offences under Criminal Breach of Trust, the Court hereby Sentences the Defendant, Chief Joshua Chibi Dariye to Terms of Imprisonment in Each of these Offence, as follows: -

As regards the Offence of **CRIMINAL BREACH OF TRUST**, the Defendant is to serve in: -

COUNT 1-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 2-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 4-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 5-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 6-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 7-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 8-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 10-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 17-Fourteen (14) Years Term of Imprisonment with No Option of Fine

COUNT 21-Fourteen (14) Years Term of Imprisonment with No Option of Fine

As regards the Offence of **CRIMINAL MISAPPROPRIATION**, the Defendant is serve in: -

COUNT 3-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 9-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 11-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 12-Two (2) Years Term of Imprisonment with No Option of Fine

COUNT 22-Two (2) Years Term of Imprisonment with No Option of Fine

ALL SENTENCING ON EACH COUNT TO RUN CONCURRENTLY.

THE COURT, IN ACCORDANCE WITH THE FEDERAL CAPITAL TERRITORY COURTS (SENTENCING GUIDELINES) PRACTICE DIRECTION, 2016 IN PART TWO AT PARAGRAPH 9(1) AND BY 321(b) SECTION OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015, HEREBY ORDERS THE DEFENDANT, CHIEF JOSHUA CHIBI DARIYE, TO RESTITUTE TO PLATEAU STATE GOVERNMENT THE TOTAL SUMS IN COUNTS 2, 7, 8, 10 AND 21.

THE COURT FURTHER ORDERS THE ECONOMIC AND FINANCIAL CRIMES COMMISSION TO FORFEIT AND PAY THE RECOVERED SUM IN COUNT 4 INTO THE COFFERS OF PLATEAU STATE GOVERNMENT.

**HON. JUSTICE A.A.I. BANJOKO
JUDGE, HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA**