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 8TH DAY OF FEBRUARY, 2018
CHARGE N0. FCT/HC/CR/39/2009

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA……COMPLAINANT

AND

1. **ENGR. SAMUEL IBI GEKPE……1ST DEFENDANT**
2. **DR. ABDULLAHI ALIYU……2ND DEFENDANT**
3. **SIMON KIRDI NANLE……3RD DEFENDANT**
4. **ENGR. LAWRENCE KAYODE OREKOYA……4TH DEFENDANT**
5. **ABDULSAMAD GARBA JAHUN……5TH DEFENDANT**
6. **BARR. KAYODE I. OYEDEJI……6TH DEFENDANT**

- **KEMI PINHEIRO, SAN WITH ADEBOWALE KAMORU ESQ., JAMIU AGORO ESQ., FOR THE COMPLAINANT/PROSECUTION**

- **PAUL EROKORO, SAN WITH IFENYIWA OKOYE ESQ., CLEMENT CHINAKA ESQ., FOR THE 1ST DEFENDANT**

- **OFFIONG OFFIONG, SAN WITH DR. G.O. OGUNYOMI ESQ., IFEANYI UDUMNEGO ESQ., FOR THE 2ND DEFENDANT**

- **A.D. TYODEN ESQ., WITH P.E. DAFFI FOR THE 3RD DEFENDANT**

- **BIODUN AKIN-AINA ESQ., WITH K.C. EZEWUSE FOR THE 4TH DEFENDANT**

- **H.M. HALIRU ESQ. FOR THE 5TH DEFENDANT**

- **EYITAYO FATOGUN ESQ., WITH AKINYOSOYE AROSANYE ESQ., FOR THE 6TH DEFENDANT**

JUDGMENT

At the onset, it is necessary to highlight the fact that the initial Charges filed against these Defendants on Record were as contained in a One Hundred and Fifty-Seven (157) Count Charge, which included Four (4) other Defendants.

Upon a successful Application for Severance, the Charges were split and the Six Defendants were re-arraigned under an Amended Sixty-Five (65) Count Charge dated and filed on the 20th day of July 2010. The Charges comprise the offences of **Conspiracy contrary to Section 97 (1) of the Penal Code Act and also Criminal Breach of Trust contrary to Section 315 of the Penal Code Act** to which they all pleaded Not Guilty.

It is important to also highlight the fact that when this case was being tried for determination, Learned Silks, Paul Erokoro SAN and Offiong SAN, both representing the 1st and 2nd Defendants respectively, had approached the Court of Appeal over the Decision of this Court delivered on the 25th of February 2016, which had overruled the No-Case Submission made by the all the Defendants on Record. In the meantime, the trial progressed in accordance with the Provisions of Section 306 of the Administration of Justice Act 2015, was completed and in accordance with Section 307, the Court was mandated to retire and consider its verdict and therefore, the case was adjourned for Judgment. During the phase of Judgment Writing and when the case was set for Judgment, the Appeal from the Court of Appeal was heard and determined, whereby, the 1stDefendant's Appeal was dismissed, and the Court was notified of this dismissal, through a Letter dated the 5th of January 2018, by Learned Counsel for the Prosecution, which had attached a Copy of the Judgment of the Court of Appeal in **CA/A/272A/CR/2016**.

As regards the 2nd Defendant, the Court was notified of the decision of the Court of Appeal, through a Letter (to which an Enrolled Order of the Court of Appeal in **Appeal CA/A/272CA/2016** was attached), written by Learned Counsel for the 2nd Defendant, dated the 30th of January 2018, a few days away from this Judgment, wherein the Court of Appeal on the 21st day of December 2017, upheld his No-Case Submission, acquitting him of the Offences of Conspiracy and Criminal Breach of Trust.

At this stage, whilst the Court will give deference and take cognisance of this decision rendered by the Appellate Court, it cannot at this stage, substantially change the mode of this Judgment by unilaterally removing aspects concerning the 2nd Defendant, more especially, as there is no formal Application before the Court to amend the Charges and it would cause substantial delay in the administration of justice process, to change the context of the Judgment text at this late stage.

Therefore, the Judgment would be read as if the Charges and persona remained the same but will bear in mind, the decision of the Court of Appeal for the relative conclusions.

The Sixty-Five (65) Counts of Offences are set out as follows: -

COUNT 1

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) agreed among yourselves to do unlawful acts, to wit: Criminal Breach of Trust by Public Servants in the purported award of Grid Extension and Solar Electricity Contracts from the Amended Budget 2008 of the Rural Electrification Agency (REA); and thereby committed an offence punishable under **Section 97 (1) of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 2

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N119,669,654.28 (One Hundred and Nineteen Million, Six Hundred and Sixty Nine Thousand, Six Hundred and Fifty Four Naira, Twenty Eight Kobo only)** purporting same to be the cumulative sum for 4 (Nos.) Solar Electrification Contracts awarded to **Helping Hands International Ltd,** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 3

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N32,812,647.14 (Thirty Two Million, Eight Hundred and Twelve Thousand, Six Hundred and Forty Seven Naira, Fourteen Kobo only)** purporting same to be the cumulative sum for 1 (No) Solar Electrification contract to **Dan Jubril & Company Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 4

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N135,110,900.00 (One Hundred and Thirty Five Million, One Hundred and Ten Thousand, Nine Hundred Naira only)** purporting same to be the cumulative sum for 4 (Nos.) Solar Electrification Contracts awarded to **Valexcon Global Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 5

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N65,625,294.28 (Sixty Five Million, Six Hundred and Twenty Five Thousand, Two Hundred and Ninety Four Naira, Twenty Eight kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Solar Electrification Contracts awarded to **Emekonas Ind. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 6

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N49,399,915.30 (Forty Nine Million, Three Hundred and Ninety Nine Thousand, Nine Hundred and Fifteen Naira, Thirty Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Solar Electrification Contracts awarded to **Oliza Inv. Co. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 7

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister

Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N62,730,060.70 (Sixty Two Million, Seven Hundred and Thirty Thousand, Sixty Naira, Seventy Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Solar Electrification Contracts awarded to **Chief & Chief Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 8

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N127,390,277.12 (One Hundred and Twenty Seven Million, three Hundred and Ninety Thousand Two Hundred and Seventy Seven Naira, Twelve Kobo only)** purporting same to be the cumulative sum for 4 (Nos.) Solar Electrification Contracts awarded to **Cambra Heights Inv. Co. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 9

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial

Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N26,057,102.16 (Twenty Six Million, Fifty Seven Thousand, One Hundred and Two Naira, Sixteen Kobo only)** purporting same to be the cumulative sum for 1 (No) Solar Electrification contract to **Bazim Int. Investment Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 10

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N26,057,102.16 (Twenty Six Million, Fifty Seven Thousand, One Hundred and Two Naira, Sixteen Kobo only)** purporting same to be the cumulative sum for 1 (No) Solar Electrification contract to **Bukinn More Ventures Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 11

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money,

property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N32,814,631.28 (Thirty Two Million, Eight Hundred and Fourteen Thousand, Six Hundred and Thirty One Naira, Twenty Eight Kobo only)** purporting same to be the cumulative sum for 1 (No) Solar Electrification contract to **Aviva Global Concept Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 12

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N34,637,666.36 (Thirty Four Million, Six Hundred and Thirty Seven Thousand, Six Hundred and Sixty Six Naira, Thirty Six Kobo only)** purporting same to be the cumulative sum for 1 (No) Solar Electrification contract to **Hanson Global Link Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 13

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public

Servants; by fraudulently facilitating the withdrawal of the sum of **N29,917,413.58 (Twenty Nine Million, Nine Hundred and Seventeen Thousand, Four Hundred and Thirteen Naira Fifty Eight Kobo only)** purporting same to be the cumulative sum for 1 (No) Solar Electrification contract to **Construction Affairs Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 14

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N27,987,257.84 (Twenty Seven Million, Nine Hundred and Eighty Seven Thousand, Two Hundred and Fifty Seven Naira, Eighty Four Kobo only)** purporting same to be the cumulative sum for 1 (No) Solar Electrification contract to **Alistar Trading Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 15

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N57,904,671.40 (Fifty Seven Million, Nine Hundred and Four Thousand, Six Hundred and**

Seventy One Naira Forty Kobo only) purporting same to be the cumulative sum for 2 (Nos.) Solar Electrification Contracts awarded to **Willands Engr. Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 16

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N82,031,617.86 (Eighty Two Million, Thirty One Thousand, Six Hundred and Seventeen Naira Eighty Six Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Solar Electrification Contracts awarded to **Utility and Energy Solution** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 17

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N93,612,552.16 (Ninety Three Million, Six Hundred and Twelve Thousand, Five Hundred and Fifty Two Naira, Sixteen Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Solar Electrification Contracts awarded to **Browny Gold Ltd** from the

Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 18

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N34,637,666.36 (Thirty Four Million, Six Hundred and Thirty Seven Thousand, Six Hundred and Sixty Six Naira, Thirty Six Kobo only)** purporting same to be the cumulative sum for 1 (No) Solar Electrification contract to **Sweetstone Global Inv. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 19

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N35,377,313.28 (Thirty Five Million, Three Hundred and Seventy Seven Thousand, Three Hundred and Thirteen Naira, Twenty Eight Kobo only)** purporting same to be the cumulative sum for 1 (No) Solar Electrification contract to **Copec Solar Technology Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby

committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 20

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N141,509,253.16 (One Hundred and Forty Million, Five Hundred and Nine Thousand, Two Hundred and Fifty Three Naira, Sixteen Kobo only)** purporting same to be the cumulative sum for 4 (Nos.) Solar Electrification Contracts awarded to **Skipper Electric Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 21

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N19,025,169.89 (Nine Million, Twenty Five Thousand, One Hundred and Sixty Nine Thousand, Eight Nine Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Sayuti Enter. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under

Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.

COUNT 22

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N17,799,411.82 (Seventeen Million, Seven Hundred and Ninety Nine Thousand, Four Hundred and Eleven Naira, Eighty Two Kobo only)** purporting same to be sum for 1 (No) Grid Extension Electrification contract to **Geophil Service Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 23

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N53,884,716.47 (Fifty Three Million, Eight Hundred and Eighty Four Thousand, Seven Hundred and Sixteen Naira, Forty Seven Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Mask Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 24

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N73,173,060.00 (Seventy Three Million, One Hundred and Seventy Three Thousand, Sixty Naira only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Omotosho& Sons Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 25

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N32,526,000.78 (Thirty Two Million, Five Hundred and Twenty Six Thousand, Seventy Eight Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Stanley Stephen & Co. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 26

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N95,618,766.61 (Ninety Five Million, Six Hundred and Eighteen Thousand, Seven Hundred and Sixty Six Naira, Sixty One Kobo only)** purporting same to be the cumulative sum for 5 (Nos.) Grid Extension Electrification Contracts to **Willands Engr. Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 27

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N84,044,513.21 (Eighty Four Million, Forty Four Thousand, Five Hundred and Thirteen Naira, Twenty One Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Con. Engr. Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 28

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister

Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N16, 634,709.95 (Sixteen Million, Six Hundred and Thirty Four Thousand, Seven Hundred and Nine Naira, Ninety Five Kobo only)** purporting same to be the sum for 1 (No) Grid Extension Electrification contract to **Mak&Mak Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 29

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N46,445,810.37 (Forty Six Million, Four Hundred and Forty Five Thousand, Eight Hundred and Ten Naira Thirty Seven Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Best Brother Int. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 30

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being

Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N130,757,886.71 (One Hundred and Thirty Million, Seven Hundred and Fifty Seven Thousand, Eight Hundred and Eighty Six Naira, Seventy One Kobo only)** purporting same to be the cumulative sum for 5 (Nos.) Grid Extension Electrification contract to **Damsal Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 31

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N56,513,730.30 (Fifty Six Million, Five Hundred and Thirteen Thousand, Seven Hundred and Thirty Naira, Thirty Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Lakfed Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 32

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of**

Nigeria Account No. 0103742014, committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N69,561,972.16 (Sixty Nine Million, Five Hundred and Sixty One Thousand, Nine Hundred and Seventy Two Naira, Sixteen Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Sibga Service Ltd.,** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 33

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N64,456,014.28 (Sixty Four Million, Four Hundred and Fifty Six Thousand, Fourteen Naira, Twenty Eight Kobo only)** purporting same to be the cumulative sum for 1 (No) Grid Extension Electrification contract to **Solabig Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 34

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N64,471,680.53**

(Sixty Four Million, Four Hundred and Seventy One Thousand, Six Hundred and Eighty Naira, Fifty Three Kobo only) purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Bernadinois Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 35

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N52,619,138.65 (Fifty Two Million, Six Hundred and Nineteen Thousand, One Hundred and Thirty Eight Naira, Sixty Five Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Nelly Vic Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 36

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N59,985,721.21 (Fifty Nine Million, Nine Hundred and Eighty Five Thousand, Seven Hundred and Twenty One Naira, Twenty One Kobo only)** purporting same to be the

cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **El-Pinder Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 37

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N53,208,566.74 (Fifty Three Million, Two Hundred and Eight Thousand, Five Hundred and Sixty Six Naira, Seventy Four Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Jidec Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 38

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N150,345,672.55 (One Hundred and Fifty Million, Three Hundred and Forty Five Thousand, Six Hundred and Seventy Two Naira, Fifty Five Kobo only)** purporting same to be the cumulative sum for 6 (Nos.) Grid Extension Electrification contract to **Tometrix Int'l Ltd** from the Amended Budget 2008 of the

Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 39

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N102,736,599.22 (One Hundred and Two Million, Seven Hundred and Thirty Six Thousand, Five Hundred and Ninety Nine Naira, Twenty Two Kobo only)** purporting same to be the cumulative sum for 4 (Nos.) Grid Extension Electrification Contracts to **Asia Africa Trading Co. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 40

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N132,950,093.06 (One Hundred and Thirty Two Million, Nine Hundred and Fifty Thousand, Ninety Three Naira, Six Kobo only)** purporting same to be the cumulative sum for 5 (Nos.) Grid Extension Electrification Contracts to **C. C. Ohms Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby

committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 41

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N54,741,210.98 (Fifty Four Million, Seven Hundred and Forty One Thousand, Two Hundred and Ten Naira Ninety Eight Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Makfen Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 42

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N38,392,704.40 (Thirty Eight Million, Three Hundred and Ninety Two Thousand, Seven Hundred and Four Naira, Forty Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Savannah Engr. Ltd.** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 43

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N38,250,077.37 (Thirty Eight Million, Two Hundred and Fifty Thousand, Nine Hundred and Seventy Seven Naira Thirty Seven Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Bajot Engr. Co. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 44

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N38,250,077.37 (Thirty Eight Million, Two Hundred and Fifty Thousand, Nine Hundred and Seventy Seven Naira Thirty Seven Kobo only)** purporting same to be the sum for 1 (No) Grid Extension Electrification contract to **Emacson Engr. Co. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 45

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N664,246,839.90 (Six Hundred and Sixty Four Million, Two Hundred and Forty Six Thousand, Eight Hundred and Thirty Nine Naira, Ninety Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Liberty (Overseas) Brothers Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 46

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N73,094,179.43 (Seventy Three Million, Ninety Four Thousand, One Hundred and Seventy Nine Naira, forty Three Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Nabeelah Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 47

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister

Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N44,691,205.74 (Forty Four Million, Six Hundred and Ninety One Thousand, Two Hundred and Five Naira, Seventy Four Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Sunnex Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 48

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N82,844,822.64 (Eighty Two Million, Eight Hundred and Forty Four Thousand, Eight Hundred and Twenty Two Naira, Sixty Four Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Adolphous Holding Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 49

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being

Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N53,365,253.25 (Fifty Three Million, Three Hundred and Sixty Five Thousand, Two Hundred and Fifty Three Naira, Twenty Five Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Lastak Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 50

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N34,026,318.10 (Thirty Four Million, Twenty Six Thousand, Three Hundred and Eighteen Naira, Ten Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Fos Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 51

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of**

Nigeria Account No. 0103742014, committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N42,566,986.43 (Forty Two Million, Five Hundred and Sixty Six Thousand, Nine Hundred and Eighty Six Naira, Forty Three Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Arijet (WA) Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 52

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N31,984,878.12 (Thirty One Million, Nine Hundred and Eighty Four Thousand, Eight Hundred and Seventy Eight Naira, Twelve Kobo only)** purporting same to be the sum for 1 (No.) Grid Extension Electrification contract to **RienChemie Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 53

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N61,001,199.91**

(Sixty One Million, One Thousand, One Hundred and Ninety Nine Naira, Ninety One Kobo only) purporting same to be the cumulative sum for 5 (Nos.) Grid Extension Electrification Contracts to **Samab Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 54

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N81,284,928.77 (Eighty One Million, Two Hundred and Eighty Four Thousand, Nine Hundred and Twenty Eight Naira, Seventy Seven Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Best Co. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 55

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N61,340,554.72 (Sixty One Million, Three Hundred and Forty Thousand, Five Hundred and Fifty Four Naira, Seventy Two Kobo only)** purporting same to be the cumulative

sum for 2 (Nos.) Grid Extension Electrification Contracts to **Incourage Trust Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 56

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N81,919,376.90 (Eighty One Million, Nine Hundred and Nineteen Thousand, Three Hundred and Seventy Six Naira, Ninety Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Sokotech Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 57

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N11,504,400.97 (Eleven Million, Five Hundred and Four Thousand, Four Hundred Naira, Ninety Seven Kobo only)** purporting same to be the sum for 1 (No) Grid Extension Electrification contract to **Okia Morris Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is

to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 58

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N11,542,578.03 (Eleven Million, Five Hundred and Forty Two Thousand, Five Hundred and Seventy Eight Naira, Three Kobo only)** purporting same to be the sum for 1 (No) Grid Extension Electrification contract to **Comdavis Electric. Enter. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 59

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N34,815,347.12 (Thirty Four Million, Eight Hundred and Fifteen Thousand, Three Hundred and Forty Seven Naira, Twelve Kobo only)** purporting same to be the sum for 1 (No) Grid Extension Electrification contract to **Mark 'E' Engr. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 60

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N106,080,116.88 (One Hundred and six Million, Eighty Thousand, One Hundred and Sixteen Naira, Eighty Eight Kobo only)** purporting same to be the cumulative sum for 4 (Nos.) Grid Extension Electrification Contracts to **Mondok Engr. (Nig.) Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 61

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N91,343,627.88 (Ninety One Million, Three Hundred and Forty Three Thousand, Six Hundred and Twenty Seven Naira, Eighty Eight Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Mono Tech Input Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 62

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N61,191,773.23 (Sixty One Million, One Hundred and Ninety One Thousand, Seven Hundred and Seventy Three Naira, Twenty Three Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Soltech Nig. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 63

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N74,306,666.82 (Seventy Four Million, Three Hundred and Six Thousand, Six Hundred and Sixty Six Naira, Eighty Two Kobo only)** purporting same to be the cumulative sum for 3 (Nos.) Grid Extension Electrification Contracts to **Jibrilla Ent. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990**

COUNT 64

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister

Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N31,513,940.27 (Thirty One Million, Five Hundred and Thirteen Thousand, Nine Hundred and Forty Naira, Twenty Seven Kobo only)** purporting same to be the cumulative sum for 2 (Nos.) Grid Extension Electrification Contracts to **Aum Projects Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

COUNT 65

That you (1) Engr. Samuel Ibi Gekpe, (2) Dr. Abdullahi Aliyu, (3) Simon Kirdi Nanle, (4) Engr. Lawrence Kayode Orekoya, (5) Abdulsamad Garba Jahun and (6) Barrister Kayode I. Oyedeji, sometime in December 2008, in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory of Nigeria, while being Public Servants/Officers and in such capacity entrusted with dominion over money, property of the Rural Electrification Agency (REA) domiciled in **Central Bank of Nigeria Account No. 0103742014,** committed Criminal Breach of Trust by Public Servants; by fraudulently facilitating the withdrawal of the sum of **N7,466,942.51 (Seven Million, Four Hundred and Sixty Six Thousand, Nine Hundred and Forty Two Naira, Fifty One Kobo only)** purporting same to be the sum for 1 (No) Grid Extension Electrification contract to **W. Ibe & Bros. Ltd** from the Amended Budget 2008 of the Rural Electrification Agency (REA) in violation of the mode in which such trust is to be discharged; and thereby committed an offence punishable under **Section 315 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.**

The Prosecution opened its case on the 19th day of April 2011, calling a Total of Seven (7) Witnesses.

The 1st to 4th Prosecution Witnesses were all Subpoenaed Witnesses, who basically tendered Documents. These Subpoenaed Witnesses were: -

PW1, Mr. Elo Imoke, a Manager in the Compliance Department of the Corporate Affairs Commission, who tendered documentation relating to Dan Jubril & Co. Ltd., which were admitted as **Exhibits 1 to 5** on the Record.

PW2, Mr. Udogwu Okebe, a Senior Manager with the Central Bank of Nigeria, Abuja Branch tendered the Certified True Copies of Central Bank Cheques as **Exhibits 6 to 151**.

PW3, Ms. Nkechi Nzeduba, a Business Manager of the United Bank for Africa, tendered **Exhibits 152 to 157**. With the exclusion of Exhibit 157, Exhibits 152 to 156 had to do with the Account Opening Documentation for Dan Jubril & Co. Ltd., whilst Exhibit 157, is a Certified True Copy of a Letter of Request for a written clarification, and dealt with the payment of 15% Contract Sum by the Rural Electrification Agency (hereinafter referred to as "**REA**").

PW4, Mr. Matthew Onwusoh, a Senior Manager, Corporate Performance and Regulation of REA tendered into evidence Documentation of REA, including the Amended Budget for the Year 2008, Certain Memos, Certificates of No Objection, New Project Award, Payment Vouchers, Contract Award Letters and Acceptance Letter, Letters of Authority as **Exhibits 158 through to Exhibits 181B**.

For Ease of Reference, the Extended and Itemized List is tabulated as follows: -

EXHIBIT MARK	EXHIBIT PARTICULARS	COMMENT
EXH. 1	CAC CERTIFICATE FORM OF INCORPORATION	C.T.C & COPY
EXH. 2	FORM CAC 2 DAN JIBRIL	C.T.C & COPY
EXH. 3	FORM CAC 7 DAN JIBRIL	C.T.C & COPY
EXH. 4	FORM CAC 3 DAN JIBRIL	C.T.C & COPY
EXH. 5	MEMORANDUM AND ARTICLE OF ASSOCIATION	C.T.C & COPY
EXH. 6	CBN CHEQUE DATED 24/12/08 NO. 03140806	C.T.C & COPY
EXH. 7	CBN CHEQUE DATED 24/12/08 NO. 03140808	C.T.C & COPY
EXH. 8	CBN CHEQUE DATED 24/12/08 NO. 03140810	C.T.C & COPY
EXH. 9	CBN CHEQUE DATED 24/12/08 NO. 03140812	C.T.C & COPY
EXH. 10	CBN CHEQUE DATED 24/12/08 NO. 03140814	C.T.C & COPY
EXH. 11	CBN CHEQUE DATED 24/12/08 NO. 03140816	C.T.C & COPY
EXH. 12	CBN CHEQUE DATED 24/12/08 NO. 03140820	C.T.C & COPY
EXH. 13	CBN CHEQUE DATED 24/12/08 NO. 03140822	C.T.C & COPY
EXH. 14	CBN CHEQUE DATED 24/12/08 NO. 03140826	C.T.C & COPY
EXH. 15	CBN CHEQUE DATED 24/12/08 NO. 03140835	C.T.C & COPY

EXH. 16	CBN CHEQUE DATED 24/12/08 NO. 03140838	C.T.C & COPY
EXH. 17	CBN CHEQUE DATED 24/12/08 NO. 03140841	C.T.C & COPY
EXH. 18	CBN CHEQUE DATED 24/12/08 NO. 03140843	C.T.C & COPY
EXH. 19	CBN CHEQUE DATED 24/12/08 NO. 03140845	C.T.C & COPY
EXH. 20	CBN CHEQUE DATED 24/12/08 NO. 03140847	C.T.C & COPY
EXH. 21	CBN CHEQUE DATED 24/12/08 NO. 03140849	C.T.C & COPY
EXH. 22	CBN CHEQUE DATED 24/12/08 NO. 03140851	C.T.C & COPY
EXH. 23	CBN CHEQUE DATED 24/12/08 NO. 03140853	C.T.C & COPY
EXH. 24	CBN CHEQUE DATED 24/12/08 NO. 03140855	C.T.C & COPY
EXH. 25	CBN CHEQUE DATED 24/12/08 NO. 03140859	C.T.C & COPY
EXH. 26	CBN CHEQUE DATED 24/12/08 NO. 03140861	C.T.C & COPY
EXH. 27	CBN CHEQUE DATED 24/12/08 NO. 03140864	C.T.C & COPY
EXH. 28	CBN CHEQUE DATED 24/12/08 NO. 03140866	C.T.C & COPY
EXH. 29	CBN CHEQUE DATED 29/12/08 NO. 03140870	C.T.C & COPY
EXH.30	CBN CHEQUE DATED 24/12/08 NO. 03140868	C.T.C & COPY
EXH. 31	CBN CHEQUE DATED 24/12/08 NO. 03140835	C.T.C & COPY
EXH. 32	CBN CHEQUE DATED 29/12/08 NO. 03140872	C.T.C & COPY
EXH. 33	CBN CHEQUE DATED 29/12/08 NO. 03140874	C.T.C & COPY
EXH. 34	CBN CHEQUE DATED 29/12/08 NO. 03140876	C.T.C & COPY
EXH. 35	CBN CHEQUE DATED 29/12/08 NO. 03140878	C.T.C & COPY
EXH. 36	CBN CHEQUE DATED 29/12/08 NO. 03140880	C.T.C & COPY
EXH. 37	CBN CHEQUE DATED 30/12/08 NO. 03140900	C.T.C & COPY
EXH. 38	CBN CHEQUE DATED 30/12/08 NO. 03140033	C.T.C & COPY
EXH. 39	CBN CHEQUE DATED 30/12/08 NO. 03140027	C.T.C & COPY
EXH. 40	CBN CHEQUE DATED 30/12/08 NO. 03140029	C.T.C & COPY
EXH. 41	CBN CHEQUE DATED 30/12/08 NO. 03140031	C.T.C & COPY
EXH. 42	CBN CHEQUE DATED 30/12/08 NO. 03140035	C.T.C & COPY
EXH. 43	CBN CHEQUE DATED 30/12/08 NO. 03140048	C.T.C & COPY
EXH. 44	CBN CHEQUE DATED 30/12/08 NO. 03140882	C.T.C & COPY
EXH. 45	CBN CHEQUE DATED 30/12/08 NO. 03140883	C.T.C & COPY
EXH. 46	CBN CHEQUE DATED 30/12/08 NO. 03140884	C.T.C & COPY
EXH. 47	CBN CHEQUE DATED 30/12/08 NO. 03140886	C.T.C & COPY
EXH. 48	CBN CHEQUE DATED 30/12/08 NO. 03140888	C.T.C & COPY
EXH. 49	CBN CHEQUE DATED 30/12/08 NO. 03140890	C.T.C & COPY
EXH. 50	CBN CHEQUE DATED 30/12/08 NO. 03140892	C.T.C & COPY
EXH. 51	CBN CHEQUE DATED 30/12/08 NO. 03140894	C.T.C & COPY
EXH. 52	CBN CHEQUE DATED 30/12/08 NO. 03140896	C.T.C & COPY

EXH. 53	CBN CHEQUE DATED 30/12/08 NO. 03140898	C.T.C & COPY
EXH. 54	CBN CHEQUE DATED 30/12/08 NO. 03140002	C.T.C & COPY
EXH. 55	CBN CHEQUE DATED 30/12/08 NO. 03140004	C.T.C & COPY
EXH. 56	CBN CHEQUE DATED 30/12/08 NO. 03140006	C.T.C & COPY
EXH. 57	CBN CHEQUE DATED 30/12/08 NO. 03140008	C.T.C & COPY
EXH. 58	CBN CHEQUE DATED 30/12/08 NO. 03140011	C.T.C & COPY
EXH. 59	CBN CHEQUE DATED 30/12/08 NO. 03140013	C.T.C & COPY
EXH. 60	CBN CHEQUE DATED 30/12/08 NO. 03140015	C.T.C & COPY
EXH. 61	CBN CHEQUE DATED 30/12/08 NO. 03140017	C.T.C & COPY
EXH. 62	CBN CHEQUE DATED 30/12/08 NO. 03140043	C.T.C & COPY
EXH. 63	CBN CHEQUE DATED 30/12/08 NO. 03140045	C.T.C & COPY
EXH. 64	CBN CHEQUE DATED 30/12/08 NO. 03140047	C.T.C & COPY
EXH. 65	CBN CHEQUE DATED 30/12/08 NO. 03140051	C.T.C & COPY
EXH. 66	CBN CHEQUE DATED 30/12/08 NO. 03140053	C.T.C & COPY
EXH. 67	CBN CHEQUE DATED 30/12/08 NO. 03140055	C.T.C & COPY
EXH. 68	CBN CHEQUE DATED 30/12/08 NO. 03140057	C.T.C & COPY
EXH. 69	CBN CHEQUE DATED 30/12/08 NO. 03140059	C.T.C & COPY
EXH. 70	CBN CHEQUE DATED 30/12/08 NO. 03140062	C.T.C & COPY
EXH. 71	CBN CHEQUE DATED 30/12/08 NO. 03140064	C.T.C & COPY
EXH. 72	CBN CHEQUE DATED 30/12/08 NO. 03140066	C.T.C & COPY
EXH. 73	CBN CHEQUE DATED 30/12/08 NO. 03140070	C.T.C & COPY
EXH. 74	CBN CHEQUE DATED 30/12/08 NO. 03140076	C.T.C & COPY
EXH. 75	CBN CHEQUE DATED 30/12/08 NO. 03140078	C.T.C & COPY
EXH. 76	CBN CHEQUE DATED 30/12/08 NO. 03140084	C.T.C & COPY
EXH. 77	CBN CHEQUE DATED 30/12/08 NO. 03140116	C.T.C & COPY
EXH.78	CBN CHEQUE DATED 30/12/08 NO. 03140118	C.T.C & COPY
EXH. 79	CBN CHEQUE DATED 30/12/08 NO. 03140120	C.T.C & COPY
EXH. 80	CBN CHEQUE DATED 30/12/08 NO. 03140128	C.T.C & COPY
EXH. 81	CBN CHEQUE DATED 30/12/08 NO. 03140124	C.T.C & COPY
EXH. 82	CBN CHEQUE DATED 30/12/08 NO. 03140126	C.T.C & COPY
EXH. 83	CBN CHEQUE DATED 30/12/08 NO. 03140128	C.T.C & COPY
EXH. 84	CBN CHEQUE DATED 30/12/08 NO. 03140130	C.T.C & COPY
EXH. 85	CBN CHEQUE DATED 30/12/08 NO. 03140132	C.T.C & COPY
EXH. 86	CBN CHEQUE DATED 30/12/08 NO. 03140134	C.T.C & COPY
EXH. 87	CBN CHEQUE DATED 30/12/08 NO. 03140136	C.T.C & COPY
EXH. 88	CBN CHEQUE DATED 30/12/08 NO. 03140138	C.T.C & COPY
EXH. 89	CBN CHEQUE DATED 30/12/08 NO. 03140140	C.T.C & COPY

EXH. 90	CBN CHEQUE DATED 30/12/08 NO. 03140144	C.T.C & COPY
EXH. 91	CBN CHEQUE DATED 30/12/08 NO. 03140146	C.T.C & COPY
EXH. 92	CBN CHEQUE DATED 30/12/08 NO. 03140148	C.T.C & COPY
EXH. 93	CBN CHEQUE DATED 30/12/08 NO. 03140156	C.T.C & COPY
EXH. 94	CBN CHEQUE DATED 30/12/08 NO. 03140158	C.T.C & COPY
EXH. 95	CBN CHEQUE DATED 30/12/08 NO. 03140160	C.T.C & COPY
EXH. 96	CBN CHEQUE DATED 30/12/08 NO. 03140162	C.T.C & COPY
EXH. 97	CBN CHEQUE DATED 30/12/08 NO. 03140188	C.T.C & COPY
EXH. 98	CBN CHEQUE DATED 30/12/08 NO. 03140194	C.T.C & COPY
EXH. 99	CBN CHEQUE DATED 30/12/08 NO. 03140196	C.T.C & COPY
EXH. 100	CBN CHEQUE DATED 30/12/08 NO. 03140019	C.T.C & COPY
EXH. 101	CBN CHEQUE DATED 30/12/08 NO. 03140021	C.T.C & COPY
EXH. 102	CBN CHEQUE DATED 30/12/08 NO. 03140023	C.T.C & COPY
EXH. 103	CBN CHEQUE DATED 30/12/08 NO. 03140025	C.T.C & COPY
EXH. 104	CBN CHEQUE DATED 30/12/08 NO. 03140037	C.T.C & COPY
EXH. 105	CBN CHEQUE DATED 30/12/08 NO. 03140038	C.T.C & COPY
EXH. 106	CBN CHEQUE DATED 30/12/08 NO. 03140041	C.T.C & COPY
EXH. 107	CBN CHEQUE DATED 30/12/08 NO. 03140068	C.T.C & COPY
EXH. 108	CBN CHEQUE DATED 30/12/08 NO. 03140072	C.T.C & COPY
EXH. 109	CBN CHEQUE DATED 30/12/08 NO. 03140074	C.T.C & COPY
EXH. 110	CBN CHEQUE DATED 30/12/08 NO. 03140076	C.T.C & COPY
EXH. 111	CBN CHEQUE DATED 30/12/08 NO. 03140080	C.T.C & COPY
EXH. 112	CBN CHEQUE DATED 30/12/08 NO. 03140082	C.T.C & COPY
EXH. 113	CBN CHEQUE DATED 30/12/08 NO. 03140086	C.T.C & COPY
EXH. 114	CBN CHEQUE DATED 30/12/08 NO. 03140081	C.T.C & COPY
EXH. 115	CBN CHEQUE DATED 30/12/08 NO. 03140090	C.T.C & COPY
EXH. 116	CBN CHEQUE DATED 30/12/08 NO. 03140092	C.T.C & COPY
EXH. 117	CBN CHEQUE DATED 30/12/08 NO. 03140094	C.T.C & COPY
EXH. 118	CBN CHEQUE DATED 30/12/08 NO. 03140096	C.T.C & COPY
EXH. 119	CBN CHEQUE DATED 30/12/08 NO. 03140098	C.T.C & COPY
EXH. 120	CBN CHEQUE DATED 30/12/08 NO. 03140100	C.T.C & COPY
EXH. 121	CBN CHEQUE DATED 30/12/08 NO. 03140102	C.T.C & COPY
EXH. 122	CBN CHEQUE DATED 30/12/08 NO. 03140104	C.T.C & COPY
EXH. 123	CBN CHEQUE DATED 30/12/08 NO. 03140106	C.T.C & COPY
EXH. 124	CBN CHEQUE DATED 30/12/08 NO. 03140108	C.T.C & COPY
EXH. 125	CBN CHEQUE DATED 30/12/08 NO. 03140110	C.T.C & COPY
EXH. 126	CBN CHEQUE DATED 30/12/08 NO. 03140112	C.T.C & COPY

EXH. 127	CBN CHEQUE DATED 30/12/08 NO. 03140114	C.T.C & COPY
EXH. 128	CBN CHEQUE DATED 30/12/08 NO. 03140164	C.T.C & COPY
EXH. 129	CBN CHEQUE DATED 30/12/08 NO. 03140166	C.T.C & COPY
EXH. 130	CBN CHEQUE DATED 30/12/08 NO. 03140168	C.T.C & COPY
EXH. 131	CBN CHEQUE DATED 30/12/08 NO. 03140172	C.T.C & COPY
EXH. 132	CBN CHEQUE DATED 30/12/08 NO. 03140174	C.T.C & COPY
EXH. 133	CBN CHEQUE DATED 30/12/08 NO. 03140176	C.T.C & COPY
EXH. 134	CBN CHEQUE DATED 30/12/08 NO. 03140178	C.T.C & COPY
EXH. 135	CBN CHEQUE DATED 30/12/08 NO. 03140180	C.T.C & COPY
EXH. 136	CBN CHEQUE DATED 30/12/08 NO. 03140182	C.T.C & COPY
EXH. 137	CBN CHEQUE DATED 30/12/08 NO. 03140184	C.T.C & COPY
EXH. 138	CBN CHEQUE DATED 30/12/08 NO. 03140186	C.T.C & COPY
EXH. 139	CBN CHEQUE DATED 30/12/08 NO. 031	C.T.C & COPY
EXH. 140	CBN CHEQUE DATED 30/12/08 NO. 03140206	C.T.C & COPY
EXH. 141	CBN CHEQUE DATED 30/12/08 NO. 031	C.T.C & COPY
EXH. 142	CBN CHEQUE DATED 30/12/08 NO. 03140210	C.T.C & COPY
EXH. 143	CBN CHEQUE DATED 30/12/08 NO. 03140214	C.T.C & COPY
EXH. 144	CBN CHEQUE DATED 30/12/08 NO. 03140216	C.T.C & COPY
EXH. 145	CBN CHEQUE DATED 30/12/08 NO. 03140218	C.T.C & COPY
EXH. 146	CBN CHEQUE DATED 30/12/08 NO. 03140220	C.T.C & COPY
EXH. 147	CBN CHEQUE DATED 30/12/08 NO. 03140222	C.T.C & COPY
EXH. 148	CBN CHEQUE DATED 30/12/08 NO. 03140224	C.T.C & COPY
EXH. 149	CBN CHEQUE DATED 30/12/08 NO. 03140226	C.T.C & COPY
EXH. 150	CBN CHEQUE DATED 24/12/08 NO. 03140837	C.T.C & COPY
EXH. 151	CBN CHEQUE DATED 24/12/08 NO. 03140824	C.T.C & COPY
EXH. 151	CBN CHEQUE DATED 24/12/08 NO. 03140824	C.T.C & COPY
EXH. 152	SIGNATURE CARD, CURRENT ACCOUNT	C.T.C & COPY
EXH. 153	UBA ACCOUNT OPENING DETAILS DAN JUBRIL	C.T.C & COPY
EXH. 154	SEARCH REPORT	C.T.C & COPY
EXH. 155	KYC CUSTOMER Q	C.T.C & COPY
EXH. 156	COMPANY RESOLUTION	C.T.C & COPY
EXH. 157	REQUEST FOR WRITTEN CLARIFIATION	C.T.C & COPY
EXH. 158	BUDGET FOR YEAR 2008	C.T.C & COPY
EXH. 159	LETTER DATED 10/12/08 SUMMARY MEETING	C.T.C & COPY
EXH. 160	COMMITTEE MEETING LETTER DATED 10/12/08	C.T.C & COPY
EXH. 161	CERTIFICATE OF NO OBJECTION (AWARD)	C.T.C & COPY
EXH. 162	CERTIFICATE OF NO OBJECTION (AWARD)	C.T.C & COPY

EXH. 163	NEW PROJECT FOR AWARD UNDER Y 2008 AMENDED	C.T.C & COPY
EXH. 164	FORWARDING OF LIST OF PRE-QUALIFIED CONSTRUC. REA 2008	C.T.C & COPY
EXH. 165	REA 2008	C.T.C & COPY
EXH. 166	RURAL ELECT. AGENCY SOLAR BASED 2008	C.T.C & COPY
EXH. 167 A1 – A37	EVIDENCE OF 85% PAYMENT LIST	C.T.C & COPY
EXH. 168 A1 – A40	EVIDENCE PAYMENT OF 15% TO CONTRACTOR	C.T.C & COPY
EXH. 169 A1 – A111	REA PAYMENT VOUCHER	C.T.C & COPY
EXH. 170 A1 – 113	ALL DOCUMENT RELATING TO GRID PAYMENT	C.T.C & COPY
EXH. 171	OFFER OF AWARD LETTER DATED 12/12/08	C.T.C & COPY
EXH. 172	ACCEPTANCE LETTER OF AWARD 19/12/08	C.T.C & COPY
EXH. 173	LETTER OF ATESTMENT FOR AWARD DAN JUBRIL 23/12/08	C.T.C & COPY
EXH. 174	PAYMENT VOUCHER DATED 31/12/08	C.T.C & COPY
EXH. 175	CTC OF ATTESTETION BY UDUAK ISRAEL	C.T.C & COPY
EXH. 176	LETTER OF AUTHORITY FOR CHEQUE COLLECTION 29/12/08	C.T.C & COPY
EXH. 177	CTC OF PAYMENT VOUCHER 7/1/09 FOR DAN JIBRIL	C.T.C & COPY
EXH. 178	LETTER OF AUTHORITY FOR CHEQUE COLLECTION BY M.D. FOR DAN JIBRIL	C.T.C & COPY
EXH. 179	CTC OF AGREEMENT FOR PROVISION OF SOLAR STREET LIGHTING FOR DAN JIBRIL	C.T.C & COPY
EXH. 180A	CTC OF PAYMENT VOUCHER FOR CAMBRA HEIGHT INVEST. CO. LTD	C.T.C & COPY
EXH. 180B	CTC OF PAYMENT VOUCHER FOR UTILITY AND ENERGY SOLUTIONS LTD CBN/08/818	C.T.C & COPY
EXH. 180C	CTC OF PAYMENT VOUCHER FOR UTILITY AND ENERGY SOLUTION LTD CBN/08/814	C.T.C & COPY
EXH. 181A	CTC OF PAYMENT VOUCHER FOR SOLABIC NIG. LTD CBN/08/923	C.T.C & COPY
EXH. 181B	CTC OF PAYMENT VOUCHER FOR EL-PINDERS NIG. LTD CBN/08/1037	C.T.C & COPY

PW5, Mr Nasiru Bello, the Assistant Chief Procurement Officer in the employ of the Bureau for Public Procurement (hereafter referred to as the "**Bureau**"), identified the functions of the Bureau to include: - Reviewing Government Projects that exceeded the threshold of Ministries, Departments and Agencies (hereinafter referred to as "**MDA**"); and carrying out Procurement Audit on the MDA's Preceding Year Procurement for the purposes of determining compliance with the Bureau for Public Procurement Act (hereinafter referred to as the**"PPA"**).

Sometime in March 2009, on the instruction of the Director-General of the Bureau, he and seven other persons were constituted into an Eight Man Procurement Audit Team to carry out Procurement Audit on REA for the 2008 Financial Year and they commenced and concluded the Procurement Audit Exercise from the 17th to the 19th of March 2009, after which they chronicled their findings into a Report called the Procurement Audit Report. A Certified True Copy of this Report was admitted without objection as **Exhibit 182**.

Based on the Terms of Reference in the Report, REA provided as requested all the Contract Documents that were awarded in 2008, the Documents containing the Procedure adopted for the Procurement, the List of Companies that participated in the Procurement, the Pre- Qualification and Financial Documents of the Listed Participant Companies, the Tenders Board Approval, Contract Awards, Contract Agreements, Status of the Project as well as the Payment Status of the Project. They discovered therefrom that Two sets of Contracts were awarded in Two Lots, namely: - (1) Grid Electrification and Extension Lot; and (2) Solar Electrification Lot. Also discovered was the fact that from the 113 Contracts awarded for the Grid Electrification and Extension Lot, only 105 Documents were supplied. Similarly, as regards the 45 Contracts awarded for Solar Electrification Lot, only 29 Documents were supplied.

With the supplied REA Documentations, the Team used a Template to ascertain the Level of Compliance, the Commencement and Completion of the Contracts. Other documents also analysed and evaluated were Documents in **Exhibits 169 A1- 111, 170 A1- 13, 158- 163, 164- 179, 168 A1- A40 and 167A1- A37.**

From their analysis of the Grid Extension Contract Lot in Paragraph 4.0 of the Report, his Team noted that the Procurement was not advertised in any National Daily. The Ministry of Power in 2007, compiled a Pre-Qualification List of Companies recommended for the awards of Contracts in instances where a Selective Tendering Method is employed. This Pre-Qualification List had a total of 113

Companies. Upon examining this Pre-qualification List, they observed that only 24 out of 113 Companies on the List were included and awarded Grid Extension Contracts and he highlightedthe names of the Companies that were not mentioned in the 2007 Ministry's List at the Back Page of the Ministry's List.

PW5 stated that under normal circumstances all Heads of Department were expected to be part of the Tenders Board and he named the Tenders Board Members of REA who awarded the Contracts to be: - (1). Engineer Sam Gekpe- Managing Director as Chairman; (2). Mr Nanle Simon Kirdi- Director, Fund Management as Member; (3). Engineer M. K. Orekoya, Director of Projects as Member; (4). Mr Isa Yau Dunari, Director of Promotion as Member; (5). Mr. Abdulsamad G. Jahun, Director of Human Resources and Administration as Member; and (6). Mr. Oyedeji I. Kayode, Head of Legal Department as Secretary.

According to PW5, his Team came to the conclusion in their Audit Report that REA did not advertise the awarded Contracts in any National Dailies as provided for in the Public Procurement Act nor did they carry out National Competitive Bidding nor Bid Evaluation.

Under Cross- examination by Learned Counsel for the 1st Defendant, he described the various Methods of Procurement. He then set out the Preliminary Stages to be considered before a Procurement could be made to be: - (1) An Advert was to be made in Two (2) National Dailies including the Tenders' Journal with an estimated time set at Six (6) Weeks; (2) the Pre-Qualification Stage; (3) the Financial Tender Stage, considered by the Planning Committee of REA; followed by (4) the Tender Board's Stage where the Contract is eventually awarded to the Contractors and an Agreement is executed and finally (5) the Execution of the Contract.

He was aware of the fact that Budgets for a period of one year were usually sent to the Ministries, Departments and Agencies (MDAs) and knew also that the yearly period may extend into the following year. He knew that monies not exhausted by any MDA were mopped up and sent back to the Federal Government's Treasury.

Though PW5 remembered the date the 2008 Amended Budget was approved by the President, he was unaware whether or not Budgets passed by the National Assembly were Acts of the National Assembly and he identified Exhibit 158 to be the Budget for Nigeria, even though he could not sight the signature of the President on it.However, he did not know whether REA received her Amended Budget in December.

Since REA had abused the procurement process, only the Bureau in the National Interest could cancel the awarded Contracts. However, cancellation was not recommended by his Team, due to the absence of mandate as contained in their Terms of Reference, which simply dictated an examination of whether or not the award process followed due process.

He testified that REA supplied the Team with some Files, while others were in the custody of the Economic and Financial Crimes Commission (EFCC). His Team never verified the execution of the projects nor investigated individuals to ascertain whether or not the Award of Contracts followed due process, as this was not part of their Terms of Reference. He was not aware of the Contractorsgoing to Court nor could he tell whether or not these Contractors were Legally Registered Companies with the Corporate Affairs Commission (CAC), as his Team never conducted any check to ascertain their Registration. All he could say was that the REA Budget was implemented a little late and may have resulted in the non-implementation of its Capital Projects.

Under Cross-Examination by Learned Counsel for the 2nd Defendant, he stated that where an Emergency Project was not initially provided for in a Budget, a Supplementary Budget mightbe presented to the National Assembly to accommodate that Project.

PW5 stated that they discovered that the Solar Electrification and Grid Extension Contracts were to last for Sixty (60) days and Ninety (90) days respectively. When asked whether the Supplementary Budget was passed in November, he could not remember.

He was not aware that the Economic and Financial Crimes Commission (hereinafter referred to as "**EFCC**") got involved in the matter ordering the freezing of the accounts in which Eighty-Five (85) % of the Contract Sums were lodged. He would not have been surprised to learn that after the Contractors had completed their Contracts, they were eventually paid.

Further, he stated that the Public Procurement Act made provisions for the establishment of National Council on Procurement but this Institution was yet to be constituted.

Under Cross-Examination by Learned Counsel to the 3rd Defendant, he acknowledged that between 2008 and his present testimony in Court, this Country had Two (2) Presidents. He was aware that the Late President Umaru Yar'adua considered electricity supply, as one of the cardinal challenges that required

address and it was for this purpose that REA was created to address this challenge. In furtherance of these Policies, Budgetary Provisions were made for these Electricity Projects and were captured in the Budget.

He did not know whether the Late President Umaru Yaradua, had signed the Amended Budget on the 16th of November 2008. All he knew was that a Budget was passed into Law and the next step was its implementation. He agreed that REA had obtained approval from her Parent Ministry before commencing the procurement exercise. On the assumption that the President had approved the budget on the 16th of November 2008, only six (6) weeks would have been left remaining for the 2008 Financial Year.

He stated that various types of procurement had various steps but the National Competitive Bidding and International Competitive Bidding required advertisement. He re-confirmed that it was the mandate of his Team to simply examine the documents supplied to them by REA, and to ensure procurements for the 2008 financial year were carried out in consonance with the Procurement Act.

He stated that President Goodluck Jonathan had established a Presidential Task Force on Power, with the aim of fast-tracking power delivery by side-tracking the bureaucracy of Contracts and also that the Bureau was meant to enhance the procurement process in Nigeria. In the negative, he testified that it was not normal to issue audit queries but where issues arose in their Report, his Team consulted the Directors of Legal and Procurement. However, in this case, his Team did not confront the Directors with a copy of the Report. He could not say whether or not the Nigerian Government lost any money as a result of these Contracts or that those Contractors were involved in the Projects. He confirmed yet again that his Team did not check whether the Contracts were executed as all the Team did was to check on the status of the projects handed over to them by REA.

Under Cross-Examination by Counsel to the 4th Defendant, he testified he was neither an Accountant nor a trained Auditor but was simply a Civil Engineer. Aside from the Bureau where he works, he had nothing whatsoever to do with Auditing. He described the sphere of audit to be restricted to the Template given by the Bureau. He did not know one Engineer Lawrence Orekoya or recall any interaction with any person by that name. In his reaction to Page 8 Paragraphs 5.0, 5.1- 5.13 of the Audit Report, he testified that the Paragraphs were a summation of the Audit Investigation.

In the affirmative, he said that the Bureau pursuant to the Procurement Act, reached its conclusion, as seen in the Report. He was asked if the Report showed that

Engineer Kayode Orekoya awarded the Solar and Grid Energy Contracts and he answered in the negative. He was also asked if the Report contained any form of indictment against Engineer Kayode Orekoya and he could not tell whether or not this was so.

Furthermore, REA awarded the Contracts, explaining that from the 17th to 19th of March 2009, his Team saw REA's Tenders Board Approval, but could not recall seeing the Award Letters. He further explained that the Report was based on the evidence place before the Team and on clarification received from both the Director of Legal and Director of Procurement of REA.

Under Cross-Examination by Learned Counsel to the 5th Defendant, he testified as to his credentials and had no prior contact with the 5th Defendant. He also had no idea about the responsibilities of the Director of Human Resources but opined that this Director ought not to have been a Member of the Procurement Planning Committee. It was suggested to him, if it was possible that this Director was at the wrong place and time; he replied that it would seem so. Finally, it was his testimony that he was neither aware of any Court Orders mandating payment to the Contractors nor was he aware of Job Certificates issued to the Contractors after completion of their Projects.

Under Cross-Examination by Counsel to the 6th Defendant, he could not tell whether the 6th Defendant was present at the Meeting that was held on the 10th of December 2008, nor could he tell if part of the documents supplied to his Team was Exhibit 159, which had detailed a Summary of the Procurement Planning Committee Meeting Decisions and which was signed by PW4. According to him, the Report did not contain the procurement methods and none of the five known methods were unlawful.

By way of Re–Examination, to the question put to him by Learned Counsel to the 4th Defendant, he stated that the only MDAs exempted from the known Procurement Procedures, were Contracts emanating from the National Security and Defence, however, none of these were applicable to the Contracts awarded by REA.

On the 1st of December 2011, the Prosecution called his sixth witness, **PW6**, Mr. Yahaya Abdullahi Sharmaki, a Retired Director from the Federal Civil Service. Prior to his retirement, he was with the Ministry of Power as the Deputy Director for Planning, Research and Statistics and was also the Secretary of the Ministerial Tenders Board. He explained that the Planning Division was in charge of the Tenders Board and the Division, was the Secretariat of the Tenders Board handling

the Tenders Board Meetings, co-ordinating, organising and planning all the Tender activities of the Ministry of Power.

He was familiar with the Permanent Secretary of the Ministry, the 2nd Defendant and knew that the Procurement Act was implemented in 2008, whilst he was working at the Ministry of Power having been privileged to have witnessed its implementation for the first time. He knew that when applying the Procurement Act, certain factors, which had to be borne-in-mind, included the value for money, competition, and transparency amongst others.

According to him, he Procurement Planning Committees, ubiquitous in Ministries and Parastatals were established to plan, organise, and co-ordinate procurement activities of the Ministries and Agencies and outlined their differences. The Tenders Board was the Approving Agency for Ministries and their respective Agencies, whereas the Planning Committee essentially was to identify the requests of Ministries, Departments and Agencies and choose the appropriate type of procurement method amongst others. He listed some of the procurement methods to be: -

1) International Competitive bidding;
2) National Competitive Bidding;
3) Direct Contracting or Procurement; and
4) Limited or Restricted Competitive Bidding or Selective Tendering, amongst others.

Under Cross-Examination by the Learned Silk to the 1st Defendant, he was aware of REA's existence in the year 2008, when he worked at the Ministry of Power. In the affirmative, he answered that the Primary Documents regulating the conduct of Civil Servants were the Civil Service Rules and Financial Regulations. However, these Primary Documents do not contemplate every conceivable situation, so Circulars were issued alongside from time to time, that were considered also to be equally important.

When asked, he answered that he had not read the Regulation or had reason to know the purpose for establishing REA and was also unaware that the purpose for establishing REA, was to rapidly electrify rural areas in the Country. He was equally unaware of the percentage of rural areas that had electricity. What he was aware of was that the provision of electricity was the core objective of the Yar'adua Administration. He confirmed his earlier testimony on the selective tendering and added that he was familiar with tendering in Lots, however, he was unaware of any Rule prohibiting a Contractor from tendering for more than one Contract.

As he had never headed any Agency or Governmental Department, he could not say whether the Chief Executive Officer of a Ministry or Agency, by virtue of being the Chief Accounting Officer, took advice from his Directors and Subordinates. He confirmed he had seen Exhibit 182, the Audit Report of the Bureau, and he was asked to point out where the Certificate of No Objection was stated not to conform to the Regulations, but he could not locate it from the Report.

Under Cross-Examination by Learned Counsel to the 2nd Defendant, he answered that Emergency Procurement Procedure was provided for in the Act and REA and the Ministry had their own Procurement Planning Committee. Regarding these Contracts, he could not tell if all preliminary steps, such as survey and others, were carried out as he was only seeing Exhibit 182, the Bureau's Audit Report, for the first time in Court and had no idea if the Contractors had completed their job.

Under Cross-Examination by the Learned Counsel to the 3rd Defendant, he affirmed that the Contracts were captured in the 2008 Amended Budget. He could not tell if all the Contracts awarded by REA were below Fifty Million Naira (N50, 000, 000). He acknowledged that some of the 2008 Budget Funds were utilised whilst unutilised funds were returned. He further testified that there was a Subsisting Budget in place and the additional expenditure approved in the month of November 2008, were duly carried out. Some of these expenditures were advertised whilst others were not. He agreed that when making a statement to the EFCC, he did not mention REA and denied attributing the reason for not advertising to be due to lack of time of the Minister.

Through this witness, Two (2) Certified True Copies of his EFCC Statements dated 12th and 13th of February 2009 were tendered without objection and admitted into evidence as **Exhibits 183 and 184** respectively.

He further maintained his stance that these Statements had nothing to do with REA or this case in particular but concerned Contracts awarded by the Administrative Headquarters of his Ministry. He clarified in the affirmative that the Contracts earlier referred to, were part of the 2008 Amended Budget. According to him, he could only speak for the Ministry but not for the Budget that catered for REA's activities. One of his job functions was to oversee REA, which draws its funds from both the Federal Budget and the Amended Budget.

With regards to the Selective Tendering Method as provided in the Procurement Act, which he had mentioned in his first Statement, he stated that the Ministry conducted this Selective Tendering for its own purposes due to time factor but he could not speak for REA on this matter.

According to PW6, Consultants were engaged for the Ministry's Main Projects, but was unaware if REA had also engaged these same Consultants for the Contracts now in issue. He could not tell whether or not the Consultants' Report formed the basis for REA's Award. According to him, it was normal for REA to comply with directions given to it by the Ministry.
Lastly, he testified that he could not tell whether or not it was normal to ask REA to grant Contracts within its threshold.

Under Cross-Examination by Learned Counsel to the 4th Defendant, he testified that the Public Procurement Act created two (2) important Agencies, which were the National Procurement Council and the Bureau for Public Procurement. He added that the Council was the overall master over the Bureau and every major action had to be approved by the Council. He knew Engineer Orekoya, the 4th Defendant as Director but never had any official or personal relationship with him and therefore, had no grudge against him.

Under Cross-Examination by Learned Counsel to the 5th Defendant, he could not remember whether the 5th Defendant as Director of Human Resources was also a Member of the Procurement Committee nor could he answer what his position would have been, had he sat on the Committee. He agreed that where a Chief Executive of Ministry, Department or Agency summoned a Meeting, it was ideal to be present otherwise it would amount to insubordination.

Under Cross-Examination by Learned Counsel to the 6th Defendant, he stated there was no Minister of State at the time the Contracts were awarded and he did not know that the 6th Defendant, as the Head of Legal Department was not the Chief Accounting Officer.

Finally, the Prosecution brought his witness, **PW7**, by name Ibrahim Ahmed, an Assistant Superintendent of Police seconded to the Intelligence and Special Operations Unit of the Economic and Financial Crimes Commission (EFCC).

It is important at this juncture to state that this Witness was "The Star Witness" for the Prosecution, and his Evidence both in Chief and under Cross-Examination, covering all the Sixty-Five Count Charges, was rendered in a period of more than One Year.

He gave sworn testimony that sometime in the month of February 2009, his attention and those of Mr Bashiru Abdullahi and Mr Shuaibu Umar were drawn by

the Head of his Unit in the EFCC, to a written Petition by Mr Amos Amodu Drisu who alleged a massive fraud in the allocation or Contracts awarded by REA for the installation of Solar Based System and Grid Extension. He identified a Copy of the Petition, which had earlier been admitted without objection as **Exhibit 183**.

On receiving the Petition, his Team studied the contents of the Petition and drew out an action plan. They wrote an Introductory Letter to REA requesting the List of REA's Capital Budget for 2008. REA supplied a Copy of both the Budget for 2008 and the Amended Budget of 2008, which are already tendered and marked as **Exhibits 165** and **158** respectively. His Team analysed these Exhibits and discovered that the 2008 Appropriation Budget made no provision for the Contract for installation of Solar Based System but the Amended Appropriation Budget did. He further affirmed that the Amended Budget made provision for new projects and there were about 113 Grid Extension and 45 Solar Based Systems. He also saw **Exhibit 163**, the List of New Projects under the Amended Budget. His Team were obliged upon request, the Copies of the Minutes of Meeting of REA's Procurement Planning Committee, which informs **Exhibit 160** before the Court. From this, they discovered that the Committee met on the 10th of December 2008 and the 1st and 6th Defendants, Engineer Samuel Ibi Gekpe and Barrister Kayode signed the documents.

However, he explained that Exhibit 160 was the Summary of the Meeting and he also saw the Minutes of Meeting itself. After collecting these two (2) documents, his Team yet again discovered that the Procurement Planning Committee had agreed to waive some of the due-process requirements and further agreed to raise a Memo to the Minister of State for Power for his Approval for the Award of 113 Grid Extension Contracts and 45 Solar Based Systems. He testified that his Team had requested to have the Invitation Letters written to the Members of the Committee or a Memo, but they were never obliged with them.

A similar request was made to the Managing Director of REA, the 1st Defendant, but he instead supplied them with Certificates of No- Objection signed by some of the Members of the Committee. He identified **Exhibits 161** and **162**, earlier admitted, as the Certificates of No- Objection given to them.

From these Exhibits, he identified the Signatories to be the 1st, 3rd, 4th, 5th and the 6th Defendants and noted that the Column meant for the Signature of the Director of Procurement, was left unsigned. The unsigned Column steered his Team's concern so they confronted the Signatories and the Director of Procurement Mr Abdulkareem Saadu Gurin, to know why he did not sign. The reason given was that he was absent on that particular date when the Meeting was held and he made a

Statement to that effect, which was tendered into evidence, without any objection, and admitted as **Exhibit 184.**

On receiving the Certificates of No-Objection, his Team still requested and were obliged, by Engineer Samuel Ibi Gekpe, two Memos seeking Approval from the Minister of State for Power. The First Memo sought for Approval to award 113 Grid Extension Contracts to 113 Awardees. It also contained an Approval to pay 15% Mobilization Fee as well as permission to write Cheques for the sum of 85%.

Concerning the Second Memo, it requested for the Award of a Contract for the installation of Solar Based System to 45 Companies. The Solar Contracts Approval requested for 15% as Mobilisation Fee upon presentation of an Advanced Payment Guarantee. The Team's attention was drawn to the bottom of each Memo where the Permanent Secretary, Dr. Abdullahi Aliyu, the 2nd Defendant, minuted andendorsed, giving REA the go-ahead.

Further, the Team obtained Written Statements from the Defendants and based on the Certificates of No-Objection, the investigation dovetailed into ascertaining the beneficiaries of the Contracts and why the Permanent Secretary and not the Minister of State for Power approved the Memo.

Some of the Contractors could not be traced and they then sought to know how the List of Contractors was compiled and how the Contracts were awarded. They perused carefully the Award Letters of the Two Sets of Contracts, the Evidence of Collection of the Award Letters and Agreements and discovered that save for the Solar Installation Contracts,which had the names and addresses of their Contractors, the Grid Extension Contracts, only had the names of the Contracting Companies but no Corresponding Addresses.

They noted that in the Award Letter, REA had covenanted to pay 15% Mobilisation Fee upon being presented with an Advanced Payment Guarantee (APG) from a Reputable Bank while in the Contract Agreement, the payments were to be made in three (3) instalments, namely: 15% as Mobilisation Fee; 75% at the Completion of the Project; and 10% as Retention Fee.

On the strength of these Agreements, the Team were supplied with Copies of Payment Cheques of 15% and 85%, whereupon they found out that the Award Letters were dated either the 12th, 17th or 19th of December 2008 with the Payment Cheques for the 15% and 85% dated on either the 24th or 30th of December 2008.

On this discovery, his Team enquired from Engineer Samuel Ibi Gekpe, to know how the Contractors were selected. To aid his answering this question, he was shown

Exhibits 168, 169 and **170,** which he identified as the Award Letters and the people who collected the Award Letters.

Further, during the course of the investigation, it was discovered that REA's Procurement Planning Committee Minutes, never deliberated on how the Contractors were generated. When confronted, the 1st Defendant gave them a List of Companies forwarded to REA by the Minister of State for Power and had told them that it was this List of the Pre-Qualified Contractors from the Ministry of Power, he used in awarding the Contracts to the Contractor Companies. This List, informs **Exhibit 164,** which PW7, identified before the Court together with **Exhibits 174 to 181C,** being the evidence of the 15% and 85% payments for the Solar Installations. PW7, further identified the Award Letters and Evidence of Collection of the Letters, his Team came across in the course of investigation. When they looked at the Evidence of Collection for all the Contract Letters, especially the Solar Based Installations, they found out that they were all signed for and collected by one person named Ms. Uduak.

His Team conducted a Comparative Analysis on both Exhibit 164, the Pre-Qualification List from the Ministry of Power and Companies that were awarded the Two Sets of Contracts and they discovered that only Twenty-Four (24) Companies in the Pre-Qualification List were awarded the Grid Extension Contracts and only One (1) Company from that Pre-Qualification List was awarded a Solar Based Contract from a Total of Twenty-Two (22) Companies, who benefitted from the Solar Based Contracts. In other words, of the 100 or so Companies, only 25 were from any form of Pre-Qualification List.

He identified Three (3) Original Copies of Barrister Kayode's Statement dated 14th of March 2009, 23rd of April 2009 and 29th of April 2009, which were tendered without objection, admitted and marked as **Exhibits 185A, 185B** and **185C** respectively.

According to PW7, Engineer Samuel Ibi Gekpe told the Team that the House of Representatives or Senate recommended some of the Contractors that were on the List. He confirmed the Statements made by the 1st Defendant dated the 12th of February 2009, 24th of March 2009, 13th of February 2009, 21st of April 2009, 29th April 2009, 29th of April 2009, 29th of April 2009 and 6th of May 2009. These Statements were also tendered without objection, admitted and marked as **Exhibits 186A- H** respectively.

Apart from that, the Memos seeking Approvals emanating from the 1st to the 2nd Defendantwere contained in **Exhibits 167 and 168**, which he saw together with

Exhibits 169 and 170, a List of Contractors for payment of 85% and 15% for the Grid Extension**.** They noted that the first payment was dated the 12th of December 2008 and this fact was stated throughout **Exhibits 167 and 168**.

Based on the contents of the above Memos, his Team were obliged with Payment Vouchers, which had attached to them other Documents, such as: -

1) Memo from Barrister Kayode Oyedeji dated the 29th of December 2008 to the Managing Director seeking for Approval to pay 15%;
2) The Award Letter;
3) Memo from the Managing Director to the Minister of State seeking Approval;
4) A Receipt from the Contractor;
5) An Attestation Form;
6) A Letter of Authority to collect Cheque on the behalf of Company/Contractor;
7) A Driving Licence as Proof of Collection; and
8) Acknowledgement of Receipt of the Cheques.

According to PW7, even though the Cheques were dated either the 24th or 30th of December 2008, they were not disbursed on the days they were signed, and each Representative of the Company/Contractor collected a Cheque of 15% and 85% Payment Voucher in the months of December 2008 and January 2009.

The Terms upon which the Approval was founded was based on the necessity to issue Advanced Payment Guarantees (APGs). Where any of the Contractors presented its APG, Two (2) Cheques for the Contract Sum were issued to that Contractor and payments were made at the same time. He further stated that some Contractors, who had presented their APGs to REA, collected their Contract Sums in December 2008 whilst others collected theirs in January 2009.

Further, they were given the Original Copies of the Two (2) Memos seeking Approval for the Award of Grid Extension and Solar Based Systems, which were attached to the Payment Vouchers. He identified the Memo for the Grid Extension and Memo for Solar Based Systems, which were provisionally tendered and admitted into evidence, without objection, as **Exhibits 187and 188** respectively.

He also identified in **Exhibit 169 A1**, a Memo seeking Approval for the Grid Extension contract dated the 17th of December 2008, and he stated that the Terms of Payment was conditioned on Contractors presenting APGs before the 85% payment were handed over to them but added that as revealed by their investigation, the Terms of Approval were not followed.

The Team then wrote the Governor of the Central Bank of Nigeria (referred to as "CBN"), requesting for a detailed Statement of Capital Project Account maintained by REA, including Instruments issued by it between December 2008 and January 2009 and they were obliged. They observed that the Payment Cheques evidenced in **Exhibits 6 to 151**, signifying payments of 15% and 85% were presented on or before the 31st of December 2008.

They also observed that some of the APGs issued by various banks were presented in January, some in February 2009 and some were presented after his Team had started investigation.

He identified one of the APGs issued by Zenith Bank Plc. on the behalf of Mondok Engineering Associates Limited addressed to the Managing Director/ Chief Executive of REA dated 19th of January 2009. With an overruled objection, this Document was admitted as **Exhibit 189.** Similarly, the Forty-One (41) APGs, issued in favour of Beneficiary Contractors for both the Grid Extension and Solar Based Extension were admitted into evidence as **Exhibits 190(1 - 41).**

The Team confronted the 2nd Defendant with these Documents and the newly discovered facts, whereupon he notified them that he had issued a Written Query to the 1st Defendant to answer. He gave the Team the Query, its Answer by the 1st Defendant and a Circular concerning the Award of Contracts for Capital Projects.

A Memo emanating from the 2nd Defendant to the 1st Defendant and Heads of Agencies under the Ministry of Power, dated 2nd of June 2008 was tendered through this witness and admitted into evidence without objection as **Exhibit 191**, together with the Query dated the 20th of January 2009, which was admitted as **Exhibit 192**. Likewise, the Answer to the Query written by the 1st Defendant dated the 26th of January 2009 was also tendered and admitted into evidence without objection as **Exhibit 193.**

Upon his Team examining these Three Documents, i.e. the Circular, the Query and the Answer, they discovered that the 2nd Defendant had duly informed the 1st Defendant to adhere to the implementation of due process.

PW7 knew of a Company named Dan Jibril and Company Limited, who was a beneficiary of the Solar Based Award Contract and identified Exhibit 179, as one of those Agreements dated the 30th of December 2008 entered into between REA (signed on the behalf of REA by Engineer Samuel Gekpe and Kayode Oyedeji), and Dan Jibril & Co. Limited.

When referred to the "Terms of Payment" in the Agreement, PW7 testified that he made a comparative analysis of the Agreement in Exhibit 179, Exhibits 6- 151- the Cheques issued by the CBN and Exhibits 187 and 188- the Approvals, and discovered that the Two (2) Approvals were given before the date of the Agreement in Exhibit 179.

According to him, the subsequent payment was not in line with the Terms of the Approval. Relating the mode of payment to the Agreement, he noticed that the Two (2) dates were inconsistent.

Further, the Terms of Payment in the Agreement were inconsistent with the Terms of the Approval and explained that the Terms of Payment was to be that upon presentation of an APG, 15% would be paid as Mobilisation Fee, then 75% would be paid upon full completion of the job and certification by REA and finally, 10% Retention Fee, is held back for six (6) months in the event of any defect in the Contract.

Contrary to these Terms, his Team discovered that 100% had been paid even before Contractors moved to the Site.

From their investigation, they found out that the Minister of State in the Ministry had been removed and no appointment was made replacing the Minister, leaving a vacuum. The 2nd Defendant was confronted to know if there were any Directives or Memo from the Office of the Head of Service or Office of the Secretary to the Federal Government, permitting him to act on the behalf of the Minister but no such Directives or Memo or Mandates were presented.

The 2nd Defendant made Two (2) Statements dated the 19th of February 2009 and 5th of May 2009, which were tendered and admitted into evidence without objection as **Exhibits 194A and 194B** respectively. Further, he knew one Mr Y. A. Sharmaki, a Staff of the Ministry of Power who, during the course of his Team's investigation, made Two (2) Statements dated the 12th of February 2009 and 13th of February 2009 and these were tendered and admitted into evidence, without objection, as **Exhibits 195A and 195B** respectively.

The 5th Defendant also made Two (2) Statements dated the 19th of March 2009 and 23rd April 2009 which were admitted without objection as **Exhibits 196A and 196B**.

The 3rd Defendant, REA's Director of Finance, equally made Two (2) Statements on the 17th of February 2009 which were admitted into evidence as **Exhibits 197A and**

198B. PW7 was referred to Exhibit 197B, where he explained that at the time for payments, not all the Bank Guarantees were in place.

The 4th Defendant, REA's Director of Project, made Four (4) Statements dated the 17th of March 2009, 3rd, 23rd and 29th of April 2009 which were all admitted into evidence without objection as **Exhibits 198A, B, C and D.**

From the Statement of the 1st Defendant, it was the Members of the National Assembly that supplied the List of Contractors used, and he obliged the Team with Photocopies of their Original Letters, which were admitted into evidence without objection as **Exhibits 199A and 199B.**

In relation to Exhibit 179, the Contract Agreement between REA and Dan Jibril& Co. Limited, PW7, testified that his Team investigated who was behind this Company. This was because **Exhibit 171** represented an Award Letter signed by Engineer Samuel Gekpe for the provision of Solar Systems for Agwara in Niger State dated the 12th of December 2008. This Company was not mentioned in the List of Pre-Qualified Contractors forwarded to REA in 2007 (**Exhibit 164**), which the 1st Defendant had stated he relied on and used for the purposes of awarding the Contracts.

In addition to **Exhibit 179**, he was shown **Exhibits 1, 152 and 154** where he stated that in the course of investigation, his Team discovered from the Account Opening Documents of the Company, that the Directors of Dan Jibril and Company Limited were Honourable Jibril B. Mohammed, a Member of the House of Representatives, Hajia Aisha Jibril, Mr. Isa Mohammed and Mr. Yusuf Jibo Mohammed, another Member of the House of Representatives.

From this Account, they could also see that Honourable Jibo Mohammed was the Sole Signatory to the Account domiciled at United Bank for Africa where the Monies were paid.

On the next adjourned date, the Prosecution re-tendered through PW7, the Certified True Copies of the Originals of Exhibits 187 and 188, (provisionally admitted), which now had annexure attached to them, as **Exhibits 200 and 201.**

At this point, the Prosecution had no further questions and Learned Silk to the 1st Defendant began his cross- examination.

PW7, stated that this Charge was not politically motivated and contrived, adding that the document mentioned in Exhibit 183, the Petition Letter, was genuine having emanated from one Mr. Amos Amodu, who claimed he was a staff of REA.

They later discovered that such person did not exist as they traced Mr. Amos Amodu to No. 78 Louis Street in Lagos.

He went on to testify as to his familiarity with the Procurement Process, which begins where a Ministry or Agency identifies Projects or Works to be carried out in the following year. Thereafter, a Budget would be proposed. But before then, the Ministry or Agency would engage a Quantity Surveyor, identify the Project Site, and determine the Bill of Quantity as well as the Project's Market Value. He explained that every Ministry or Agency had a Public Procurement Committee, whose responsibility was to consider the Project or Items approved in the Ministry's or Agency's Budget and then make appropriate recommendations, calling for Tenders. PW7 did not know whether the President of Nigeria could propose a Project to be included in the Budget and also did not know about the Seven (7) Point Agenda of the Yar'adua Administration.

PW7 stated that Senators and Legislators introduced Contractors to REA to carry out certain jobs and the 1st Defendant had told him of several letters he had so received, but not all. When asked to produce the List given to the 1st Defendant by Legislators, he replied that some of these letters were not shown to his Team during their investigation, and they gathered that some recommendations were orally made and not all the Companies were accepted to carry out the Contracts.

In the further course of investigation, his Team intended to secure documentations that dealt with the Budget particularly the Memo that was sent to the Minister of State, through which approvals were secured. The 1st Defendant willingly gave them certain documents in question, which they collected, made duplicates and certified them and kept them in a folder. The Originals of these documents were with REA and he could not recall seeing the Bank Statement of the 1st Defendant.

A File of Nominated Contractors was admitted as **Exhibit 202** and he stated that he did not see any of these Contracts awarded to Honourable Ita Ena, Senator Kola Gbajomo, Senator Johnson Abomba, and Honourable Abiodun Akinlade as the documents pertained to names of Companies but not the names of Senators or Members of the House of Representatives.

PW7 testified in the affirmative that he had the opportunity to examine Seventy-Nine (79) Pages of the File, severally dated the 15th day of January 2007, 15th of March and 22nd of December 2008. He testified that Eight (8) letters were dated between the 13th of January and 23rd of March 2009 out of which three (3) were addressed to the Honourable Minister of State for Power and the Managing Director, amongst others. He added that out of these Letters, Eleven (11) solicited for the

Electrification of rural and implementation of Rural Electrification Contracts. He also added that Thirty- Three (33) of these Letters introduced Forty-Four (44) Companies for consideration in giving out Contracts. He compared the List on the documents and the Two (2) Approvals and discovered that only one of the Companies was given a Solar-Based Contract out of the Forty-Five (45) Contractors. Going back to his earlier testimony, he answered in the affirmative that out of the Forty-Four (44) Companies that were introduced, Nine (9) of the Companies were given Grid Extension Contracts. He added that out of One Hundred and Thirteen (113) Contracts, only nine (9) Companies were recommended by the National Assembly. He further added that only Nine (9) Members of the National Assembly recommended Companies were awarded Contracts and these nine were not standing trial before the Court.

PW7 was referred to certain portions in the Proof of Evidence where other individuals were mentioned in the Charge and referred to the Statement of the 1st Defendant, who had stated that the Contracts were given to these Companies because the Honourable Members recommended them. At first, the 1st Defendant told the Team that he did the Contracts alone, but as facts later began to emerge, he could no longer hide those who had asked him to do so and told the Team that he had agreed to give the Contracts to those Companies. The names of some Honourable Members included Honourable Ndudi Elumelu, Honourable Jibril Mohammed, and Senator Ugbane. However, there were no documents from any of these above referred Members suggesting or introducing a Company in order to be awarded Contracts. His Team secured from the 1st Defendant, documents relating to Dan Jubril, a Company owned by one of the Members. He emphasised that all the Contracts for Niger State Rural Electrification was given to that Company and all the payments were made into a Bank Account where he, Honourable Jubril Mohammed was the only signatory.

On that note, his Team requested and secured the Award Letters, which led to the further discoveries, namely: (1). Some of the Contractors addresses were not stated on the Award Letter, and (2). The 1st Defendant called on the Companies to forward their Corporate Affairs Commission (CAC) Certificates of Registration. He emphasised that it was after the Award Letter had been issued that the beneficiary companies later forward their Acceptance Letter along with other documents the 1st Defendant had requested them to furnish which included their Certificate of Incorporation.

He was shown Exhibit 164, a List of Pre-Qualified Contractors, as well as Page 233 of Volume 2 of the Proof of Evidence, where he confirmed it to be the List of

Companies awarded the Grid Extension Contracts, andPW7 highlighted the amounts, their respective Bank Accounts and Bankers. He was asked, if any of the Nine (9) Companies introduced by the Members of the National Assembly were not earlier contained in the Pre-Qualified List of the Minister of Power in the year 2007 before the subsequent Contracts were awarded and he randomly identified the Nine (9) Companies.

The Six (6) Defendants supplied the List of benefiting Companies, to the Team, who then realised the names of their Directors and Shareholdersfrom the Corporate Affairs Commission (CAC).

PW7 was asked series of questions and his responses were in the negative, namely: on the reason REA was created; the existence of 2018 Rural Electrification Contracts awarded by the Minister of Power, prior to the creation of REA; some of the Projects were ongoing for about fourteen (14) years; the cardinal program was electrification of Rural Areas.

As regards, questioning the Bureau of Public Procurement (BPP), he replied that this was needless because his investigation bordered on Breach of Trust by Public Servants. He was asked if he was aware that the Bureau of Public Procurement (BPP) conducted an audit shortly before the Economic and Financial Crimes Commission (EFCC) commenced its investigation and if he had seen the Audit Report, to which he replied in the negative. He gave a similar response when asked if he had seen a letter written to the Minister of Power by the Bureau.

Moving on, he testified that it was during the course of the investigation that he heard of Constituency Projects. The 1st Defendant had stated the Projects approved in 2008 Amended Budget were new projects never proposed by REA.

Particularly on the 2008 Amended Budget, a trail of questions was asked which included, whether REA was the only Establishment mentioned in the Amended Budget.

As regards, Procurement, under the Public Procurement Act, he was asked the timeframe specified therein and suggested if it was Six (6) weeks, and he claimed he did not know. Thereafter, he was asked if the Appropriation Act and Amended Appropriation Act became Law, upon the President of Nigeria signing them, and he answered that he was investigating a case of Criminal Breach of Trust where the persons investigated had dominion over the money and not the signing of the Budgets by the President. He stated that it was the Defendants who supplied Copies of the Budgets to show that the Budget was approved for implementation.

He added that Copies were made from the Contract Agreements, evidencing the fact that the 1st and 6th Defendants signed them and could not recall if all the Contract Agreements were produced before this Court. He assumed that the Contract Agreements obtained from the 6th Defendant might be in the custody of the Exhibit Keeper at the EFCC.

PW7 reaffirmed that 100% payment were made to the Contractors even before their mobilisation to the Project Sites. He acknowledged that at the time of his investigation, Mrs. Farida Waziri was the Chairman of the EFCC. However, he testified seeing for the first time a letter written by Mrs. Farida Waziri to the Bureau of Public Enterprises (Bureau) contradicting the position, which sought to suggest, that 100% was paid to Contractors before moving to site.

Learned Silk for the 1st Defendant sought to tender in evidence this Letter. After considering the arguments led as to its admissibility, this Court in it's Ruling, held that this testifying witness, PW7, was not the Maker of this document. Since he was seeing this document for the first time, it would be a futile exercise and of little use to admit same through him. The scenario would have been different had he acknowledged the letter or had knowledge of its contents. The letter was not used to refresh his Memory or to contradict his earlier statement, which would have enabled him to comment on the letter before its admissibility. This Court further held that the Defence could call the appropriate person, that is, the maker or author of the letter at the relevant time but definitely not through this testifying witness. The Prosecution's objection was upheld and the letter was marked inadmissible.

Learned Silk tendered from the Bar, Certified True Copies of REA's Letters addressed to the Managing Directors of Dan Jubril and Company Limited, Copec Solar Technology Limited both dated 12th of December 2008 and Valexcon Global Limited dated 19th of December 2008, which PW7 identified as Companies in respect of which the 1st Defendant was standing Trial. These Letters were separately admitted as **Exhibits 203, 204 and 205.**

PW7 was shown Exhibit 203, an Offer Letter to Dan Jubril& Company Limited titled "**OFFER OF AWARD OF CONTRACT FOR PROVISION OF SOLAR STREET LIGHT SYSTEM FOR AGWAR IN NIGER STATE**" whose Contract Sum was Forty-Two Million, Six Hundred and Sixty Six Thousand, Six Hundred Naira (N42, 666, 600). He read the content of the Offer Letter and stated that he could only confirm this Contract Sum parallel with the Payment Cheques issued by the Central Bank Nigeria (CBN). PW7 went through one of the Cheques, which covered the sum of Five Million, Seven Hundred and Ninety Nine Thousand, Four Hundred and Sixty Seven

Naira Fourteen Kobo (N5, 799, 467. 14). He confirmed that Dan Jubril and Company Limited was one of the Contractors he investigated, whose address was D/89 King Jubril Road, New Bussa- Niger State.

According to him, only the Solar Based System Contracts had Company Addresses whilst the List of Contractors forwarded by the Ministry for the Grid Extension Contracts, had no Company Addresses.

Through this witness, a Certified True Copy of a Letter dated the 20th of January 2009 from the Minister of Power to the Managing Director of REA requesting Rollover of Unutilised Funds was admitted as **Exhibit 206.** PW7 stated that investigation commenced in the Month of March 2009, after payments were made in the Month of December 2008. On whether he sought permission to Award the Contracts from the 2nd Defendant, he answered that he had enquired from the 1st Defendant if he had the authority to award the Contracts, to which the 1st Defendant replied that he had obtained Approval from the Minister of State for Power. But their investigation revealed there was no Minister of State for Power and it was the Permanent Secretary who acted on the Letter seeking Approval.

PW7 was shown **Exhibits 200 and 201**, Letters written on the 17th and 11th of December 2008 addressed to the Minister of State for Power, he could not say whether there was a Minister of State for Power at that time and if so, when that Minister resumed office.

PW7 subsequently identified **Exhibit 192**, a Letter bearing Reference **N0. MPS/1/1CRE/5156/S.4/135** dated the 20th of January 2009 signed by the 2nd Defendant, Dr. Abdullahi Aliyu OON Permanent Secretary of Power, written to the 1st Defendant, as one of the documents supplied to his Team by the 2nd Defendant. They then confronted him with Two (2) Memos sent to the Minister of State for Power and with the fact that there was no Minute emanating from the Minister of State for Power, and the 2nd Defendant told his Team that the action carried out by the 1st Defendant was wrong and his actions necessitated the Query.

PW7 examined the Reference Number of another Letter that was dated the 20th of January 2009 marked **Exhibit 206**, emanating from Honourable Nuhu Wya and he replied that this Exhibit 206 bore the same Reference Number with **Exhibit 192**. According to this witness, during the course of investigation he only came across Exhibit 192 but he was seeing this Exhibit 206 for the first time in Court. He highlighted the similarities between the Two Exhibits but noted that the Headings were not the same. He stated that on Exhibit 192, the heading read, "REQUEST FOR ROLLOVER OF UNUTILISED FUND" whereas Exhibit 206 read, "REQUEST FOR

ROLLOVER OF UNUTILISED FUNDS" and further that both the content and numbering were not also the same. After reading through the Two Exhibits, he stated that the Contents of both Exhibits were the same and was surprised at their similarity.

As regards the Query written and addressed to the 1st Defendant, the 2nd Defendant supplied to his Team the Query and 1st Defendant's Answer to the Query. According to him, the 2nd Defendant told his Team he was not aware of the fact that the Cheques he had mentioned in his Letter, had been presented, clearedwith value given to them.

A Certified True Copy of a Letter dated 30th of December 2008 written by the 1st Defendant as Managing Director of REA titled "A REQUEST FOR THE ROLLOVER OF UNUTILIZED FUNDS" was admitted without objection as **Exhibit 207.** PW7 identified the Reference Number to be same. Learned Silk also tendered into evidence the 2008 Federal Gazette known as the **Budget Gazette N0. 80 Volume 95 dated 15/12/2008 also known as Governments Notice N0. 62** titled Appropriation Amendment Act 2008, admitted as **Exhibit 208.**

PW7 stated that the investigation pertained to the Contracts awarded by REA and his Team were not privy to the entire Budget because the 1st and 2nd Defendants only availed portions of the Budget where REA's Budget was captured. Therefore, the Team could not crosscheck whether other Projects were introduced by other Agencies. They discovered that New Projects were introduced into REA's Budget in the Amended Appropriation Act, which Projects were unplanned for as there was no initial plan or a Proposal from REA.

Shown **Page A760 of Exhibit 208- the Budget, particularly Page A762 captioned Classification "N0. 043000002501100 Unutilised 2006 Capital"**, he stated that he was seeing this Complete Budget for the first time. He could not say whether it was the first time unutilised funds for Year 2006 were carried over into the Year 2008 and he did not look into the 2007 Budget because it was not part of his investigation. He added that the 1st and 2nd Defendants had told him that there were ongoing pending Projects that was requested for and contained in REA's Budget to enable the Agency settle Contractors.

PW7 was then referred to the Signature Page of Exhibit 208 for the purposes of identifying the Signature of the President of the Federal Republic of Nigeria but he answered there was no such Signature. It was put to him that the date under the President's Signature read 31st of October 2008.

It was PW7's testimony that he never saw the 2009 Budget. When he was asked if in the 2009 Budget provisions were made for the payment of Contractors for those Contracts awarded by REA in December 2008, he answered he did not know, he never saw the 2009 budget and added that monies were already removed even before the 31st of December 2008.

On the next adjourned date, the Appropriation Act 2009 contained in the Official Gazette No. 93 Volume 96 known as Government Notice No. 419 was tendered from the bar by the Learned Silk to the 1st Defendant and admitted as **Exhibit 209.**

After admitting this document Learned Silk Paul Erokoro SAN referred to Pages A664 to A672, and PW7 confirmed that the Budget for REA Projects were on those pages.

He was again referred to those pages and further asked if from those Pages any of those projects, for which the Defendants were standing, were included in the 2009 Budget. In his response, he answered that it would difficult to determine if those Contracts were mentioned in the Budget unless he was given a chance to compare both what is contained in the Budget with those Exhibits now before this Court.

At this point, Learned Silk Paul Erokoro SAN for the 1st Defendant sought to tender from the Bar Certified True Copies of Correspondences written by the Honourable Minister of State for Power, concerning Rural Electrification Projects under the 2008 Amended Budget, addressed to the following Companies, namely:

1) Cambria Heights International Limited;
2) Chief and Chief Nigeria Limited;
3) Corporate Solar Technology Limited;
4) Utility and Energy Solutions Limited;
5) Helping Hand International Limited;
6) Oliza Investment Company Limited;
7) Sweet Shore Global Investment Limited;
8) Valex Global Limited;
9) Alistair Trading Company Limited;
10) Solar Energy-Vurkin Moore Venture Limited;
11) Emekoas Industries Limited; and
12) MS Hanson Global Limited.

The Prosecution raised three (3) grounds of objection on the admissibility of these letters namely, (1). Relevancy as per Section 211 of the Evidence Act as Amended- that the letters were made in 2011 later than the Charge filed in the year 2009 and the fact that PW7 was giving evidence based on his investigations prior to the filing

of the Charge, so it was preposterous to ask questions on documents prepared after the Charge had been prepared; (2). That the letters were made to third parties other than the present witness citing Sections 231- 233 of the Act, above referred; and (3)the Issue of Certification.

After a considered Ruling, these Correspondences relating to the above-mentioned Companies were admitted in the order as **Exhibit 210a-d; Exhibit 211a-b; Exhibit 212; Exhibit 213a-c; Exhibit 214a-d; Exhibit 215a-b; Exhibit 216; Exhibit 217a-d; Exhibit 218; Exhibit 219; Exhibit 220a-b; and Exhibit 221,** in the manner they were listed above**.**

For the purposes of demonstrating an instance, **Exhibit 210A-D** (consisting of four (4) documents) which are correspondences relating to Cambria Heights Limited was shown to PW7 and was specifically asked to tell this Court the subject matter; authors and recipients; and the payment instructions. He confirmed these details and testified that he could recall seeing a letter written by United Bank for Africa (hereafter referred to as "UBA") to the 1st Defendant. Still dealing with **Exhibits 210A-D**, he was shown a letter written by the Minister to the Bank in 2011 wherein a letter written by the 1st Defendant was alluded to requesting UBA to keep 85% of the Contract Sum due to Cambria Heights Limited. PW7 testified that he was seeing this Reference Letter for the first time. He added that he could not recall whether or not he saw this Letter until given the chance to see all the Letters.

He was asked if Cheques were released to the Contractors, he replied that he would have to check his records. PW7 was then shown some Cheques, and he stated that they came to his notice the day before and had crosschecked the Cheques and their numbers.

Learned Silk for the 1st Defendant asked PW7 if any of the Defendants were charged before the Federal High Court under the Public Procurement Act, and even though he was yet to see the Charge at the Federal High Court, he knew of that Trial and gave details, stating that even the Defendants had curiously approached him asking if he would among the witnesses that would also testify in that Trial.

PW7 was shown an Exparte Order made pursuant to an Application in **Exhibit 222**, the Charge Sheet before the Federal High Court, and he replied that he was seeing this Order for the first time. Thereafter, Learned Counsel sought to tender a Certified True Copy of the Exparte Order as well as the Proceedings of that Court. The Prosecution raised objections as regards the omission in the name of the Certifying Officer and particularly its relevance to the pending Trial. He added that

no foundation had been shown to connect Exhibit 222 to the Companies in this pending Trial. The objections were overruled and the Exparte Order was admitted as **Exhibit 223.** A Motion on Notice to Defreeze and the emanating Court Order to Defreeze was shown to PW7. He again replied he was seeing them for the first time; the Prosecution proffered similar objections, which were overruled. The Motion on Notice and the Court Order were admitted as **Exhibits 224** and **225.**

PW7 reiterated that at the commencement of his investigationsometime in 2009, Letters were written to the 1st and 6th Defendants instructing them to direct the Contractors to come for questioning but none of the Contractors surfaced and his Team made a Report to that effect. He added that during the investigation, his Team wrote letters to certain Banks to block those Accounts as well as asking for documentations on those Accounts, and if required, he could supply them before the Court.

He maintained his earlier stance that the Contractors were paid 100% of the Contract Sum before they even moved to their respective Sites. Further, his investigation established that the Cheques were raised in the name of Contractor-Companies and those Cheques were paid into their accounts.

He was particularly referred to a Letter written to Fidelity Bank on the 9th of January 2009 (marked as Exhibit A1 attached as Page 29 of Exhibit 224) and after reading this letter, he then answered that it did not support his earlier testimony of 100% upfront payment. However, he added that he could not recall the 1st Defendant giving instructions to each of the Banks not to pay until completion of the Contracts. He was then shown Page 1 of Exhibit 186B (Statement of the 1st Defendant) and he replied that his Team discovered that Cheques were raised in favour of the Contractor-Companies and value were given to them, with the Contractors having access to the monies as at December 2008.

It was his testimony that his Team confronted the Accounting Officers of those Banks for the purposes of making comments on the claims of the 1st Defendant. But these Bank Officers stated that they were not in receipt of any such letters. Further instructions were given to the Bank to avail his Team with REA's Acknowledgement Copies, if and when received. The 1st Defendant was also told to supply the Acknowledgment Copy and he promised to do so, but never didand no further investigation was undertaken to determine the falsity of the 1st Defendant's claim.

His failure to do so prompted his Team to write Letters to the Banks requesting for Statements of Account, Account Opening Packages and Documents attached thereto

all in bid to determine persons that operated the Accounts. It was his testimony that about Twenty-Two (22) UBA Accounts were held in favour of Solar Energy Limited whose signatory was Uduak Akpan Israel. Their investigation further led them to request from REA, Acknowledgment Copies signed by all the Contractors accepting the Cheques and the same name Uduak Akpan Israel surfaced yet again because she signed the Acknowledgement Copies of the Letters.

PW7 rehashed the fact that the Contractors were paid in the year 2008. He was confronted with Exhibit 222 at Pages 13 and the Averments dated 13th of May 2009, to which he replied that he was seeing the Document for the first time and could not say when the Averments in Exhibit 222 were filed or the Counter to the Averments.

According to this witness, he was yet to see any of the Contractors as Cheques were paid into their Accounts and Monies were withdrawn therefrom as at December 2008.

Again he was confronted with Exhibit 224, the Motion on Notice filed at the Federal High Court, to which he answered that he was seeing this Exhibit for the first time and Page 29 of this Exhibit was written to the Manager of Fidelity Bank Plc. and not all the Banks.

Learned Silk tendered Power Projects of REA, consisting of Twenty-Eight (28) Documents, some Certificates of Job Completion from the Federal Ministry of Power, which were admitted as **Exhibits 226 to 253.**

Shown Exhibit 226, PW7 stated that the Documents contained therein were made in 2011 after they had concluded their investigation in 2009 and therefore, he never came across the Documents in the course of his investigation.

When shown Exhibit 209- the 2009 Budget, he stated that the Contracts were not captured in the Budget and there was nowhere Proposals for Contracts were made by REA. As a matter of policy, where a Budget was approved and Contracts awarded, provisions for payment were made in that year's Budget. However, where it happens the Contractors have commenced their job on the Site but that year is coming to an end, it was the Government's Directive that any unspent monies ought to be remitted to the coffers of the Federal Government. Any affected Ministry, Department and Agency's unfinished work or payment, were then rolled over into the Budget of the following year.

It was his testimony that at the time of his investigation, his Team were not privy to the 2009 Budget. Though PW7 could not tell if Budget estimates and preparations were prepared prior to the following year, he remembered that his Team had written to the Accountant General of the Federation to enable them know the releases made to REA.

After he was shown Exhibit 223, PW7 indicated he was unaware that any Contractor was charged before the Federal High Court. He was further referred to Page 27 of this Exhibit and answered that he was aware of the existence of this Document.

PW7 could remember the 1st Defendant informing him that Advance Payment Guarantee (APGs) were given by Banks before the Cheques were released. However, during investigation, they discovered that while the Cheques were released in 2008, some of the APGs were given in 2009. He had read the APGs received in the course of their investigation but needed his memory to be refreshed, in order to say whether the various Banks had undertaken to reimburse REA in the instance where a Contractor fails to either complete the job or that the Contract Money was declared missing.

Based on an Application for the release of Certified True Copies of the above-referred documents of REA, the Assistant Legal Adviser of the Ministry of Power by name Mr. Shekari Haruna Moses was in Court along with 75 documents. They were in regard to the Rural Electrification Agency Power Projects, Payment Instructions and certain Correspondences and Learned Silk tendered these Documents from the Bar, which being Job Completion Certificates and Firm Instructions on disbursement of proceeds of 85% Contract Sums were admitted without objection as **Exhibits 254 (1-75).**

Paul Erokoro SAN also sought to tender from the Bar Thirty-Two (32) Certified True Copy of Letters written by the 1st Defendant to various Banks instructing them not to release the 85% of the Contract Sum unless and until the job was completed. Adebowale Kamoru, Learned Counsel representing the Prosecution objected on the ground that the ideal copies would have been certified copies from the Original sent to the Banks.In response, Learned Silk argued that REA could only certify what it had in its possession. The Prosecution's objection was overruled and the Letters without any further objection were admitted as **Exhibits 255(1-32).**

Exhibits 255(1-32) were shown to PW7 and he replied he was seeing these Exhibits for the first time in Court. PW7 handpicked one of the Letters and read the one written by Zenith Bank. After doing so, he rehashed the date he commenced investigation to be between February and March 2009, after a Petition was received by the EFCC in the month of February 2009.

PW7 stated that he was not aware the EFCC froze the Accounts belonging to all the Contractors who received 85% of the Contract Sum in the Month of August 2009. The investigators wrote to the various Banks requesting for Statements of Account as well as further issued them instructions to halt all outgoing transactions from those Accounts. When asked, he could not recollect tendering the EFCC's letters to the Banks but added that he and his Team were in custody of the Letters.

At the end of their investigation, a Report was written and handed over to the EFCC's Legal Department but he did not know whether these documents were contained in the Proof of Evidence.

Paul Erokoro SAN subsequently sought to tender from the Bar Fifteen (15) batches of Advanced Payment Guarantees (APGs), which were admitted without objection as follows: (1) Skye Bank Plc.- **Exhibit 256(1-20);** (2) Afribank- **Exhibit 257 (1-2);** (3) Sterling Bank Plc.- **Exhibit 258(1-3)**; (4) Ecobank- **Exhibit 259(1-6)**; (5) Guaranty Trust Bank- **Exhibit 260(1-9)**; (6) Unity Bank- **Exhibit 261(1-12)**; (7) Oceanic Bank Plc.- **Exhibit 262(1-18)**; (8) United Bank for Africa- **Exhibit 263(1-32)**; (9) Intercontinental Bank (now Access Bank)- **Exhibit 264(1-18)**; (10) Diamond Bank- **Exhibit 265(1-15)**; (11) Spring Bank- **Exhibit 266(1-2)**; (12) Bank PHB- **Exhibit 267**; (13) Fidelity Bank- **Exhibit 268(1-4)**; (14) Zenith Bank- **Exhibit 269 (1-13)**; (15) Wema Bank- **Exhibit 270**; and finally, (16) Finbank- **Exhibit 271(1-15)**.
Also tendered and admitted is a Copy of a Letter written by UBA Plc. to REA dated the 30th of January 2009 marked as **Exhibit 272**.

After the tendering of this Exhibit 272, the Prosecution led by Adebowale Kamaru made two (2) observations namely: -
1). If the Original of the Letter written by UBA to REA is to be in the custody of REA, and REA had also brought in Documents, then he questioned why REA could not be subpoenaed to produce the Documents and wondered why there was dependence on the Copy of the Letter. This particular Exhibit failed to meet the description of documents requested for by the *subpoena duces tecum* laid down in the Evidence

Act. That one of the Letters requested by the EFCC is the Letter from REA to UBA and under normal circumstances, UBA ought to be in possession of the Letter and ought to have brought in a Copy, moreso when the Subpoena did not ask for any type of evidence
2). It can be seen that the Second Letter was written by UBA to REA, therefore, UBA ought to have in its possession, the Copy of the Letter with REA being the custodian of the Document and having regard to the natural course of things, ought not to be in the custody of UBA.
The Note on the Letter by the Recipient, REA, shows that it wasinscribed a Month after it was received, which is a big gap that cast doubts on the authenticity of the Letter.

He explained that the minute inscribed on Exhibit 272 after it was received by REA created a vacuum that undermined the authenticity of the Exhibit.

Responding, Paul Erokoro SAN argued that this was the document tendered through a Subpoena and explained that the Minute inscribed on the Exhibit 272 was done by REA itself. Paul Erokoro SAN expressed his own concern to be not satisfied with this particular Exhibit had REA attached to the subpoena the desired letter. Adebowale Kamaru reserved his comment for Address laying emphasis to the weight to be attached thereto.

When asked, PW7 repeated his assertion that the 1st Defendant's claim in his Statement that he wrote UBA instructing not to make payment, their investigations showed that this was untrue. In fact, the Accounting Officers of the Banks referred him back to the 1st Defendant to supply the Letters they were said to have acknowledged. Reacting to Exhibit 272, PW7 stated that he was seeing it for the first time and never saw it during the course of his investigation. However, he observed that the name of the Author was not written on it.

Finally, he was **shown Pages 108 and 110, Volume 1 of the Additional Proof of Evidence** and it was his testimony that he did not file it explaining yet again that he was seeing this Exhibit 272 for the first time.

Thereafter, Learned Counsel for the 2nd Defendant B.A. Wali commenced his Cross-Examination. It was the testimony of PW7, that the 2nd Defendant was not the Accounting Officer of REA and confirmed that none of the Contract Sums were traceable to his Bank Account. Further, he was not a Director in any of the

Companies but could not tell if he was a Shareholder. Finally, the 2nd Defendant did not sign any of the Cheques issued to the Contractor Companies.

No further questions were asked and thereafter Learned Counsel for the 3rd Defendant A.D. Tyoden began his Cross-Examination.
He responded by stating that in the EFCC, there was hierarchy and at the time of his investigation, the Chairman was Mrs. Farida Waziri, who was the Administrative Head. She usually referred Complaints for investigation and had the power to issue Public Statements that concerns the EFCC. At the time the investigation commenced, the Contractors were yet to move to Site, even though they had recourse to accessible funds and none of them completed the job.

PW7 answered that the Head of REA was given a Query, which emanated from the Ministry of Power in regard to the mode of payment (not that the monies were lost), as 100% payments of funds were made available to the Contractors.
He confirmed that, the Defendants in their respective Statements had alleged that they held a Procurement Planning Committee Meeting on the 10th of December 2008.
PW7 testified that the 3rd Defendant was the Director of Accounts and a signatory to REA's Account and one of his duties included processing of payment for Contracts awarded by REA and releasing of Cheques to the Contractors. He did not know whether the 3rd Defendant had any relationship either as Director or Secretary with the Contracting Companies.
PW7 further confirmed that he obtained a Statement from Mr. Gurin- Director of Procurement who explained to him, the reason for his absence when the Committee decision was made. PW7 reiterated the fact that he was yet to meet with any of the Contractors that benefitted under the Contracts, as they were not supplied with their Addresses.

Finally, he stated that some payments were made to Contractors even before the APGs were secured.

No further questions were asked and thereafter Learned Counsel for the 4th Defendant, Akin Aina Esq. began his cross- examination.
PW7 identified the 4th Defendant as the Director of Projects who volunteered a Statement under caution. He did not remember how many Statements were made by the 4th Defendant, however when shown, he identified the Four (4) Statements of

the 4th Defendant marked **Exhibits 198A-D.** Further, he stated that his Team investigated the 4th Defendant's Bank Accounts.

Furthermore, the 4th Defendant was not a Director in any of the Contracting Companies as he conducted search at the CAC and he could not tell whether he was a Shareholder in the Contracting Companies.
Finally, when asked, he answered that the 4th Defendant did not release Cheques for the awarded Contracts. No further questions were asked.

Learned Counsel to the 5th Defendant, H.M. Haliru Esq. questioned PW7 whether aside of **Exhibits 161 and 162**, the Certifications of No-Objection and **Exhibits 196A-B**, the Statements of the 5th Defendant, the 5th Defendant had appended either an endorsement or his signature on any other Document and his response was that it was the signing of the Certificate of No-Objection that gave rise to the Award of the Contracts otherwise the Awards would not have taken place.

Learned Counsel to the 6th Defendant Mr. Ayotunde Ogunleye commenced his Cross-Examination of PW7, who identified the 6th Defendant as the Head of Legal but was unsure whether he was the Secretary of REA. Despite the fact that he thoroughly examined the Cheques, he could not tell whether the 6th Defendant signed any of the Cheques.

His Team discovered that it was the 6th Defendant that generated and gave out the Award Letters as well as the Names used to award the Contracts. He also prepared the Agreements for the Parties, wherein the mode of payment was stated to be 15% Mobilisation and any subsequent payment was to be based on Certification. The Agreement further narrated that at the end of a Contract, a 10% Fee should be retained as Retention in case of default.

One of the links to the 6th Defendant was that he issued the Award Letters and recommendation for payment. The 6th Defendant, after giving out the Award Letters, it was he that recommended in a Memo raised that 15% and 85% be paid to the Contractors and equally drafted the Contract Agreement.However, all the payments were made 100% without complying with the Agreement. The 6th Defendant had also said that some of the names of the Contractors, were given to him by the Managing Director, Samuel Ibi Gekpe himself.

PW7 could not tell if the 6th Defendant was a Shareholder in any of the Contracting Companies but knew that he was not a Director in any of them. Further, from his Bank's Statements, he could not recall whether there was any business transaction linking him to the Companies.
PW7 could not say whether the Contracts were completed and would be surprised if so. According to him, the Contracts were not revoked because the Contractors received 100%, and at the time he concluded his investigation, the Contracts were uncompleted.

Apart from that, PW7 testified that in the course of their investigation, the 6th Defendant told them that the 1st Defendant gave him some of the names on the List. Learned Counsel Ayotunde Ogunleye for the 6th Defendant, then applied to adopt the evidence so far extracted and the documents tendered by Paul Erokoro SAN.

Thereafter, he questioned whether the 6th Defendant constituted the Board Meeting held on the 10th of December 2008, referring to the Statement obtained from the 6th Defendant, wherein he wrote he was present at the meeting. It was on the premise on what he had written, the Team requested for the Agenda of the Meeting to show it actually held, but they were not given any document to that effect. A similar request was put to the 1st Defendant, who had acknowledged that he was present at the Meeting.
PW7 finally stated that efforts were made during their investigation to establish how the Meeting was convened but uptil and including the day of his present testimony, no Agenda or Document was given to the Team.

No further questions were asked and at this point, PW7's cross-examination ended.

Kemi Pinheiro SAN the Prosecuting Learned Silk, requested for all the documents tendered during PW7's cross-examination for the purposes of leading the Re-examination. After PW7 was shown **Exhibits 226, 250, 251, 254 and 257**, Kemi Pinheiro SAN asked (after an overruled objection by the Learned Silk to the 1st Defendant) what his testimony evidence would be with regard to all those documents, whereupon PW7 testified that he was seeing those Documents for the first time in Court and none of the Defendants brought the existence of the Documents to his knowledge. He also noted that from the dates written on the Documents, they emanated after investigations had concluded.

He was then shown **Exhibit224** particularly at **Page 29**, and he rehashed his earlier testimony and further rehashed visits made by the Team to the Banks in order to verify the 1st Defendant's Claims. He finally stated that the Banks visited by his Team denied 1st Defendant's Claim to the Bank's Acknowledgement Letter, challenging the fact that the Letter had emanated from the Bank.

No further questions were asked and PW7 was finally discharged.

A No-Case Submission was deliberated upon by the Court, and dismissed in a considered Ruling, where all the Defendants were ordered to enter into their Defence. Following the Court's Order, the 1st Defendant elected not to further participate in the Proceedings, the 2nd and 3rd Defendants elected to rest their case on that of the Prosecution, while the 4th, 5th and 6th Defendants, elected to enter into their defence.

Opening his Defence, the 4th Defendant Engr. Lawrence Kayode Orekoya, testified on Oath in his regard stating that before the Month of May 2009, he was a Public Servant working as Director of Projects in REA. His Agency and his Department had Offices in all Six (6) Geopolitical areas of Nigeria, which are: -

1. Oshogbo for South- East
2. Enugu for South – East
3. Calabar for South – South
4. Lokoja for North – Central
5. Dutse for North – West and
6. Bauchi for North East.

His Schedule of Duties as Director included receiving instructions and sending Correspondences to the Managing Director of REA when directed to conduct Surveys, obtain Bill of Measurements and Estimates, and to monitor Ongoing Projects. These duties are usually carried out by the Zonal Offices, who forward their Reports to his Office and after crosschecking the submitted Report, he then forwards the Report to the Managing Director.

He denied involvement in all the Counts of Charge levied against him in regard to Conspiracy, Criminal Breach of Trust and of having Dominion over monies or property or facilitating withdrawal of funds from the Central Bank of Nigeria (CBN) or conniving with any other Public Officer in that regard and added that all his assignments were simply for the benefit of the Country.

He identified his EFCC Statements marked **Exhibits 198 A, B, C and D**. With particular reference to **Exhibit 198B,** he mentioned Projects he had supervised and listed out Completed Grid Extension Projects, even though the List was not attached to his Statement. Those Completed Projects in this Exhibit were in respect of the Charges before this Court. The EFCC never invited him to either confirm his Statement or confirm the completion of the Projects.

He was shown **Exhibits 198A and 198C** and he stated that he was present at the Planning Procurement Committee Meeting of the 10th December, attending in his capacity as the Director of Projects.

At the Meeting, they were informed of the urgency and necessity of the Federal Executive to execute Projects that were contained in the 2008 Budget, and being a Public Servant, he agreed to the aspiration of the Federal Government. He identified his signatures on Exhibits 161 and 162- the Certificates of No-Objection, which he signed when they were brought to his Office.

He had no criminal intention when signing these Exhibits as he had signed on the basis that: - (1) The Contract had to be urgently executed; (2) That being the 10th of December 2008, the Contracts were supposed to be awarded or executed before the 31st of December 2008; and (3) the Projects were already provided for in the 2008 Budget.

Under Cross-Examination by Learned Silk for the 2nd Defendant, he could tell the difference between the Award and Execution of a Contract. According to him, the Contracts were only discussed but not awarded at the said Procurement Planning Committee Meeting.

He explained "Urgency" to mean that the Contracts had to be awarded by 31st December of 2008, which ends the Budget Year.

Engineer Lawrence Orekoya, stated that the completion days for the Two (2) Contracts were also discussed to be Sixty (60) Days for the Solar Based Electrification and Ninety (90) Days for the Grid Extension. It was made known to them that even though the Contracts were going to be awarded in December, the Contractors would not be able to conclude the Contracts in the month of December.

Most correspondences from REA were usually addressed to the Honourable Minister. During the Government Transition he had witnessed, correspondences were usually sent to one Minister but subsequently there was also Minister of State, who had control over some Agencies of the Federal Government. All Ministers who

had served in the previous government vacated office, which usually created a gap. When questioned, he answered in the affirmative that there was a time when there was no Minister and the Permanent Secretary acted in his stead and correspondences continued to be addressed to him as either Minister or Minister of State and it was his responsibility to attend to those Letters.

In Civil Service, it was normal practice to take instruction from a Superior, whose instruction must be complied with otherwise it would amount to disobedience and in this instance he carried out instructions as directed by his Superior Officer.

When a Contract is awarded, how to pay for the Contract also had to be decided upon, because where his Agency fails to make provision for payment, there would be a penalty. At the Meeting, they had agreed to pay in advance 15% Mobilization Fee and they also agreed monies would be paid to the Contractors' Bankers using Advanced Payment Guarantees, so that the Banks would not release the funds until confirmation is received from REA over completion of projects.

Under cross-examination by Learned Counsel to the 3rd Defendant, he identified those who attended the 10th December 2008 Meeting by their signatures on Exhibits 161 and 162, the Certificates of No-Objection to include the Managing Director, Director Funds, Director Promotion, Deputy Director Human Resources, the Legal Adviser and himself, Director Projects.

REA's Management Team was different from the Procurement Planning Committee, which is an ad-hoc Committee, whose membership depended on the Project to be executed.

Finally, he had no knowledge when the Contracts were paid adding that the Meeting of the 10th of December was a proposal.

Under Cross-Examination by Learned Counsel to the 5th Defendant, he stated that apart from the Meeting of 10th December, no other Meeting was held and no Contractor who benefitted from the Contracts was presented to them for any form of consideration. **Exhibits 161 and 162-**Certificates of No-Objection were not signed at the Committee Meeting but were brought to his Office for his signature. He denied any involvement with regard to issuance of either the Letters of Award or the Cheques, which Cheques he never saw.

Under Cross-Examination by Learned Counsel to the 6th Defendant, he reiterated the discussion of 15% Mobilization Fee, which was to be paid to Contractors and further, the 85% balance was to be secured with APGs. The Contracts Files were

sent to him for monitoring, from where he discovered that both the payments of 15% and 85% were made with APGs covering the payments.

At the EFCC, Bank Statements were not shown to him in order to demonstrate the fact that he benefitted from any of the Projects. Shown Exhibit 159, the Summary of the Meeting, he agreed with the fact that the 6th Defendant was not at that Meeting because Mr. Matthew C. Onwusoh Esq. acted as the Acting Secretary/ Legal Adviser.

Under Cross-Examination by the Prosecution, he stated that he never occupied the position of either a Minister or Minister of State, or served as their Secretary, Personal Assistant or Special Assistant or was he their Mail Recipient nor did he work in the Mail Delivery. It was by virtue of his position as Deputy Director of Projects that he sat at the Meeting of the 10thDecember, 2008. The Contracts executed by REA and the Monies thereto belonged to the Federal Government and none of the Contracts or Monies for the Contracts belonged to him. He agreed with the fact that where there were issues with the Contracts or issues pertaining to unpaid balance, those issues were directed at REA and not to him personally.

Shown **Exhibit 159**- the Summary of Meeting of 10th December 2008, he agreed it was a decision taken for 15% Mobilization Fee and as regards the 85% payment, this was to be secured by the presentation of APGs by the Contractors' Bankers as well as receipts by Bankers of the Project Report, which were premised on Completion of Projects and REA's Report to the Bankers to release monies to the Contractors. Therefore, it was incorrect to say that the 85% balance payments were tied to APGs alone.

Shown **Exhibit 198A** - his EFCC Statement made on the 19th of March at Page 2, where he had written that due to the pressing need to honour the Amended Budget, the timeframe was tight, the Projects had to be executed before December 2008, the Projects had to be awarded even though they were not executed within that timeframe. When further questioned, he claimed not to recall everything at the point of writing his Statement.

Shown **Exhibits 161 and 162**- the Certificates of No-Objection, he stated these Exhibits were in regard to the Meeting of 10th December 2008, which he attend and the meeting was called Public Procurement Committee Meeting. The Deputy Director of Procurement was absent at the Meeting on grounds of ill health, and he never enquired about his ill health or whether before Exhibits 160 and 161 came into existence, he was truly sick and could not explain why he did not sign the

Certificates of No-Objection. When confronted with the Two Certificates-Exhibits 161 and 162 to show that the 6th Defendant, who was not present at Meeting, had signed the Certificates, he denied contradicting himself stating that he was not a position to speak on behalf of the 6th Defendant.

Engineer Lawrence Orekoya stated that he received a phone call from the Managing Director inviting him to the Procurement Meeting and there was no Notice to that effect. Those absent were the Deputy Director Procurement and the 6th Defendant-the Head of Legal who had travelled for his baby's naming ceremony, with Mr. Matthew Onwusoh acting in his stead.

Shown again Exhibits 161 and 162-the Certificates of No-Objection, he confirmed that the signatures of the Director Procurement were not on them but could not say why he did not sign them.

At the Meeting, one of the decisions was for REA's Procurement Planning Committee REA to issue Certificates of No-Objection for the Contracts, which Certificates were not prepared during the Meeting. From the Minutes of Meeting, there were discussions that Letters would be written to the Minister of State to recommend the issuing of Letters of Award and upon receipt of that recommendation the Certificates of No-Objection would be raised. It was after the Meeting that the Certificates of No- Objection was raised for their signature and he signed.

He identified the signatures of the 6th Defendant on Exhibits 161 and 162- the Certificates of No-Objection and also in Exhibit 160, a Memo summarizing the decisions taken by the Procurement Planning Committee. Exhibit 159 was a Summary of Meeting and it had similar Headings and Contents as Exhibit 160.

The Two Exhibits mentioned only those who attended the Meeting, but did not mention either 2nd Defendant or Mr. Matthew Onwusoh. According to him, he wrote the Minutes of Meeting while Mr. Matthew Onwusoh, who stood in for the 6th Defendant, wrote the Memo in Exhibit 159. But he turned round to say that it was Mr. Matthew Onwusoh, who took the Minutes of the Meeting of the 10th of December 2008 and maintained on his honour that the 6th Defendant was not present at the Meeting.

In one breath, he stated that he would not be surprised that a person who had not attended the Meeting of the 10th December 2008 would write Exhibit 160 but in another breath, he stated he would surprised that a person who was absent would write on what had transpired at the Meeting.

According to Engineer Lawrence Orekoya, had the decisions not been discussed at the 10th of December 2008, the Contracts would not have been awarded and paid for in the manner it was awarded and paid. He was aware of the written Memo and the Letter written to the Minister and also knew when the Projects were awarded with payments made and he was instructed to monitor the progress of the Project.

Since the Meeting of the 10th December, he dealt only with Files that were returned to him. From the date of the Meeting till execution of the Projects, his actions were geared towards expediting actions and forestalling a situation where unspent funds would be remitted back.

DW4 stated that in some instances, a Financial Year could extend to 31st March of the following year and the normal practice was that at the end of 31st December, unspent funds are remitted back into Government Treasury. It was never their intention to beat this normal practice of non-remittance of unspent funds.

He was aware of the decision reached at the Meeting of 10th December, to secure 85% of the Contract Sum, using APGs from Banks in order to secure any late payments and also to escape liability for non-payment of Contractors. This was because they had not decided to pay the Contractors at the Award Stage. He also did not know the Contractors or whether the Banks to whom the 85% were paid to, were the Contractors' Bankers.

He disagreed with the fact that the implementation of this decision had the effect of taking out of REA's control and custody her monies as he did not know how the system worked or how REA's monies was taken from Central Bank of Nigeria to the Banks.

No further questions were asked and there was no re-examination.

The 5th Defendant Mr. Abdulsamad Garba Jahun also testified in his own regard that he is the Deputy Director Human Resource and Administration of REA and denied involvement in all the Counts preferred against him. Sometime on the 10th of December 2008, he was invited through a telephone call from the Office of the Managing Director or Chief Executive Officer of REA, to attend a Brief Meeting, which had no Agenda.

He honoured the invitation since it came from his Boss, who was his Superior by virtue of his position as Managing Director. Before the Meeting, the Chief Executive informed him of REA's Budget in the 2008 Appropriation. During the Brief Meeting,

the Chief Executive told them of an instruction from the Acting Minister/Permanent Secretary of the Federal Ministry of Power to process Award Letters as contained in the 2008 Appropriation Budget.

Further, Committees were to be set up that would do the Scoping Mission, Site Surveys for the Projects, Pricing and Costing of the Contracts.

According to him, the Meeting he attended did not discuss the Award of Contracts because the List of Companies was not presented to them at the Meeting, the Agreements between the Contractors and REA was also not presented to them nor did they discuss the Payment and issuance of Cheques for 15% and 85% and so the allusions attributed to the Meeting of the 10th December did not take place and as far as he was concerned, those allusions may have been discussed in other Meetings he was unaware of.

Further, visits to the Project Sites, Scoping and Pricing were also not done and these facts were not contained in the Memo. According to him, they may have been other Meetings, which discussed the above but he did not participate as he nothing to do with the Contracts or its execution and he had never met with the Contractors or had discussions with any of the Directors before and after the Award and Execution of the Contracts.

Shown Exhibit 159- the Summary of Meeting and Exhibit 160- the Memo, he stated the two Exhibits were not Minutes of Meeting but Memos written by Mr. Onwusoh, which substantially did not reflect what had happened in the Meeting. Mr. Onwusoh took the brief of Mr. Kayode, 6th Defendant, who was away but on his return, may have written the Minutes of Meeting.

He named those present at the Meeting of 10th December 2008 to include: - the Managing Director/Chief Executive Officer, Director (Projects), Director (Promotion), Director (Funds), Principal Manager (Performance and Evaluation), Principal Manager (Audit), the Senior Manager (Performance and Evaluation), Mr. Onwusoh and himself, the Director (Human Resources).

Shown Exhibits 161 and 162- Certificates of No-Objection for Solar Based and Grid Extension Projects, he stated that when the Managing Director was preparing his Memos to the Minister, he was **commandeered** into signing them due to the urgency of the matter and the fact that the Managing Director, who was his Superior had linked the relevance of the Certificates to the 2008 Approved Budget of the Agency,further stating that the Government was interested in the Contracts.

Some days after the Meeting of 10th December, he met the Managing Director with Draft Copies of Memos on the **Stairway** where he signed the Certificates of No-Objection and he could not exactly remember how many Directors had signed before he eventually signed. When asked, the motivating factor for his signing, he replied because it was a direction from his Superior, who had attached significance to the signing of the Documents. He later regretted signing the Certificates when he got to know that the Director Procurement did not sign, as he is the Principal Officer responsible for overseeing the implementation of the Procurement Process. In spite the absence of the Director Procurement, he was expected to have signed the Certificates at a later time when the Memo was drafted.

He acknowledged **Exhibits 196A and B** were his EFCC Statements, and when referred to Page 2 of 196A and the Second Paragraph of Exhibit 196B, he got to know of the allegations of his connivance with colleagues.

By his Schedule of Duties, he had nothing to do with Projects and was never involved in any subsequent dealings or transactions regarding Project after the Meeting of 10th December 2008.

Further, he did not have any discussions with any of the Directors that would indicate an iota of opinion or collusion. He was never in the Budget Processes or Signatory to any Active or Dormant Accounts of REA or Financing or Awarding of Contracts nor was he a Floor Member of the National Assembly or House Committee. He did not exercise powers in regard to Budget nor been to the Office of the Permanent Secretary, the 2nd Defendant, with regard to the 2008 Budget. More so, the Head of Unit, Principal Manager (Performance Evaluation), Principal Manager (Audit) and other Officers report directly to and receive instructions from the Managing Director but not him.

Shown Exhibits 6 to 151, he identified the signature of the Managing Director and perhaps that of Director Finance, adding that he was seeing these Exhibits for the first time. He was not a Signatory or Issuer nor did he have any connection whatsoever with these Central Bank of Nigeria Cheques.

Since his Thirty-Three (33) years of Service as an Administrator with hopes of retirement, he has never been either a Contractor or Supplier and in this instance, none of the Contractors could say they knew him or had a transaction with him. Shown Exhibits 1 to 5, Documents relating to Dan Jibril& Co Limited, he denied knowing this Company or being its Director but knew one of its alter-ego, Mr. Jibril, who he met for the first time at the Economic and Financial Crimes Commission's (EFCC) Office in Wuse.

Under Cross-Examination by Learned Silk to the 2nd Defendant, he was shown Exhibits 196A and B-his EFCC Statements and he stated that he never met or discussed with the 2nd Defendant, Dr. Aliyu before or after the Contracts and whatever had been said in regard to Dr. Aliyu, he had heard it from other persons.

Referred to Exhibit 196A dated 19th of March 2009, he agreed mentioning the words "urgency" and "priority" in his Statement in consonance with the wordings used in Section 42 of the Public Procurement Act. In the course of making his Statement, he was asked to narrate the Procedure for awarding Contracts.

From what he had heard, his Agency, REA, had decided to choose the Direct Procurement Method in compliance with Section 42 of the Public Procurement Act. According to him, the use of the phrase, "as I heard" was not contained in his Statement but that was what he heard from his Superiors. In fact, after their first invite to the EFCC on the 19th of March, the Managing Director suggested to them that the Direct Procurement Method as provided by Section 42 of the Public Procurement Act was used in the event they were asked what Method was used.

Under Cross-Examination by Learned Counsel to the 3rd Defendant, he reiterated his evidence that Exhibits 159 and 160 did not reflect the discussions of the Meeting of the 10th of December and named those who were at the Meeting. The Managing Director briefed them on plans to execute the Agency's 2008 Budget and the Meeting did not include discussions of the Contracts.

Under Cross-Examination by Learned Counsel to the 4th Defendant, his listed out his Schedule of Duties and went on to say that he reported directly to the Managing Director and may also receive instructions from Directors of Funds and Projects.

After the Meeting of the 10th of December, he had nothing to do with implementation of the Contracts nor did he receive any direction thereto and being a Subordinate Officer, he acted only in relation to instructions directed at him from a Superior Officer, who by virtue of rank or appointment was the Managing Director and then indirectly, with the Permanent Secretary of the Ministry of Power, who was not working in his Agency.

DW5, Mr. Jahun, was not cross-examined by Learned Counsel to the 6th Defendant and thereafter the Prosecution began his Cross-Examination. He stated that Exhibits 159 and 160 were Memos that further explained what did not transpire at the Meeting of the 10th of December 2008. The Meeting was a briefing for the purposes of translating the intention of the 2008 Budget with plans to create Committees and Sub-Committees that would conduct Survey, Scoping Mission and Pricing.

From the Distribution List in Exhibits 159 and 160, he agreed he was copied but could not remember with precision which person from the List approached him. He agreed it was not all instructions from his Superior he was to obey especially if doing so was contrary to the Law or to validate what he had no knowledge of. He identified his signatures on Exhibits 161 and 162, the Certificates of No-objection, which he signed in his capacity as Deputy Director (Human Resources and Administration). According to him, the issues pertaining to the Certificates of No-Objection were not discussed at the Procurement Planning Meeting and maintained the fact that he did not attend any other meeting. His reasons for signing Exhibits 161 and 162 were because it was urgent in order to obey a superior order. From circumstances he found himself, he had no opportunity to protest because the Managing Director met him on the stairway after going from office to office eliciting signatures from Directors that were present at the Meeting.

In retrospect, he would not have signed Exhibits 161 and 162. When asked why he did not mention this fact of protest in his EFCC Statement-Exhibits 196A and B, he stated that he had attempted to write a Complaint to the Office of the Head of Service setting out his predicament and had in fact written a Draft. However, he was advised by his Lawyer to abandon writing. According to him, Exhibits 161 and 162 were not made in furtherance of the award of the Contracts. During the meeting of the 10th of December, he was not disturbed with the absence of the Director Procurement at the Meeting, who he learnt was sick.

DW5 stated that there must have been an interval of about One (1) week between the Meeting of the 10th of December and when he signed at the stairway. It was in that week, after he had signed, the Director Procurement resumed work and it was also in that week the Managing Director brought a written Memo dated 17th of December, which he had sent to the Acting Minister, the 2nd Defendant. The Director Procurement had two Senior Managers under his supervision, who also were not in the meeting of 10th December 2008.

He reiterated that there was no formal Notice for the Meeting, which took place on the same day and was summoned by telephone call to attend.

Finally, it was when summoned by the EFCC that he realised the Director Procurement did not sign and he could not say why the Director Procurement did not sign. No further questions were asked and that ended his testimony.

The 6th Defendant, Kayode Oyedeji, on Oath testified that prior to this Charge preferred against him, in the Month of June 2007, he was in the employ of Rural Electrification Agency (REA) as the Company Secretary/ Legal Adviser. Exhibit 158 the Amended Budget, contained the Solar and Grid Extension Projects for the Country, which was passed by the National Assembly sometime in November 2008 and assented to by the Late President Yar'adua on the 16th of November 2008.

Before the 10th of December 2008, he was on Casual Leave with his family in Oshogbo. His wife put to bed on the 4th of December and the 6th and 7th and 8th and 9th of December 2008 being a weekend and a Public Holiday, he stayed with his family in order to do his child's naming ceremony slated for the 11th of December 2008.

In his absence on the 10th, his colleague Mr. Matthew Onwusoh, the Senior Manager Performance acted in his stead as Acting Company Secretary. On the 9th of December 2008, he was summoned to report back to Abuja on the 10th of December 2008. Upon his arrival on the 10th of December 2008 at about 3pm, Mr. Matthew Onwusoh briefed him on what transpired during the Procurement Planning Committee, and handed over to him the Summary of the Meeting. From the Summary, marked as Exhibit 159 particularly Column 2 of Page 3, he noted an instruction, which prompted him to prepare a Memo, now admitted as Exhibit 160. He acknowledged seeing a Copy of the Distribution List attached to Exhibit 160, which was circulated to all those whose names were on the List.

Shown Exhibits 161 and 162, the Certificates of No-Objection, he identified his signature and designation as Head of Legal Unit.

His attention was drawn to the missing signature of the Director for Procurement, to which he replied that he was junior in hierarchy so he signed first and from the Civil Service Rules, he was not expected to sign after his Boss or Superior. Therefore, he signed first and would not know why the Director of Procurement did not sign his Signature Column.

Shown **Exhibit 185B,** his Statement to the EFCC particularly to where he had written he had attended the Meeting of the 10th of December 2008, he replied that was an honest mistake, a slip, as he was under tension at the time. His reasons for signing the Two Certificates of No-Objection were that: - (1) The Signature Column was labelled Head Legal Unit and he was the Head of that Unit; (2) He was represented and subsequently briefed by an Officer who attended the meeting and acted in his absence and (3) Exhibits 161 and 162 were in tandem with the Summary of the Planning Procurement Meeting.

He was not the Maker of Exhibits 161 and 162- the Certificates of No-Objectionand neither did he have any interest or monetary compensation either personally or held in Trust norwas he was a Shareholder or Member of any of the Companies mentioned in the Annexures to these Exhibits.

According to him, he wrote his Statement-Exhibit 185C, after a Search was conducted at his residence, nothing was found either connecting or relating him to the Contract and he was not confronted by the EFCC with any of his Bank Statements.

In **Exhibit 185A**, his Statement to the EFCC, he had mentioned 15% payment was made and 85% were secured with Bank's Advance Payment Guarantees (APGs). Shown **Exhibits 256(1-20)**, the APG Certificates, he replied that all the Contracts were secured with APG Certificates and it was his duty to ensure that they do not expire by securing their renewal from the Banks who issued them.

He identified the Cheques marked Exhibits 6 to 151, to be the Cheques released to Companies awarded Contracts by REA and denied being a Signatory of the Cheques or of REA's Account. He also was not a Signatory of the Payment Vouchers marked **Exhibits 168 (1-40)**and his Unit had nothing to do with either its issuance or subsequent payments.

He denied conspiring with any of the Defendants or having dominion over REA or custody or issuance or signing of the Cheques.

He reiterated that though he was not at the Meeting of the 10th of December 2008, based on the briefings he received of the urgency and importance of the Project towards improving the Power situation of the Country, they proceeded with the Contracts as stipulated in Section 42 of the Public Procurement Act.

Further, since the Amended Budget had been assented to, REA had to proceed with the Award of the Projects. Considering the situation, circumstances and from the briefings he had received from the Summary of Meetings, marked Exhibit 159, he answered that the mode of payment was right, at that time.

Under Cross-Examination by Learned Silk for the 2nd Defendant, he was aware of the squabble between the National Assembly and the Executive that occurred sometime in Late 2008 over Constituency Projects and Poor Implementation of Projects by the Executive. He agreed with the fact that one of the assertions of the National Assembly was to exercise oversight function through different Committees. He also agreed with the fact that the expectation of the National Assembly was to ensure high level of implementation.

The National Assembly in carrying out its Constitutional Role could mete out Penalty in the form of withholding further budgetary allocations for Projects when an Agency is perceived to have performed poorly on project implementation.

According to him, the Financial Year ends in the month of December, and where a Project is not implemented, it would not be included in the Budget of the following year. He agreed that REA would be summoned to defend the Contracts as set out in the Budget. He also agreed that Assent was given late in November 2008 and REA had barely Six (6) Weeks to conclude the processes for awarding the Contracts. Therefore, Time was a factor, which factor was stated in the Minutes of Meeting, which formed the rationale for proceeding with the Contracts under Section 42 of the PPA. At the time he was later briefed, REA had about Three (3) Weeks to conclude the Contracts.

On the Payment Structure adopted by REA, he stated that for any form of Contract, 15% is usually given and in this instance, the challenge was with the balance of the 85% Contract Sum. The Solar and Grid Extension Contract Agreements REA entered into with each of the Companies, was that the Projects were to be completed within Sixty (60) Days and Ninety (90) Days respectively. In order to avoid the mischief of uncompleted and abandoned Projects as well as wastage of Public Expenditure, he, as a Public Officer had the responsibility to prevent such from happening.

It was his honest belief that the Award needed Cash backing otherwise REA would be penalized in the event it fails to pay within Sixty (60) Days. The 85% was to be secured with APGs and Letters instructing the Banks not to release any part of the 85% till Projects were completed and upon completion, another Letter would be sent to the Banks, instructing them to release the committed funds. Primarily, he was concerned with ensuring that the APGs were in place, stating further that the APGs would expire upon: - (1) Completion of the Contracts and (2) When REA sends a Letter to the Bank informing them that the Contract had been completed. He discovered that it was Management's decision to release the 85% to Contractors' Bankers, who issued out the APG Certificates and he was instructed to monitor the APGs so they do not elapse and he was aware the 85% was actually paid to the Contractors' Bankers.

The Management of REA discussed this Payment Structure before it was implemented, and there was nothing unlawful about this Structure as APGs were used to secure the money and not to make payments for the Contractsand this was the rationale.

When asked, he was not aware the 1st Defendant had stated to the EFCC that he had a dialogue with the Supervising Legislative Committee on Power that no Budgetary Provision would be made in Year 2009.

Under Cross-Examination by Learned Counsel to the 3rd, who also held the Brief of Learned Counsel to the 4th Defendant, he stated that one of his duties was to prepare Minutes of Meeting, its Agenda and the Notice of Meeting. For the Meeting of the 10th of December 2008, the Notice was not prepared because he was in Oshogbo.

REA has a Six (6) Member Board from each of the Federal Political Zones and any person could be summoned to attend its Management Meetings. Referred to Line 2 of Exhibit 185A- his EFCC Statement, he stated that the Managing Director could instruct him to prepare Notices of Meetings, setting out the Agenda.

He could not say whether Pre-Qualified Contractors were monopolised but in order to be Pre-Qualified, a Company must be registered with the Ministry and pay the necessary fees before being considered for a job. He could also not say whether it was within the scope of the Public Procurement Committee to issue Certificates of No-Objection or whether the 2008 unexpended funds were returned to the Federal Government.

He could not say if the Projects set in Exhibits 160 and 162 were for Members of the National Assembly but knew that each Project was below the N50Million Threshold.

He denied being the Initiator of the APGs, adding that the APGs were used by his Agency to secure Federal Government monies in the event of non-performance by a Contractor. It was his duty to ensure that the APG does not elapse before the Project is executed and completed.

Under Cross-Examination by Learned Counsel for the 5th Defendant, he stated that he prepared Exhibits 160, 161 and 162, which were reflections of the Summary of Meeting in Exhibits 159 or 160. When questioned whether there was anywhere in Exhibits 161 and 162 that the Total Consideration Sum for the entire Contracts were discussed, he replied that the amounts written Exhibits 161 and 162 as well as the duration of the Contracts were not stated. The numbers of Projects to be executed were also not reflected in Exhibits 159 and 160.

He stated that there were subsequent Management Meetings that discussed matters relating to the Projects but did expatiate on them.

Under Cross-Examination by the Prosecution, he reiterated not being at the Meeting of the 10th of December 2008 and his EFCC Statement- Exhibit 185Bwas made in

error. He had drafted the Contract Agreements, which were subsequently vetted and approved and had signed the Contracts on behalf of REA in his capacity as the Senior Manager, Legal of REA based on instruction. However, he did not sign Exhibit 161 and 162, the Certificates of No- Objectionat gunpoint. When shown the Contract Agreement in Exhibit 179, he stated that both he and the 1st Defendant executed the Contracts worth less than N50Million, which is REA's Threshold on behalf of REA and that this Contract Agreement in Exhibit 179 was not prepared on the strength of the Approvals granted in Exhibit 200 and 201 but were prepared on the instructions of the 1st Defendant.

He did not have any interface with any of the Contractors when issuing the Letter of Award and releasing of the Contract Documents and Cheques. To the best of his knowledge, he performed his duty because a Management Decision had been taken, which he could not overrule. But his duty, by virtue of his training, did not extend to illegal instructions.

Administratively, REA being an Agency under the Federal Ministry of Power had to secure an Approval from the Ministry and it was after this and based on instruction, REA commenced the distribution of the Contracts. The Approval was not directed to him but in the course of treating Contractors' Files, he saw the Approval.

One of the decisions of the Procurement Meeting had to do with the mode of Payment. The mode he was informed of was 15% and 85% but there was another mode of 15%, 75% and 10% Retention Fees, which was adopted. This was the first time REA would be executing Contracts and by his training, he went through Copies of Drafts prepared by the Federal Ministry of Power, where the provisions were made for 15%, 75% and 10%. Based on the instruction of the 1st Defendant, he prepared a Draft Agreement in the Mode adopted, which was later vetted and approved. When asked, whether the adopted mode of payment was initiated by him, he stated that he is a Lawyer in the Legal Unit not an Accountant and had nothing to do with Payments. He acknowledged being fully aware of the Public Procurement Act 2007 and recalled that 15% down payment should be made to the Contractor at the time of the Award.

He also did not bother to know where the Approval emanated from, as long as his Agency had the powers to award Contracts. No Agency was expected to award any contract unless there was cash backing otherwise a Penalty may ensue against his Agency, which he conjectured to be 5%, if payment is not made within Sixty- (60) Days.

Further, the Contract documents that were prepared in 2008 was on the instruction of his Superior adding that the Price for each Contract were stated therein before Approval was sought.

This witness, when shown Clause 9.0 of the Contract Agreement, where he acknowledged that the Clause referred to Terms of Payment to be 15%, 75% and 10% and this was the same Mode he employed for all the Agreements he prepared and executed. To contradict the Mode adopted in the Agreement, the Prosecution showed him Annexures to Exhibits 200 and 201- the Approvals for Contract Award, where he acknowledged seeing the List of Contractor-Companies and the Approval in each of the Contract Files and further stated that the Draft Agreements were prepared and later executed on behalf of REA.

DW6, distinguished the Approvals on Exhibits 200 and 201 but could not remember whether his Statement to the EFCC about the Mode of Payment and that rendered before this Court were different.

He agreed the APGs were not limited to EITHER 15% Mobilisation Fee OR 75% because the Management Decision of the 10th of December was to secure the balance of the Contract Sum before the end of the year, being 31st of December. Therefore, the APGs he obtained were used to secure the remaining 85%, which he monitored so they do not elapse. From the Minutes of that Meeting, the Director of Procurement was not at the Meeting even though it was stated that he attended. It was when he was served with the Proof of Evidence he got to know that the Director of Procurement did not append his signatures on the Certificates of No-Objection.

Referred again to Exhibit 179, the Contract Agreement, DW6 stated that this Agreement was executed Nineteen (19) or Twenty (20) Days after his briefing. He agreed that the Decision for the 85% of the Contract Sum to be paid through APGs, were not contained in the Contract Agreement. Also not contained in the Contract Agreement was a requirement for the presentation of APGs for all the other payments.

All the Contract Agreements he prepared were **after** the Meeting of the 10th of December 2008 and on the instruction of the 1st Defendant.

As regards the Approvals, the Memo thereto was a communication between the Managing-Director, the 1st Defendant and the Minister seeking his Approval in relation to the Contracts. However, he would have still proceeded to execute the Contracts if the Contract Sum for the Project, is within the N50Million Threshold of

his Agency. From his understanding of the Public Procurement Act, the Approval from the Ministry was needless, if his Agency acted within its Threshold.

DW6 stated that his Schedule of Duties included Releasing Award Letters to Successful Contractors whose Representative was required to present to him the Contractor's Company Identity Card, Corporate Affairs Commission Forms CO2 and CO7 and also Letters of Authority, which Letters he omitted to make mention in his Statement.

He was familiar with the name Uduak Israel Akpan, who had Letters of Authority from those Companies and she produced means of identification namely, Certified True Copies of their Forms CO2 and CO7, Originals of Certificate of Incorporation, which he sighted and made copies.

Under Re-Examination, he stated there were other Meetings he had referred to, which were Meetings he interacted with the Managing Director, the 1st Defendant in order to prepare the Memo in Exhibit 160.

Under Further Cross-Examination by the Prosecution, he was confronted with the fact that he had mentioned for the first time Letter of Authority and was told to read his EFCC Statement- Exhibit 185B. He was asked if the abbreviation, "**etc.,**" included the Letter of Authority referred to, and he answered in the affirmative.

No further questions were asked and that was the case of the 6th Defendant.

For ease of reference, the **Summary of Exhibits** tendered through PW5, PW6 and PW7 as well as those tendered by all the Defence especially the 1st Defendant are as follows: -

TENDERED BY	EXHIBIT MARK	EXHIBIT PARTICULARS	COMMENT
PROSECUTION	EXH. 182	REPORT OF THE PROCUREMENT AUDIT OF THE R.E.A. HELD BETWEEN 17 – 19 MARCH 2008	PHOTOCOPY
PROSECUTION	EXH. 183	A COPY OF PETITION	ORIGINAL
PROSECUTION	EXH. 184	STATEMENT OF ABDULKAREEM SAADU GURIN	ORIGINAL
PROSECUTION	EXH. 185 A – C	STATEMENTS OF 6TH DEFENDANT	ORIGINAL
PROSECUTION	EXH. 186 A – H	STATEMENTS OF 1ST DEFENDANT	ORIGINAL

PROSECUTION	EXH. 187	GRID	PHOTOCOPY
PROSECUTION	EXH. 188	SOLAR	PHOTOCOPY
PROSECUTION	EXH. 189	ADVANCE PAYMENT GUARANTEE DATED 19/01/09	PHOTOCOPY
PROSECUTION	EXH. 190 N0S. 1 – 41	ADVANCE PAYMENT GUARANTEES	PHOTOCOPY
PROSECUTION	EXH. 191	LETTER DATED 2ND JUNE 08	PHOTOCOPY
PROSECUTION	EXH. 192	LETTER DATED 20TH JANUARY 08	PHOTOCOPY
PROSECUTION	EXH. 193	REPLY LETTED DATED 20/01/09	PHOTOCOPY
PROSECUTION	EXH. 194 A – B	STATEMENTS OF 2ND DEFENDANT	ORIGINAL
PROSECUTION	EXH. 195 A – B	STATEMENTS OF YAHAYA ABDULLAHI SHAMAKI	ORIGINAL
PROSECUTION	EXH. 196 A – B	STATEMENTS OF 5TH DEFENDANT	ORIGINAL
PROSECUTION	EXH. 197 A – B	STATEMENTS OF 3RD DEFENDANT	ORIGINAL
PROSECUTION	EXH. 197 A – D	STATEMENTS OF 4TH DEFENDANT	ORIGINAL
PROSECUTION	EXH. 199A	LETTER DATED 4TH FEB. 08	ORIGINAL
PROSECUTION	EXH. 199B	LETTER DATED 18TH FEB. 08	ORIGINAL
PROSECUTION	EXH. 200.	LETTER DATED 17TH DEC., 08	ORIGINAL
PROSECUTION	EXH. 201.	LETTER DATED 11TH DEC., 08	ORIGINAL
DEFENCE	EXH. 202.	CONTRACT FILES NOS. 1 – 79	ORIGINAL
DEFENCE	EXH. 203.	LETTER DATED 12TH DEC. 08 ADD TO M.D. DAN JIBRIN	PHOTOCOPY
DEFENCE	EXH. 204.	LETTER DATED 12TH DEC. 08 SOLAR TECH.	PHOTOCOPY
DEFENCE	EXH. 205.	LETTER DATED 19TH DEC., 08	PHOTOCOPY
DEFENCE	EXH. 206.	LETTER FROM HON. MIN. OF STATE FOR POWER 20/01/09	PHOTOCOPY
DEFENCE	EXH. 207.	LETTER BY 1ST DEFENDANT DATED 30TH DEC. 08	PHOTOCOPY
DEFENCE	EXH. 208.	OFFICIAL GAZETTE NO. 80 VOL 95	ORIGINAL
1ST DEFENCE	EXH. 209	OFFICIAL GAZETTE VOL. 96 NO. 93	ORIGINAL

1ST DEFENCE	EXH. 210 N0S. A – D	CAMBRA HEIGHT LTD	PHOTOCOPY
1ST DEFENCE	EXH. 211 N0S. A – B	CHIEF & CHIEF 2 SETS	PHOTOCOPY
1ST DEFENCE	EXH. 212	COPEC SOLAR TECH	PHOTOCOPY
1ST DEFENCE	EXH. 213 N0S. A – C	UTILITY & ENERGY SOLUTIONS LTD	PHOTOCOPY
1ST DEFENCE	EXH. 214 N0S. A – D	HELPING HAND INT LTD	PHOTOCOPY
1ST DEFENCE	EXH. 215N0S. A – B	OLIZA INVEST	PHOTOCOPY
1ST DEFENCE	EXH. 216	SWEETSTONE GLOBAL	PHOTOCOPY
1ST DEFENCE	EXH. 217 N0S. A – D	VALEXCON GLOBAL	PHOTOCOPY
1ST DEFENCE	EXH. 218	ALI STAR TRADING	PHOTOCOPY
1ST DEFENCE	EXH. 219	BURKIN MOORE VENTURES	PHOTOCOPY
1ST DEFENCE	EXH. 220 N0S. A – B	EMEKOHAS INDUSTRIES	PHOTOCOPY
1ST DEFENCE	EXH. 221.	M/S HANSON	PHOTOCOPY
1ST DEFENCE COUNSEL	EXH. 222.	EXPARTE ORIGINATING SUMMONS	C. T. C
1ST DEFENCE COUNSEL	EXH. 223.	COURT PROCEEDINGS, COURT ORDER F.H.	C. T. C.
1ST DEFENCE COUNSEL	EXH. 224.	MOTION ON NOTICE	C. T. C.
1ST DEFENCE COUNSEL	EXH. 225.	COURT ORDER	C. T. C.
1ST DEFENCE COUNSEL	EXH. 226.	R.E.A. POWER PROJECT AMENDED 2008 BUDGET 18/04/ 11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 227.	R. E. A. DATED LETTER 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 228.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 229.	LETTER DATED 26/01/12	C. T. C.
1ST DEFENCE COUNSEL	EXH. 230.	LETTER DATED 18/04/11	C. T. C.

1ST DEFENCE COUNSEL	EXH. 231.	LETTER DATED 11/07/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 232.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 223.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 234.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 235.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 236.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 237.	LETTER DATED 30/06/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 238.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 239.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 240.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 241.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 242.	LETTER DATED 18/04/11	C. T. C.
1STDEFENCE COUNSEL	EXH. 243.	LETTER DATED 21/12/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 244.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 245.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 246.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 247.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 248.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 249.	LETTER DATED 18/04/11	C. T. C.

1ST DEFENCE COUNSEL	EXH. 250.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 251.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 252.	LETTER DATED 03/05/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 253.	LETTER DATED 18/04/11	C. T. C.
1ST DEFENCE COUNSEL	EXH. 254.	PAGES N0S. 1 – 75	C. T. C.
1ST DEFENCE COUNSEL	EXH. 255.	PAGES N0S. 1 – 32	C. T. C.
DEFENCE	EXH. 256.	ADVANCE PAYMENT 1 – 20 GUARANTEED SKY BANK	C. T. C.
DEFENCE	EXH. 257.	AFRI BANK NIG. PLC N0S. 1 – 2	C. T. C.
DEFENCE	EXH. 258.	STERLING BANK N0S. 1 – 3	C. T. C.
DEFENCE	EXH. 259.	ECO BANK N0S. 1 – 6	C. T. C.
DEFENCE	EXH. 260.	GT BANK N0S. 1 – 9	C. T. C.
DEFENCE	EXH. 261.	UNITY BANK N0S. 1 – 12	C. T. C.
1ST DEFENCE	EXH. 262.	OCEANIC BANK N0S. 1 – 18	C. T. C.
1ST DEFENCE	EXH. 263.	U. B. A. N0S. 1 – 32	C. T. C.
1ST DEFENCE	EXH. 264.	INTERCONTINENTAL N0S. 1 – 18	C. T. C.
1ST DEFENCE	EXH. 265.	DIAMOND BANK N0S. 1 – 18	C. T. C.
1ST DEFENCE	EXH. 266.	SPRING BANK N0S. 1– 2	C. T. C.
1ST DEFENCE	EXH. 267.	BANK PHB 1	C. T. C.
1ST DEFENCE	EXH. 268.	FIDELITY BANK N0S. 1 – 4	C. T. C.
1ST DEFENCE	EXH. 269.	ZENITH BANK N0S. 1 – 13	C. T. C.
1ST DEFENCE	EXH. 270.	WEMA BANK 1	C. T. C.
1ST DEFENCE	EXH. 271.	FIN BANK N0S. 1 – 15	C. T. C.
1ST DEFENCE	EXH. 272.	LETTER 30/01/09	C. T. C.

At the close of evidence on the 29th of April 2016, all Learned Counsel were ordered to file their Final Written Addresses.

In view of the 1st Defendant's choice not to further participate and the 2nd and 3rd Defendants' election to Rest their Cases on the evidence led by the Prosecution, the

Prosecution sought Forty-Five (45) Days to file first his Final Written Address against them.

As against the 4th to 6th Defendants who opened their Cases and led evidence thereto, their Counsel were ordered to file first, their Final Written Addresses to enable the Prosecution respond.

From the above Final Written Addresses filed across the board, the Issues drawn out for determination by each of the Six Defendants and the Prosecution are as follows: -

In regard to the 1st to 3rd Defendants who elected not to further participate and to rest their case, the Prosecution formulated a Lone Issue for determination, which is: -

"**Whether on the strength of the evidence adduced by the Prosecution, the guilt of the 1st - 3rd Defendants has been proved beyond reasonable doubt?"**

In response Learned Silk for the 1st Defendant, formulated Three Issues for determination, namely: -

1. **"Whether the Prosecution has proved the Offences charged beyond reasonable doubt;"**
2. **"Whether the Court should make an Order for PW7 to be prosecuted for Perjury;" and**
3. **"Whether the Court should make an Order under Section 323 of the Administration of Criminal Justice Act for Compensation to be paid to the 1st Defendant for his having been arrested and prosecuted on frivolous Charges."**

As for the 2nd Defendant, Learned Silk formulated a Lone Issue, which is,

"Whether the Prosecution has on the totality of evidence in this case proved beyond reasonable doubt that the 2nd Defendant is guilty of: -

1. **Conspiracy to fraudulently commit Criminal Breach of Trust; and**
2. **Fraudulently committing Criminal Breach of Trust."**

On behalf of the 3rd Defendant, Learned Counsel formulated Two Issues for determination, namely: -

1. **"Whether from the totality of evidence adduced by the Prosecution, in this matter, a prima facie case of Conspiracy and Criminal Breach of Trust has been proved beyond reasonable doubt linking the 3rd Defendant?"**
2. **"Whether the Court is clothed with the requisite Jurisdiction to entertain the matter and not the Federal High Court of Nigeria?"**

As regards the 4th Defendant, Learned Counsel raised Three Issues for determination, which were: -

1. **"Whether the Prosecution has proved by credible evidence the statutory elements of any of the 65 Counts as charged and beyond reasonable good grounds/ reasonable doubts against 4th Defendant to attract conviction (sic)."**
2. **"Whether pursuant to the Public Procurement Act which specifically stipulates Jurisdiction of Specific Court to entertain infraction, has this Honourable Court Jurisdiction to entertain the alleged infraction against 4th Defendant. (Sic)"**
3. **"Whether 4th Defendant should not be discharged and acquitted by this Honourable Court if Issues 1 and 2 hereof are resolved in favour of 4th Defendant."**

Learned Counsel for the 5th Defendant on his own part, formulated Two Issues for determination, which were: -

1. **"In view of the evidence adduced, whether the Offence of Conspiracy has been successfully proved by the Prosecutor against the 5th Defendant; and**
2. **"Whether the 5th Defendant is guilty of Criminal Breach of Trust, taking into cognizance the evidence adduced in this case."**

As regards the 6th Defendant, the Learned Counsel analyzed the Evidence of each testifying witness, made Submissions and Arguments in regard to them but **did not** formulate any Issue for Determination in their regard.

In response, the Prosecution formulated a Lone Issue for determination, which is: -
"**Whether on the strength of the evidence adduced by the Prosecution, the guilt of the 4th – 6th Defendants has been proved beyond reasonable doubt?"**

After a careful appraisal of all the Evidence, Oral and Documentary, led during the Trial, and after a careful consideration of the Arguments and Submissions raised in

all the Final Written Addresses of Counsel, the Court determines that the following Issues are necessary for the just determination of this case: -

1. Whether from the totality of evidence, oral or documentary adduced, the Prosecution has successfully proved beyond reasonable doubt the Offence of Criminal Breach of Trust against all the Defendants in Count 2 through to Count 65.

2. Whether Proof beyond Reasonable Doubt of the Offence of Conspiracy in Count 1 of the Charge has been successfully established against all the Defendants on Record.

3. Whether, under Section 323 of the Administration of Criminal Justice Act, Compensation should be paid to the 1st Defendant for his arrest and Prosecution under frivolous Charges.

At the outset, it is imperative to deal with Six Major Sub-Issues because the consequences of the Court's Decision on these Issues are far-reaching.
The Five Issues raised by the Defence are: 1) Jurisdiction; and 2) The Question of the 2nd and 3rd Defendants Resting their Cases on that of the Prosecution; 3) The Question of Not Participating Further in the Proceedings by the 1st Defendant; 4) Admissibility Questions of Exhibits 161 and 162- the Certificates of No-Objection; and 5) the 5th Sub-Issue as raised by the Prosecution is: "Whether Exhibits 255 (1-32), the Letters allegedly written by the 1st Defendant on behalf of REA and addressed to the Contractors' Bankers, are either inadmissible or have no evidential value"; and 6) The Six and Final Issue is that raised by Learned Silk representing the 1st Defendant Whether the Court should make an Order for PW7, Mr. Ibrahim Ahmed, the Assistant Superintendent of Police, seconded to the Intelligence and Special Operations Unit of the Economic and Financial Crimes Commission should to be prosecuted for the Offence of Perjury;

On the Preliminary Objection raised that this Court lacks Jurisdiction, Learned Silk to the 1st Defendant, in a**Motion on Notice Number M/8768/15 Dated 1st of July**

2015 supported by a Five Paragraph Affidavit and a Written Address of Counsel, premised his Objection on the following Grounds, namely: -

1. As all the Charges are concerned with the Award of Contracts for the provision of Electricity by the Defendants whilst employed in the Rural Electrification Agency, an Agency of the Federal Government of Nigeria, the Charges relate to the Administration and Management or Control of the Federal Government or one of its Agencies;
2. By virtue of Section 251 of the 1999 Constitution, this Court has no jurisdiction to entertain the Charges as the Charges can only be tried by the Federal High Court; and
3. On the authority of **GEORGE VS FRN (2014) 5 NWLR PT 1399 AT PG1**, only the Federal High Court has jurisdiction in Criminal Trials relating to the Control and Management of a Federal Government Agency.

According to Learned Silk, Section 89(1) of the Power Sector Reform Act of 2004 created REA and the Directors are appointed by the President on the recommendation of the Minister of Power, whose duty was to approve the Corporate Governance Arrangements for the Agency. The President of Nigeria, in formulating a Rural Electrification Strategy for Nigeria, was required by the Act to consult REA and was quarterly briefed by the Minister of Power through Reports prepared in consultation with REA on the progress and achievements of this Strategy and Plan.

Periodically, the Minister evaluated REA in order to determine the impact of the Rural Electrification Programme, making it an Agency of the Federal Government under Section 251 of the 1999 Constitution. He drew the Court's attention to the fact that the Defendants are all Staff of the Federal Government and in the case of the 2nd Defendant, who was the Permanent Secretary in the Ministry of Power, he had dominion over money belonging to the Agency and domiciled in the Central Bank of Nigeria. The Contracts by the Defendants were awarded on behalf of the Agency for Grid Extension and Solar Electrification in several Communities in Nigeria.

From the evidence led, Learned Counsel drew out the fact that the REA was under the Supervision of the Federal Ministry of Energy (Power) and some of the Directives were contained in the Public Procurement Act, Circulars and Rules published by Federal Government Departments and by the Bureau of Public Procurement. He maintained that the above stated Government Directives regulated the Process for the Award of the Contracts and Regulations and the 1st, 3rd to 6th Defendants had sought the Approval of the Ministry of State for Power in the

Federal Ministry of Power, under the hand of the 2nd Defendant, the Permanent Secretary.

These Awarded Contracts were included in the Amended Budget of the Federal Government and contained in the 2008 Supplementary Appropriation Act, passed by the Federal Government of Nigeria. Therefore, he concluded that the Charges all relate to the Administration or the Management or Control of the Federal Government or any of its Agencies, which by virtue of Section 251(1)(p) and (3) of the 1999 Constitution, could only be heard by the exclusive jurisdiction of the Federal High Court. Reference was made to Section 251(1) of the 1999 Constitution and the cases of **INEGBEDION VS OJEMEN (2013) 8 NWLR PT 1356, PG 211 AT PG 234 AT PARAS D-H; NDLEA VS OMIDINA (2013) 16 NWLR PT 1381 AT PG 589; NEPA VS EDEGBERO (2002) 18 NWLR PT 798 AT PG 79;** and the recent cases **of GEORGE VS FRN (2014) 5 NWLR PT 1399 PG 1 AT PG 28 PARAS F-H; AND ABIDOYE VS FRN (2014) 5 NWLR PT 1399 PG 63 AT PG 64.**
Learned Counsel finally held the view that the Decision in **EHINDERO VS FRN (2014) 10 NWLR PT 1415 PG 281** was no longer Good Law, being a Court of Appeal Decision.

As regards the 2nd Defendant, Learned Silk, Chief O.E. Offiong prefaced his Submission on the Objection by arguing that the Charges did not relate to breaches of the provisions of the PPA as they involved the Offences of Conspiracy to Commit Breach of Trust and Criminal Breach of Trust under the Penal Code.
As if in response to the arguments of the 1st and 4th Defendants, he clarified the distinction between the Offences under this Charge and those Offences under the PPA, by arguing as follows: -
a) The ingredients of Conspiracy to Commit Criminal Breach of Trust and the Commission of Criminal Breach are different from that of Breaches of the Provisions of the PPA.
b) A violation of the PPA is triable by the Federal High Court and not this Court.
c) It will be intrinsically unfair and unjust and will constitute a Breach of the 2nd Defendant's Fundamental Right to a Fair Trial to be tried indirectly for a Breach of the PPA when no Charges under that Law (PPA) have been brought against him but used as a subterfuge of the Criminal Breach of Trust, which has different elements and ingredients.
d) This Court will be acting without jurisdiction if it directly or indirectly tries the 2nd Defendant for Breach of the PPA when NO CHARGE FOR SUCH BREACH HAS BEEN PREFERRED AGAINST THE 2ND DEFENDANT BEFORE THE COURT.

e) Learned Silk, illustrated the above Submissions aptly by stating that Criminal Breach of Trust by a Public Servant requires the elements of entrustment and dominion which is not necessary for Offences under the PPA.

Mr. A.D. Tyoden, representing the 3rd Defendant on this Point of Jurisdiction, questioned whether the Court is clothed with the requisite jurisdiction to entertain the matter and not the Federal High Court of Nigeria. He cited the cases of **MBAH VS THE STATE (2014) 6 SCM PER Muhammed JSC AND MADUKOLU VS NKEMDILIM (1962) 2 SCNLR AT 341 AND NEPA VS EDEGBERO & ORS (2002) 12 NSCQR 105 RATIO 2**.
According to him, the alleged Offences occurred during the 3rd Defendant's Service as a Public Servant under REA, a Federal Parastatal and a creature of Statute and therefore are not within the jurisdiction of this Court. He referred to Sections 251 (1) (p) (q) and (r) of the 1999 Constitution to state that exclusive jurisdiction was vested in the Federal High Court, in matters in which the Federal Government or any of its Agencies was a party.

Similarly, Learned Counsel to the 4th Defendant formulated an issue on whether pursuant to the Public Procurement Act, this Court has Jurisdiction to entertain the alleged infraction against the 4th Defendant? According to Learned Counsel, Jurisdiction is a vital threshold issue and it is a crucial question of a Court's Competence to hear and determine the Subject Matter, Parties and Reliefs before it, and he cited the cases of **SOCIETY BIC SA & 2 ORS VS CHARZIN INDUSTRIES LIMITED (2014) 4 NWLR (2014) 4 NWLR PT 1398 PAGE 497 AT PAGE 534 PARAS C**. Where Proceedings, Trial, Findings, Order and Procurements are made bereft of Jurisdiction, the decision reached cannot constitute res judicata or issue estoppel and further, the proceedings are rendered null and void and that Court had ab initio, toiled in vain. He made further reference to the cases of **FRN VS IFEGWU (2003) 15 NWLR PT 842 PAGE 113 AT PAGE 188 PARAS C-D; ONI VS CADBURY NIG LIMITED (2016) 9 NWLR PT 1516 PG 80 AT PG 104 PARAS G; PAGE 105 PARA A; COTECNA INTERNATIONAL LIMITED VS IVORY MERCHANT BANK LIMITED (2006) 9 NWLR PT 985 PG 275, 297; MADUKOLU VS NKEMDILIM (1962) 2 NSCC PAGE 374; (1962) 2 SCNLR PAGE 341; EMEKA VS OKADIGBO & ORS (2012) 7 SC PT. 1; (2012) 18 NWLR PT 1331 PAGE 55.**

Furthermore, where a Court discovers it lacks jurisdiction, it must put to an end, its proceedings. Reference was made to the Supreme Court Decision of **His Lordship Adekeye JSC** in the case of **HASSAN VS ALIYU & 2 ORS (2010) 17 NWLR PT 1223**

PAGE 547 AT PAGE 626 PARAS D and His Lordship Augie JCA (as he then was) in the case of HALLMARK BANK PLC & 1 OR VS OBASANJO (2014) 4 NWLR PT 1397 PAGE 209 AT PAGE 225 PARA B.

In this instant case, it was the submission of Learned Counsel that the Sixty-Five (65) Counts of Offences preferred against the 4th Defendant was premised on the fact that he and other Directors of REA were present in their Agency's Procurement Planning Committee Meeting and had signed Two Certificates of No-Objection for the Grid Extension and Solar Electrification Contracts, which Sums as contained therein were outside their Agency's autonomy.
Consequently, their actions during the Procurement Proceedings or subsequent Award of the Contracts was an infraction or violation of the Public Procurement Act 2010 as per the Oral Testimonies of PW5, PW6 and PW7, as set out above. Learned Counsel had raised this Objection during his cross-examination of PW6, Mr. Yahaya Abdullahi Sharmaki, the Director from the Ministry of Power, where he cited Section 58(2) of the PPA. He argued that all the Testimonies rendered by PW6 were premised on the contravention of the PPA 2007, which this Court had no jurisdiction to try and he urged the Court to expunge in totality the evidence of this witness.
According to Learned Counsel, the act, that is, the Procurement Proceedings or the eventual Award, alleged to have been committed contravening Section 6(1) of the Public Procurement Act, could only be nullified, wholly or partly, by the Bureau of Public Procurement, which Body is saddled with that statutory responsibility.
Further, only the Federal High Court was statutorily mandated, as contemplated by the National Assembly, to the exclusion of other Courts, to try such Offences that contravened the Act as provided for in Section 58(2). Further Case Law Authorities were referenced to the cases of **NJIKONYE VS MTN NIG COMMUNICATIONS LIMITED (2008) 9 NWLR PT 1092 PAGE 339 AT PAGE 368 PARAS D-E PER OMOLEYE JCA; YUSUF VS OBASANJO (2003) 16 NWLR PT 847 AT PAGE 554.**

In his Reply on Point of Law, he maintained the above submissions and arguments,urging the Court to decline jurisdiction in regard to the Sixty-Five (65) Counts as well as resolve his formulated issue in favour of the 4th Defendant in line with the evidence adduced thereto.

As regards Learned Counsel to the 5th and 6th Defendants, they made no direct challenge to the Jurisdiction of this Court.

The Prosecution's response to the 1st Defendant was contained in a Counter Affidavit filed through a **Motion on Notice with Number M/10360/15 dated 11th of August 2015** but filed on the 15th of October 2015.In the Thirteen Paragraph Counter Affidavit deposed to by Jamiu Agoro and a Written Address dated the 15th of October 2015, the Prosecution contended that barely five (5) Days to the hearing of the 1st Defendant's No-Case Submission, the Motion challenging this Court's Jurisdiction was aimed at preventing the Court from proceeding further to entertain this Charge. He postulated the fact of the 1st Defendant not pursuing further this Application in the event this Court upholds the 1st Defendant's No-Case Submission and further postulated the fact that in the event this Court grants the Application, the 1st Defendant would definitely not pursue his No- Case Submission.

The Prosecution argued that by the Provision of **Section 396(2) of the Administration of Criminal Justice Act, 2015**, the 1st Defendant's Application could only be entertained along with the Substantive Issues and a Ruling made at the time of delivery of Judgment.
The Prosecution whilst orally arguing his Final Written Address, made a Corporate Response to the above Preliminary Objections. He anchored his response on the Judicial Pronouncement of the Supreme Court in the case of **FRN VS OKEY NWOSU (2016) 17 NWLR PT. 1541 AT PG 226.** According to him, the Three Grounds of Objection raised by the 1st Defendant were all principally tailored towards one element, premised on the Decision in the case of**GEORGE VS FRN (2014) 5 NWLR PT 1399 AT PG1.**

However, there has since been a contra-decision in the latest case of **FRN VS OKEY NWOSU (2016) 17 NWLR PT. 1541 AT PG 226,** another Supreme Court Decision and he argued the position of the Law to be that, where Two Conflicting Supreme Court Decisions exists, the latter in time prevails. Therefore, the Decision in**FRN VS OKEY NWOSU**, being latter in timehad effectively set aside the decisionin **GEORGE VS FRN**. He therefore urged the Court to overrule the Motion on Notice and proceed to deliver Judgment.

Learned Silk to the 1st Defendant was not hesitant in conceding that his Ground Three as set out in the Motion, which was hinged on the case of **GEORGE VS FRN (2014) 5 NWLR PT 1399 AT PG1**, was no longer the Substantive Case Law having read the Decision of the Supreme Court in **FRN VS OKEY NWOSU (2016) 17 NWLR PT. 1541 AT PG 226.** However, he maintained his Submissions and Arguments in

regard to Grounds One and Two and urged the Court to decline Jurisdiction and to Strike Out the Charges.

In further response, the Prosecution contended that Learned Counsel representing the 4th Defendant had misconceived the nature of the Charges preferred against the 4th Defendant, when he argued that as long as the evidence led by the Prosecution during Trial pointed at violation of the Provisions of the Public Procurement Act, then only the Federal High Court had Jurisdiction.
Citing the cases of **ONWUDIWE VS FRN (2006) 10 NWLR PT 988 PG 382; and FRN VS OKEY NWOSU & ORS (2016) 17 NWLR PT 1541 PAGE 226 AT PAGE 290 PARAS A-B LINE 3**, the Prosecution made a comparison between a Civil and Criminal Suit by saying that just as a Plaintiff's Claim determines jurisdiction, even so a Charge or Information in a Criminal Suit determines Jurisdiction.

In this instance, the jurisdiction to entertain this Suit ought to be considered against the backdrop of the Charges filed and the Enabling Law under which the Offences were created and not on the evidence led in support thereof. Reference was made to the case of **EGUNJOBI VS FRN (2012) LPELR- 15537 (SC)** as well as to the Amended Charge, to illustrate that the Counts were framed to be,"in contravention of and punishable under the Provisions of the Penal Code" for which this Court's jurisdiction is guaranteed. The Charges were not framed under the provisions of the "Public Procurement Act" as argued.

On the assumption that the evidence led by the Prosecution pointed towards the contravention of the Public Procurement Act, the Prosecution contended that the Defendant ought to have raised this point as a defence and by going further to demonstrate the fact that the evidence led at Trial, were at variance with the ingredients of the Offences charged but such a defence cannot be a ground for objecting to a Court's Jurisdiction.

Further, he argued that the 4th Defendant had ignored the possibility of instances where similar sets of facts or evidence could support different Criminal Charges tried before both this Court and the Federal High Court over violation of the Public Procurement Act.

Finally, he submitted that the Defendants in this Charge were not standing Trial over the Award of Contracts but for Breach of Trust reposed on them as Public

Servants and so therefore, this Court in the interest of Justice, should refuse the Application.

Now, after a careful consideration of all the questions raised in the Preliminary Objection, this Court finds that in every instance where there is an objection challenging the jurisdiction of a Court, the Court must first assume jurisdiction in order to examine whether indeed it has jurisdiction. Reference is made to the cases of **REAR ADMIRAL AGBITI VS NIG NAVY (2011) 1-2 SC PART 111 AT 178; NWOSU VS IMO STATE ENVIRONMENTAL SANITATION AGENCY (1990) 4 S.C. PAGE 71 AND AGWUNA VS A.G. FEDERATION (1995) 5 NWLR PT 396 PAGE 418.**

The main contention is that Public Servants exercising their Administrative or Managerial Control in a Federal Government Agency are charged through all the Counts for Breach of Trust in respect of Contract Awards. Reliance was heavily placed on Section 251(1) (p), (q) and(r) of the 1999 Constitution by the 1st, 3rd and 4th Defendants.

Now, foremost, it is important to initially lock down on the recognition by all the Contenders in their challenge to the Jurisdiction of this Court, that the Defendants were all Public Servants.

It is clear that under Section 58 (4) of the Public Procurement Act, certain acts or conducts were held to constitute Offences under the Act and were listed in Sub-Paragraphs (a) to (h).

From a very careful perusal of Section 58(5) of the PPA, it is noted that some of the ingredients of these offences charged are not accommodated under the Public Procurement Act. An example, is that of the Charge of Criminal Breach of Trust, where the elements of Entrustment and Dominion are essential ingredients in proving the Offence under the Penal Code but are unnecessary proof for Offences under the PPA.

The Court notes that the Learned Silk to the 1st Defendant in his Summary of Arguments also recognised the fact that the Public Procurement Act (PPA) did not contain the ingredients of the Offences of Conspiracy and Criminal Breach of Trust and went further to state that the PPA did not also provide a Guide to the Court as to whether the 1st Defendant breached any Trust. This fact was also recognised and acknowledged expressly in the submission of Learned Silk to the 2nd Defendant.

With these acceptance that the ingredients of Criminal Conspiracy and Criminal Breach of Trust were not contained in the PPA, and with the actual fact that the Defendants were positively charged under the Penal Code, this Court, wholeheartedly agrees with the submission of Learned Silk Offiong, representing the 2nd Defendant, when he stated that it will be intrinsically unfair and unjust to charge the 2nd Defendant indirectly for a Breach of the PPA when no Charges under that Law (PPA) had been brought against him. Further, he argued that this would constitute a Breach of the 2nd Defendant's Fundamental Right to a Fair Trial under a subterfuge of the Criminal Breach of Trust, which has different elements and ingredients.

The Court notes that if the Prosecution did in fact engage in a subterfuge, it was against **all** the Defendants and not just the 2nd Defendant alone. Further, this Court would also have been acting without jurisdiction **IF** it, directly or indirectly, tried all the Defendants for breaches of the Provisions of the PPA, when no Charges for such breach were preferred against them.

These line of arguments raised by Learned Silk for the 1st and 2nd Defendants actually destroyed their Contention that they should have been charged under the Public Procurement Act because they knew that no ingredients in this Charge would satisfy the requirements of the Public Procurement Act.
The Court agrees with the Submissions of Learned Counsel for the Prosecution, that in Criminal Cases, it is the Charge or Information as well as the Enabling Law that determines jurisdiction. It is certainly not the evidence led in support of the Charge or Information that the Court would look to.Reference is made to the cases of **ONWUDIWE VS FRN (2006) 10 NWLR PT 988 AT 382 AND FRN VS OKEY NWOSU & ORS (2016) 17 NWLR PT 1541 AT PAGE 226.**
All the above, has also answered the queries of the 3rd and 4th Defendants as it the Enabling Law under which they were charged, the Court would look at and not the Evidence adduced in its proof thereto.

It is arguable that the Prosecution could have charged the Defendants under any of the Offences in the Sub-Paragraphs of the above Section 58(a) to (h) of the Public Procurement Act had they desired to do so, and gone on to file the action at the Federal High Court in accordance with Section 58 (2) of the PPA, which has the exclusive jurisdiction to try such Offences. But they did not do so.

It is also generally accepted that similar sets of facts and circumstances could by choice of the Prosecution, be charged in more than one Court of Jurisdiction and more than one Enabling Statute. In this case, the Prosecution opted to charge the Defendants for the Valid Offences of Criminal Conspiracy and Criminal Breach of Trust properly brought under the Penal Code Act and further, elected the convenient forum in which he would file this Indictment. He must be assumed to have juxtaposed the facts and circumstances constituting the alleged breaches viz a viz the ingredients of each Offences before filing the Criminal Charges against the Defendants.

All in all, the Preliminary Objection regarding jurisdiction raised by the Defenceis found unmeritorious and is accordingly dismissed.

The Second Sub-Issue is as regards the 2nd and 3rd Defendants distinct choices to Rest their Cases on that of the Prosecution, and the Third Sub-Issue relates to the 1st Defendant's Election not to further participate in the proceedings after the Court overruled their No-Case Submission, and these Sub-Issues would be merged as one for the Court's consideration.

The consequences of these varied Submissions, albeit similar, have different implications.

Starting with the 2nd and 3rd Defendants' Submissions, Learned Silk for the 2nd Defendant on his own part stated that at the Close of the Prosecution's case, the 2nd Defendant made a No- Case Submission, and although overruled, beneficial evidence had been obtained from other Defence Witnesses in the absence of his defence and therefore, he was resting his case on that of the Prosecution. It was further submitted that the default of the 2nd Defendant to testify, did not deprive him of the benefit of any Presumption of Law, which inures to him by reason of his acting in a public capacity for the Minister of State for Power. He acted at a time when there were no Ministers in the Ministry of Power where he had overall responsibility for the functioning of the Ministry of Power.

He referred to the Ruling of this Court on the No-Case Submission made in his regard and submitted that the Court arrived at its decision because it had not evaluated all the evidence in this case. He stated the correct position of the Law as well as under Sections 167 and 168 of the Evidence Act 2011 to be that the failure

or default of the 2nd defendant to testify or call witnesses does not relieve the Prosecution of the legal duty to establish guilt beyond reasonable doubt by credible and admissible evidence. The Court also has a duty to consider and evaluate the totality of all the evidence, including evidence elicited during cross-examination, which supports the defence, in determining whether the Prosecution has discharged its legal duty.
Further still, where evidence is capable of more than one possible view or interpretation, the view in favour of the 2nd defendant should be adopted.

Learned Counsel for the 3rd Defendant on his own part submitted that the 3rd Defendant along with the 1st and 2nd Defendants, elected to rest their cases on that of the Prosecution. According to Learned Counsel, the implication of resting was that rather than calling any evidence in his defence, the 3rd Defendant wanted this Court to determine his guilt or innocence on the strength of the evidence adduced by the Prosecution. According to Learned Counsel, his Written Address would show the manifest weaknesses in the evidence adduced by the Prosecution in the Counts of Offences.

On his own part, Learned Silk, Erokoro, representing the 1st Defendant, when called upon to enter his defence on the 5th of April 2016, announced that the 1st Defendant elected to go by the advice of the Supreme Court in the case of **MUMUNI VS THE STATE (1975) 6 SC PAGE 79.** This advice was to the effect that, where a defendant believes that his No- Case Submission was wrongly overruled, he should, "**declinefurtherparticipation in the Trial so that any evidence elicited thereafter cannot be used against him."**
He emphatically stated that the 1st Defendant **will no longer participate in the Trial, confident that the Court will conclude that there is No- Case against him when determining the issues relevant for determination in this case.**
He submitted that the Prosecution led no evidence to prove the essential ingredients of the offence as the evidence led was at variance with the Charge. He stated that the Prosecution rejected the very evidence it had led and therefore there was no need for the 1st Defendant to give evidence or to call witnesses. According to him, the Statement of the 1st Defendant was not confessional and his account of events is unassailable, citing the case of **LAWAL VS UNION BANK (1995) 2 SCNJ AT 132 AND S. 139(2) OF THE EVIDENCE ACT.**
If therefore, there is an evidential gap or other lapses in the case of the Prosecution, which compromises the Prosecution's case, the defendant need not enter the witness box. Similarly, in the present case, the 1st Defendant has established his

defence to the Charge, during the cross-examination of the Prosecution's Witnesses, through whom he tendered **Exhibits 202 to 272**, which effectively established his defence.

In response to this submission, Learned Silk Pinheiro SAN described the Procedure adopted by the 1st Defendant as strange, in view of the very clear Provisions of **Sections 358, 359 and 360 of the Administration of Criminal Justice Act 2015 (the Act).** He stated that reliance by the 1st Defendant on the 1975 Case Law Authority was a misconception of the State of the Law as the Sections were unambiguous and are in fact, mandatory. Learned Silk set out the options open to a Defendant as follows: -

1. The Defendant may elect to make a Statement outside the box, if not represented by a Counsel;
2. The Defendant may elect to go into the witness box, be sworn and then, cross-examined; or
3. The Defendant may elect to call witnesses on his own bar.

He then urged the 1st Defendant to proceed with his defence, if any, or Rest his Case on that of the Prosecution.

In further response, Erokoro SAN submitted that the only options open to the 1st Defendant are as stated in Section 358(b) of the Act, which were a repetition of the provisions in the Criminal Procedure Code. Learned Silk, Paul Erokoro, expatiated on what the Supreme Court held in the above cited case of **MUMUNI,** to mean that: -

a) The Defendant **will not***lead any evidence*.

b) The Defendant **will not***cross- examine any other defence witnesses*, *and if the Prosecution calls any further witness in rebuttal, he will not cross- examine that witness*.

c) He **will only** come and watch the Court's Proceedings and **will not***even file his Final Written Address*.

In further response, Kemi Pinheiro SAN observed that Erokoro SAN declined to categorically state that he is resting his case on the Prosecution's case and re-echoed the above comments (a) to (c). He was of the belief that Erokoro SAN came to the above decision after a **sober and calm reflectionof the strategy** available to them and was sufficient to put an end to the 1st Defendant's defence.

After the above arguments, learned Silk to the 1st Defendant announced that the 1st Defendant was done, and had no defence and would not cross-examine or file a Final Written Address.

Learned Counsel for the Prosecution in his Final Written Address, questioned the 1st Defendant's choice not to participate in the Trial, and considered the position of the Law in instances where a Defendant elects not to participate. According to Learned Counsel, a Ruling against a No-Case Submission implies that prima- facie evidence has been established against the 1st Defendant and also on the 2nd and 3rd Defendants, for which they were to open their Defences. The implication of the Ruling was to the effect that this Court had at the conclusion of the Prosecution's Case, found that: -

1. There was evidence linking the Defendants, which included the 1st to 3rd Defendants, to the Charge;
2. Legally admissible evidence for the Court to act, had been adduced; and
3. The Prosecution's evidence had not been discredited in Cross-examination or rendered manifestly unreliable citing the cases of **SUBERU VS THE STATE (2010) 8 NWLR PT 1197 AT PAGE 586; UBANATU VS COP (2000) 2 NWLR PT 643 PAGE 141; AITUMA VS THE STATE (2006) 10 NWLR PT 989 AT PAGE 45.**

Continuing his arguments, he submitted that the 1st to 3rd Defendants chose to rest their case on the evidence led by the Prosecution, which in Law was tantamount to an admission of all the evidence led by the Prosecution. Further, legally admissible evidence had not been discredited under Cross- Examination, which evidence has been sufficiently established before the Court to return a verdict of guilt in such circumstances. Learned Counsel placed reliance on the case of **MOGAJI VS NIGERIA ARMY (2008) 8 NWLR PT 1089 PG 338**, where the Supreme Court as per **His Lordship Akintan JSC** held at **Page 379 who** held that resting of a Defendant's Case on that on that of Prosecution meant nothing less than an admission of the evidence led by the Prosecution. He further cited the dictum of **His Lordship Ogunbiyi JSC** in the case of **AJIBADE VS THE STATE (2013) 6 NWLR PT 1349 AT PAGE 25 AT PAGES 47 TO 49**, arguing that unless prosecutorial evidence on its face was either absurd or self- contradictory, the Court ought to accept it as true as against the 1st to 3rd Defendants.

In his Oral adumbration on the question of resting on the Prosecution, Learned Counsel for the Prosecution submitted that the contention of the Defence is that, none of the Contracts were furnished before the Court and on that premise, the

Prosecution failed to discharge the burden placed on it. He argued that this contention was misconceived on the basis that the evidence led had nothing to do with the Contracts executed. Rather, the fulcrum of the Prosecution's case was that the Meeting of the 10th of December 2008 was held, that an Agreement was reached as seen in **Exhibit 160** and that Agreement was executed as seen in the Two Certificates of No- Objection marked as **Exhibits 161 and 162**. In furtherance to the execution of the Two Certificates, the 2nd Defendant, who joined at a later time, gave approval as seen in **Exhibits 200 and 201**. The execution and performance of that Agreement led to the tendering of the CBN Cheques. The evidence by PW7 showed that the CBN Cheques were issued and honoured and monies left REA's Account into the Accounts of Contractors, though held in escrow, with their respective Bankers. All these evidence remained uncontradicted.

Learned Counsel for the Prosecution urged the Court to discountenance the Written Submission of Learned Silk for the 1st Defendant on the ground that some of the Submissions of Learned Silk were premised on facts and not evidence. He emphasised the point that whether Electricity was pivotal or whether it was a matter of urgency during President Yaradua's Administration, were factual points in nature for which evidence ought to have been led in their regard.

In response, Learned Silk to the 1st Defendant submitted that after a Ruling of this Court overruling the 1st Defendant's No- Case Submission, he, the 1st Defendant, elected not to take part or participate in further subsequent proceedings. According to Learned Silk, the overruling on the No- Case Submission was not that prima- facie evidence had been made against the 1st Defendant as would require him to lead evidence. Instead, what this Court held in the Ruling, was that prima- facie evidence was not established nor was any scintilla of evidence discovered implicating the 1st Defendant in any Offence.

Very quickly and as an aside, this is not what this Court held in the No-case submission. It is a mischievous twist imputed into the Ruling, which is available for public scrutiny.

Learned Silk for the 1st Defendant submitted that there was no onus on the 1st Defendant to lead any evidence in his defence and so, he chose not to call any evidence as established in the Supreme Court of **MUMUNI VS STATE (1975) NSCC VOL 9 PAGE 331.** Further, hejustified the rationale of the 1st Defendant not leading evidence by saying the Prosecution ran away from its own evidence as seen in the

Written Address in Opposition to the No- Case Submission of the 1st Defendant filed on the 13th of October 2014 particularly at Pages 18 to 20.

Now, after a careful consideration of the above arguments, the Court will rely heavily on the tested Principles of Law as held by the Apex Court on instances of Resting on the Case of the Prosecution.

In the case of **EDET EDEM AKPAN VS THE STATE (1986) 5 SC PAGE 186 AT PAGES 203, 210 His Lordship Oputa JSC** held that, "A submission of No-Case is in my view a defence. Resting the Defence on the case of the Prosecution is also a defence. In both instances, the defence is that the case as charged had not been proved".
Further, Resting on a No-Case Submission is a perfectly, legally acceptable stratagem, but when the Prosecution's Case calls for some explanations which only the Defendant can give, and such Defendant, decides to rest on a No-Case Submission, then the Trial Court must not be deterred by the incompleteness of the tale from drawing the inferences that properly flow from the evidence it has got, nor must the Court be dissuaded from reaching a firm conclusion by speculation on what the Defendant might have said if he had testified." See the case of **NUMA MALLAM ALLI& ANOR VS THE STATE (1988) 1 SC PAGES 50, 51.**

In **UMARU ADAMU VS THE STATE (2014) 8 SCM1; 10 NWLR PT 1416 AT 441; LPELR-22696 SUPREME COURT, PER ARIWOOLA JSC, at Page 24 Paragraphs D-G**, held that the Law is generally settled that a Defendant who at the close of the Prosecution's Case, decided to rest his case on that of the Prosecution as presented against him, is only exposing himself to risk and gamble. The reason being that if the case is such that even if all the Prosecution Witnesses are believed, yet the offence as charged is still not proved, then the Defendant may get away with the risk of resting his own case on that of the Prosecution. By that choice, the Defendant would have decided not to explain any fact in rebuttal of the allegation made against him. See also the cases of **NWEDE VS THE STATE (1985) 3 NWLR PT 13, PAGE 444; ALI & ANOR VS THE STATE (1988) 1 SCNJ AT PAGE 17; MAJOR BELLO M. MAGAJI VS THE NIGERIAN ARMY (2008) 34 NSCQR PT 1, PAGE 108, where AKINTAN JSC** went further to say "Again, merely resting his case on that of the Prosecution amounts to nothing less than admission of the evidence led by the Prosecution."
The Privy Council's decision of **QUEEN VS SHARMPAL SINGH (1962) 2 W.L.R. 238 AT PP. 243-245,** was cited and relied on in the case of **SEGUN AJIBADE VS THE**

STATE (2012) LPELR-15531 SUPREME COURT, where **MUNTAKA COOMASIE JSC held at Page 17 Paragraphs A-E** that "…If the Defence rests and refuses to put a Defendant into the witness box to depose to his own version of the events, then the Learned Trial Judge is denied the opportunity of listening to the Defendant tell his story, of watching his demeanour or assessing his credibility and of making the necessary choice between his story and that of the Prosecution. In the final result, the Trial Court will have to decide the case on the evidence before it, undeterred by the incompleteness of the tale, from drawing all inferences that properly flow from the evidence of the Prosecution. The Defence has shut himself out and will have himself to blame. The Court will not be expected to speculate on what the Defendant might have said if he testified.

RHODES-VIVOUR JSC, IN BELLO SHURUMO VS THE STATE (2010) NSCQR VOLUME 44, PAGE 135 held at Pages 176-177 that "Resting the Defendant's case on the Prosecution's case is only appropriate where the case of the Prosecution is weak, and has been so discredited by Cross-Examination to such an extent that the innocence of the Defendant is obvious. Resting Defendant's case on the Prosecution's case means that the Defendant accepts the Prosecution's case completely and would not testify or call evidence in his Defence."

In **ALI AND ANOTHER VS THE STATE (1988) LPELR-421 (SC),** the legal effect is that the Court would be free to accept the uncontradicted evidence of the Prosecution Witnesses. See also the cases of **THE STATE VS NAFIU RABIU (1980) 1 N.C.R.47, IGBO V. THE STATE (1978) 3 S.C.87,** where **Craig JSC** held that it means no more than that the Defendant is satisfied with the evidence given and does not wish to explain any fact or rebut any allegations made against him. This of course does not prevent the accused (or his Counsel) from making legal submissions on the evidence before the Court. He could for instance, say that even if all the evidence were believed, it would not support the charge before the Court, he could also submit that the evidence was so conflicting or had been so discredited that it is not credit-worthy.

Therefore, based on the above principles of law, this Court will hold that the 1st to 3rd Defendants are satisfied that it was totally unnecessary for them to adduce any evidence, whether positive or in rebuttal in their defence. They have also placed their bets on the premise that this Court will find that the totality of the evidence led by the Prosecution in this Charge were insufficient, inconclusive, inchoate, discredited, and unfounded and failed to establish the culpability of the 2nd and 3rd Defendants to the statutory level of proof, which is beyond a reasonable doubt.

As regards the 1st Defendant's contention of no further participation, and his reliance on the case of **MUMUNI (CITED SUPRA),** this Court finds that even though the Prosecution did not recognise it, or submit on it, there is a slight difference between Resting and Refusal to further Participate in the Proceedings. This is especially important in view of the fact that Learned Silk for the 1st Defendant, had filed and addressed the Court on his Final Written Address, wherein he proceeded to analyse the evidence led during Trial. The big question is whether this subsequent act of the 1st Defendant can rightly be classified as No Participation.

Now, where a No- Case Submission is wrongly overruled and evidence is given thereafter which warrants a Conviction, the position of the Nigerian Case Law Authorities are that the Conviction will not be upset on Appeal, see the case of **EREGIE VS POLICE (1954) 14 WACA PAGE 453.**
In R VS AJANI (1936) 3 WACA PAGE 3; it was held that after a submission has been wrongly overruled and the Defendant refuses to take any part in the subsequent proceedings, he is certain to get any Conviction, quashed on Appeal.

However, in the case of **R VS HOGAN (1922) 16 CR. APP. AT PAGE 182, DARLING J.,** clarified his earlier dicta in **R VS POWER (1919) 14 CR. APP AT RATIO 17,** where he had held that it would be quite safe for Counsel to the Defendant to take no further part in the subsequent proceedings, which he had failed to do, when he called his client to testify and also when he cross-examined a witness. In **HOGAN'S CASE,** he explained that, "I did not say that whenever a defendant submitted that there was no case and took no further part in the trial, the Judge must withdraw the case from the Jury. If such a submission is good when taken, it cannot be made bad by the subsequent evidence of that defendant. But here, there was a case at the close of the prosecution. If a Judge may not call attention to such evidence when it is against the defendant, he may not, when it is in his favour, which would be a great injustice."

It is noteworthy that in the case of **MUMUNI & ORS VS THE STATE (1975) NSCC AT 331 AT 346, IRIKEFE JSC,** in discussing the above cases, held that the co-defendant's evidence incriminating the defendant is lawful and the Court may use it as it may deem fit. It is important to realise that in this case, there was no shred of evidence against one of the co-defendants at the close of the prosecution's case, and as he had at that stage withdrawn completely from the proceedings, the **rampart on which he stood was unassailable** and so it was an error for the Trial Judge to seek

to base his conviction on the evidence gathered from the Statements of other co-prisoners.

The issues arising from all the above Case Law Authorities are that: -
Firstly, the Ruling delivered overruling the No- Case Submission must have been a **wrong decision** of the Trial Court in the first place. The premise for challenging whether there was a wrongful or rightful overruling of the No-case Submission is **NOT** at the Trial Court, but is firmly within the domain of an Appellate Court. This is because at the close of the case for the Prosecution, the question of whether or not the Court believes the evidence of the Prosecution does not arise, nor is the credibility of witnesses in issue at that stage. Reference is made to the cases of **R VS COKER (1952) 20 NLR AT PAGE 62; AJIDAGBA VS THE POLICE (1958) 3 FSC AT PAGE 5; R VS OGUCHA (1959) 4 FSC AT PAGE 64 AND OMORERE VS POLICE (1956) NRNLR AT PAGE 58**

It is certainly **NOT** within the domain or competence of a Counsel to decide on his own that the Ruling of the Trial Court was wrong.
The decision that determines whether there was a wrongful or rightful overruling of the No-Case Submission is for a future date BUT at the time the Defendant elects not to further participate in the proceedings, he is taking a great risk and has chosen to gamble on the odds that the Appellate Court would agree with him that the Trial Court was wrong in overruling his No-Case Submission.

Secondly, to successfully sit back and refuse further participation in the Trial, the defendant MUST be sitting pretty or standing on an **UNASSAILABLE RAMPART**. This means that there **MUST** be **NOTHING** anywhere that ties the defendant to the commission of the offences for which he is being tried. Nothing in his Extra-Judicial Statement; Nothing in the Documentary Evidence before the Court; Nothing in the Oral and Written Testimony of the Prosecution and Other Co-Defendants against him. In other words, he must be Squeaky Clean!

Thirdly, from the dicta in **HOGAN'S CASE (CITED SUPRA),** it was held to be a great injustice for the Trial Court not to pay attention to subsequent admissible evidence adduced by other co-defendants incriminating or favouring a defendant, who had elected not to further participate in the proceedings. This view is reinforced by the decision in **R VS AGWUNA (1949) 12 WACA PAGES 456, 460.** In this case,there was no finding that the submission had been overruled wrongly and the true effect of the decision is that, where it is rightly held that there is a case to answer, one of

the several Defendants cannot, by refusing to take part in the subsequent proceedings, make any evidence called on behalf of his fellow co- Defendants, inadmissible against him.

Fourthly, the impact of the submission that the defendant elects not to partake in further proceedings is that literarily, he is just to sit back and relax and not take any further steps, including the filing of Written Addresses. He cannot proceed to begin to analyse the evidence led and to justify or excuse his involvement in the offences he is alleged to have committed. It is trite also that the Written Addresses of Counsel, which qualifies as further participation, cannot take the place of evidence, no matter how brilliantly expressed. The explanations and defences raised in the said Address cannot be utilized in favour of the 1st defendant making out a case/defence for himself. See the cases of **DR. TAIWO OLORUNTOBA-OJU & 4 ORS VS PROFESSOR SHUAIB O. ABDUL-RAHEEM & 3 ORS (2009) NSCQR VOL. 39, AT PAGE 105 AT 117; UNION BANKOF NIGERIA PLC & 1 OR VS AYODARE & SONS (NIG) LTD & 1 OR (2007), VOL. 30 NSCQR PAGE 1 AT 4 ONNOGHEN JSC (AS HE THEN WAS, NOW CJN)** HELD AS SETTLED law that address of counsel, however brilliant, cannot take the place of evidence particularly, where there is no evidence in support of his submissions. There are also the dicta of **Pats- Acholonu JSC** in the case of **NEKA B.B.B. MANUFACTURING CO. LTD VS AFRICAN CONTINENTAL BANK LTD (2004) VOL. 17 NSCQR AT PAGE 240; AMINA AUGIE JCA (NOW JSC) IN MRS. SOLA BOSMA & ORS VS ALHAJI MUSENDIKU AKINOLE & ORS (2013) LPELR-20285 CA,** who all held that Written Addresses assist the Court in arriving at its decision, but it is not designed to take the place of credible evidence or provide the avenue to raise objections that should have been raised earlier on in the case**. AKPATA JSC in NDU VS THE STATE (1990) 7 NWLR PT 164, PAGE 450 SC** held that written address of counsel are a mere formality. They do no diminish or add strength or weakness in a Party's case. See also **OPUTA JSC IN NIGER CONST. LTD VS OKUGBENE (1987) 7 NSCC AT PAGE 1258,** where His Lordship held inter alia that, "…Cases are normally not decided on Addresses but on credible evidence. No amount of brilliance in a final speech can make up for lack of evidence to prove and establish or else, disprove and demolish points in issue".

All said and done, technically, the 1st defendant's Final Written Address filed before this Court is improper. Even Erokoro SAN, in his submission stated inter alia thus "We will be here. He will come and see and watch. He will not even file Written Address"

The Court is sure that Learned Silk, at this point, distinguished the meaning of no further participation from the meaning of resting a case, thereby confirming the conclusion of this Court, that the filing of the 1st Defendant's Final Written Address was IMPROPER and his subsequent action of filing was sine qua non to Resting his Case on the Prosecution.

But the Court notes that Learned Silk Kemi Pinheiro did not contest the filing of the 1st Defendant's Final Written Address and had even filed his Reply on Points of Law to the Address and so in the interest of Substantial Justice, this Court will regard the said Amended Address filed by the 1st Defendant.

The Fourth Preliminary Issue is in regard to the Admissibility Questions premised on Due Certification of the Certificates of No-Objection. It was contended by the 4th Defendant that these Documents are from a Government Agency and their Originals are in the Custody and Possession of REA. Relying on Sections 85, 86 and 88 of the Evidence Act, he argued that the Best Proof was the production of the Originals. He relied also Section 89(a)(i) and (ii), and (d) as well as Section 104(1) and (2) of the Evidence Act. He noted that no evidence of payments for the Certification were evident on Record and he relied on the cases of **UDOM GABRIEL EMMANUEL VS U.O.UMANA & 5ORS (2016) 12 NWLR PT 1526 PAGE 179 AT PAGES 234 PARA G LINE 3- PAGE 235 PARA R**; **OMISORE VS AREGBESOLA & ORS (2015) 15 NWLR PT 1482 AT PAGE 205; NWABUKWU VS ONWORDI (2006) ALL FWLR PT 331 AT PAGE 1236, 1251- 1252, AND TABIK INVESTMENT LTD VS GUARANTY TRUST BANK PLC (2011) LPELR- 3131 (SC),** which also requires Dating, the insertion of the Name and Official Title of the Certifier, and made no exceptions for Payment of Legal Fees by Government Departments.

In response, the Prosecution submitted that he never sought to tender the Original Copies but the Certified True Copies and referred to the Certification Endorsements on the faces of the Exhibits. He stated that the case of **UDOM** cited Supra, did not decide that a Public Document was inadmissible where there was no endorsement of Legal Fees. Rather, the inadmissibility was based on non-compliance with **Section 104 of the Evidence Act**. He again distinguished the case of **TABIK** cited Supra by saying that the case was not an authority for the declaration of the Exhibits as inadmissible, as the issue in that case was the admissibility of documents purportedly certified but not certified in full compliance with the provisions of the Evidence Act.

The Supreme Court held that the Trial Judge ought to have ordered for payment of fees as opposed to expunging the document. Again, the Six Defendants on Record, jointly executed the Documents in issue, and the 6th Defendant in his Statement admitted the Contents, existence and execution and his Oral Evidence is before the Court. Therefore, the authenticity of the Documents is not in question.

In Reply on Points of Law, Learned Counsel to the 4th Defendant stated that the Prosecution's submission was an attempt to rewrite the decisions of the Supreme Court in **TABIK'S CASE (CITED SUPRA).** Infractions of Section 104(1) of the Evidence Act are not excusable under the Extant Laws and Decided Authorities and are binding with full effect.

Now, Learned Counsel had referred to proper custody in his opening arguments on this issue, and the Court finds on the authority of **AGAGU VS DAWODU (1990) 7 NWLR PT. 160, 56 @ 66 PARAS A-D,** that whoever procures a Certified True Copy of a Public Document is competent to tender such document in any proceedings in Court, without calling the Public Officer who has the custody of the Public Documents. Once the Public Document is Certified and Signed as required by the Evidence Act, such a Document is admissible on mere production and it would be unnecessary to prove Proper Custody or to Verify it.
By **Section 146 of the Evidence Act 2011** and on the authority of **ODUBEKO VS FOWLER (1993) 7 NWLR PT 308 PAGE 637 AT PAGE 655 (SC)**, the Court is to presume every document purported to be a Certified True Copy as genuine.
A close look at the two documents will show that there is no evidence of payment of legal fees endorsed on them. The question to be asked is, does this evidence of payment mandatorily appear on the face of the Certificates of No-Objection or is there a possibility that a Receipt was issued for it but was not produced before the Court?

By the provision of **Section 104(1) of the Evidence Act 2011 (As Amended),** any person with a right to inspect can demand for copies of documents in the custody of the Public Officer upon paying a fee, which fee is the cost of Certification. An understanding of the provision of Subsection (2) of the aforesaid Act will show that this fee to be paid was not specifically required to be inscribed on the Certified Document nor is it vital that a Payment Receipt accompanies it. What Subsection (2) demands to appear on the Certified Copy are the Date, Subscription by the Officer, his Name and Official Title and a Seal, if authorised. It is only then that the Document be referred to as "Certified Copies". Reference is made to the case of

JUSTUS NWABUOKU AND ORS VS FRANCIS ONWORDI, 26NSCQR PT 2, 1161 AT 1180. This Section was given a total breakdown by Her **Lordship Dongban-Mensem JCA** in the case of **UGOCHUKWU AGBALLAH VS DR. CHIMAROKE NNAMANI AND ORS (2006) 2 EPR 757 AT PGS 781- 782.** Further, **His Lordship Agube JCA** in **EZEKIEL OGUNLEYE VS HRH OBA JOSHUA O. AINA AND ORS (2011) 3 NWLR PT 1235, PG 479 AT PG 537,** held thatit is clear that payment of legal fee on application for a Certified True Copy is not part of the condition to make a document so certified, a True Copy. It is only a condition, which must be fulfilled before the Officer certifies it. Reference is also made to **HIS LORDSHIP OBADINA, JCA** in the case of **ALHAJI MOHAMMED S. DAGGASH VS HADJIYA FATI I. BULAMA AND ORS (2004) 14 NWLR PT 892 PG 144 AT PG 187.**

Even though the Payment Receipt for Exhibits 161 and 162- the Certificates of No-Objection were not tendered before this Court, and assuming a worst case scenario where there was no payment of fees for certification, as advised by **His Lordship Rhodes Vivour JSC** in **TABIK INVESTMENT LTD (CITED SUPRA),** who held that rather than reject the Documents, the Court ought to have ordered Counsel to ensure that the said Documents were paid for.

Further, Courts of Law are admonished not to be unduly tied down by technicalities, particularly where no miscarriage of justice would be occasioned. Justice can only be done in substance and not by impeding it with mere technical procedural irregularities that occasioned no miscarriage of justice. Thus, where the facts are glaringly clear, the Court should ignore mere technicalities in order to do substantial justice, see the case of **FAMFA OIL LIMITED VS ATTORNEY GENERAL OF THE FEDERATION (2003) 18 NWLR PT 852 PG 453; OTU BASSEY EKPENETU VS MFAWA OFEGOBI AND 3 ORS (2012) 15 NWLR PT 1323 PG 276 AT PG 297 CA.**

Therefore, the non-production of the Payment Receipt evidencing the payments of Certification Fees is not regarded as fatal to warrant the expunging of Exhibits 161 and 162 and the Objection made in this regard is discountenanced.

The Fifth Sub-Issue is in regard to **Exhibits 255(1-32)** where Learned Silk urged the Court to carefully peruse the Proof of Evidence citing the case of **MOHAMMED VS ABDULKADIR (2008) 4 NWLR PART 1076 AT PAGE 111,** as he questioned whether the Documents contained therein were manufactured by the Prosecution because at the time PW7 claimed that the UBA Plc. told him they never received Exhibit 255, the Bank's acknowledgement of receipt was already before the Court as

Exhibit 157. He noted that UBA Plc. was the Bank PW7 claimed that Five (5) People told him that they never received the Letter.
Learned Counsel to the 6th Defendant also supported this argument.

Learned Counsel for the Prosecution denied that the EFCC were given Copies of these Letters and he urged the Court to expunge that part of the 6th Defendant's Final Written Address and his Counsel should be admonished for his seemingly unethical conduct. He argued that these Sets of Exhibits were tendered purporting to be Certified True Copies of Public Documents in the Custody of REA at the material time. Assuming, without conceding, that the Documents were indeed Public Documents, by the very nature and contents of the said Exhibits, the Original Copies from which Certified Copies could be obtained, must necessarily be with the Contractors' Bankers and not be with REA. To the extent that these Letters were received in evidence purporting to have been certified by REA and not the Bankers, then these Exhibits were wrongly admitted in evidence as Certified True Copy of Public Documents and ought to be expunged from the Records.

In the alternative, should these Documents be held not to constitute Copies of Public Documents as to make their Certified Copies admissible in evidence, he argued that the Letters could at best constitute Official Correspondence not intended to be preserved for Public Use on a Public Matter. Reference was made to **AUGIE JCA (AS SHE THEN WAS, NOW JSC)** in the case of **SHYLLON VS UNIVERSITY OF IBADAN (2007) 1 NWLR PT 1014 PAGE 1 AT PAGES 15, 16.**
He therefore argued that these Exhibits could at best, be receivable in evidence as Copies of Letters allegedly written by the 1st Defendant on behalf of REA to the Bankers, which Copies were retained by REA as part of its Records. In that regard, the Letters could only be tendered as having been acknowledged as received by the Bankers.

This is because the reliance placed on these Exhibits by the 6th Defendant is for the purpose of showing that the Bankers were actually instructed in terms of the contents of the said Exhibits. It became imperative therefore, to lead evidence of receipt of the Letters by the Bankers. He called on the Court to note that there is no evidence of Acknowledgement of Receipt on them and invited the Court to relate this finding to the evidence of PW7 under cross-examination by Counsel to the 1st Defendant, where he had stated that the Bankers denied receiving these Letters. Learned Counsel submitted that the 6th Defendant ought to have called the Representatives of the Banks to prove that the Letters were actually received by

them. In the absence of this proof, the Court is entitled to presume that the said Exhibits were never dispatched or received by the Bankers and he cited **Sections 167(c) of the Evidence Act** and the case of **YARO VS AREWA CONSTRUCTION LTD (2007) 17 NWLR PT 1063 AT PAGE 333.**
He submitted on the authority of **NSEFIK VS MUNA (2007) 10 NWLR PT 1043 PAGE 502** that the burden of proof is not placed on anyone asserting the negative of a factual situation but is placed on he who asserts the positive, such that if no evidence is led by him, his assertion collapses. Finally, he recalled that the Defendants rested their defence on the fact that the Letters were indeed dispatched and argued that this fact does not form part of the facts to be proved by the Prosecution in establishing the ingredients of the Offences.

In Reply on Points of Law, Learned Counsel to the 6th Defendant referred to the case of **PASCUTTO VS ADECENTRO (NIG) LTD (1997) 11 PT 529 AT PAGE 467 PER IGUH JSC** AT **PARAS B-F**to submit that the question of Acknowledgement of Exhibits 255(1-32) was not raised by the Prosecution under cross-examination and neither did he put this question to any witness. Therefore, it is an admitted fact needing no further proof. PW7 did not say that the Letters were forged, as all he said is that he was seeing them for the first time.
According to Counsel, he did not attempt to mislead the Court and finally, rehashed his argument that the burden is on the Prosecution to prove.

Now, the Prosecution's denial that the Banks received **Exhibits 255(1 to 32)** were contradicted by the evidence of **PW3**, the Branch Manager of UBA Plc., who initially tendered **Exhibit 157,** dated **2nd of February 2009**, which was a Certified True Copy of a Letter written by REA to UBA Bank acknowledging **Exhibit 272,** the Letter dated the **30th of January 2009** from UBA to REA, which in turn, had also acknowledged REA's Firm Instruction not to release or disburse any part of the 85% Cheque in Exhibit 255 dated the **9th of January 2009**.

The Court has had a careful look at the Dates and Reference Numbers on these Three Exhibits and notes that whilst Exhibit 255 does not have a legible Reference Number, it was however acknowledged by its date in Exhibit 272, a Letter written by the Bank, which in turn was responded to by REA in Exhibit 157, now in the Bank's Custody. The Dates and References to this Letter validated the exchange of correspondences between REA and at least one Bank.

The Prosecution had stated that they had gone to all the Banks including UBA but were not given the acknowledged receipt of these Letters but he was unable to provide the names of any Account Officer he claimed to have met. He had no explanation for his failure to obtain Statements from the many Bankers he claimed to have interviewed and when confronted with **Exhibits 255(1 to 32),** the Certified Letters, his response was that he was seeing the Letters for the first time. When confronted also with Page 108 of the Additional Proof of Evidence wherein UBA acknowledged the receipt of Exhibit 255 and REA's Reply dated the 2nd of February 2009, his response was that he did not file the Proof of Evidence and reiterated that he was asked by the Bankers to approach the 1st Defendant for the Acknowledgement Copies of the Letters.

The fact that PW7 did not see the Proof of Evidence is neither here nor there to the fact of the legitimacy of Exhibit 255. He was told to obtain Acknowledgement Copies from the Defendants, but there was no positive evidence as to who told him that. More evidence needed to have been furnished to the Court and the testimonies of the Bankers and those who addressed him at the Banks would have been invaluable to his cause. The Prosecution could also have gone further to discredit Exhibit 157 as forged, untrue or manufactured, thereby negating Exhibit 255. The burden he would have to discharge would on a Criminal Burden of Proof and the Court can see a response to Exhibit 255, which by the natural order to things implies the Receipt of REA's Letter. In other words, it acknowledged the Receipt of the Letter dated 9th of January 2009, which informs Exhibit 255.

The Prosecution, not seeing the whole picture does not mean there is no full picture!!

The Court however finds that the Prosecution was right in his assertion that the Original Copies of Exhibit 255 Series ought to be domiciled with the Bank and technically they ought to have emanated from the Banks and not REA. This is a fact. What is also a fact is the possibility that REA had its own Copies and the fact that it was not formally acknowledged as received by the Banks, only goes to weight and not admissibility.
Therefore, Exhibit 255 Series of Documents remain admissible and the Objection raised thereto is overruled.

The weight to be placed will be discussed anon when considering the question of dishonesty.

Now, to the consideration of the Sixth Sub Issue for determination by the Court, which is,"**Whether the Court should make an Order for PW7**, **Mr. Ibrahim Ahmed, the Assistant Superintendent of Police, seconded to the Intelligence and Special Operations Unit of the Economic and Financial Crimes Commission should to be prosecuted for the Offence of Perjury"**

According to Learned Silk, Erokoro representing the 1st Defendant, PW7 was a Lying Witness as he lied under cross- examination that he made several efforts to locate the Contractors without success, as he did not have their Addresses. This could not have been so because he was in possession of their Bank Records and Incorporation Documents, which by Law, must include their Addresses, Telephone Numbers, Passport Photographs, Email Addresses and Addresses of Signatories to the Accounts, Registered Offices, Utility Bills, etc. He also knew where the Projects were being executed and if the Contractors were evasive, he did not say so during his evidence-in-chief. These same Contractors had been charged before the Federal High Court as a result of his investigation, so he could have traced them.

Learned Silk also held it to be Lies what PW7 said in relation to the Query of the 1st Defendant issued by the 2nd Defendant, whom he claimed was forged, when PW7 said that the Cheques were released to the Contractors and not their Bankers whereas Exhibits 255 and 157 proved the contrary.
He queried the reason the Prosecution removed vital evidence favourable to the Defence in the subsequent Proof of Evidence, namely the Two Letters between UBA Plc. and REA, and also queried why the Prosecution did not protest PW7's claim that he saw Two Documents for the first time in Court, which if true, would mean that the Prosecution manufactured evidence.

Now,it is noted that the Prosecution did not specifically respond to this Issue.

Once a person has been lawfully sworn to tell the truth in any judicial proceeding, such a person is under a sacred duty to say nothing, but the truth.

Perjury is the intentional orwilful act of swearing a false oath or falsifying an affirmation to tell the truth, whether spoken or in writing, concerning matters material or relevant to the issues to aJudicial Proceeding.The Oath or Affirmation binds the witness to tell the truth. Contrary to popular misconception, no crime has occurred when a false statement, intentionally or unintentionally, is made while under Oath or subject to penalty. Instead, criminal culpability attaches only at the

instant the Declarant falsely asserts the truth of statements (made or to be made) that are material to the outcome of the proceeding.Every Statement in any Judicial Proceeding is the Actus Reus of Perjury.This suggests that once such a Statement is made, the burden on the Prosecution is to prove that the Defendant made it with Mens Rea.

In Northern Nigeria, Section 156 of the Penal Code is the Relevant Provision regarding giving false evidence and it provides thus: "Whoever, being legally bound by an oath or by any express provision of law to state the truth or being bound by law to make declaration upon any subject, makes any statement, verbally or otherwise, which is false in a material particular and which he either knows or believes to be false or does not believe to be true, is said to give false evidence."

Whether a Statement made is material or immaterial is a recondite point as Statements, which entail *interpretation* of facts are not Perjury because people often draw inaccurate conclusions unwittingly or make honest mistakes without the intent to deceive. Individuals may have honest but mistaken beliefs about certain facts or their recollection may be inaccurate, or may have a different perception of what is the accurate way to state the truth. It is essential under the Common Law Systemto prove the *intention* (*mens rea*) to commit the act and further to prove that the Declarant*actually committed* the act (*actus reus*).

Now, the third contention of Learned Silk representing the 1st Defendant is as regards withholding favourable evidence, specifically Exhibits 157 and 255, and his query that the Prosecution did not query PW7 when he stated that he was seeing these Exhibits for the first time in Court. This contention is not properly situated under the allegation of Perjury and the Learned Silk had to have gone further to prove that PW7 actually saw the Documents in question and intended to deny seeing them in the course of his investigation. The imputation by the Defence of manufacturing evidence is an imputation of forgery, which Learned Silk, the Alleger, ought to have discharged beyond reasonable doubt.
As regards the second contention, referring to PW7's assertion that the Query issued by the 2nd Defendant was forged, contrary to Exhibits 157 and 255, it is again expected for the Defence to discharge the Criminal Burden of Proof in this regard. He ought to establish that the PW7 had no reasonable cause to belief the assertion or opinion he made in regard to those Exhibits and in the absence of this proof, the Court finds his claim unsubstantiated.
As regards the first contention referring to the evidence of PW7 that he could not locate the addresses even though he had access to documents and personal details

of the Contractors, again, PW7 had testified that he had tried to locate the Contractors but could not. The fact of him not employing reasonable modes or applying reasonable sense in tracking these Contractors is not and will never be termed as Perjury. The Defence needed to show that this perceived incompetence was intentional and malicious and in any event, PW7 saying that he could not locate the Contractors cannot be termed as a lie, it can be termed as something else, but it cannot be termed as a lie. An example is where A is expected to turn off the gas cooker after completing cooking the meals. He did not. He was expected to, as it made every reasonable sense to do so. A, admitted that he did not turn off the gas cooker. The fact that it is reasonable and logical to turn of the gas cooker cannot be said to a justification for Perjury. Even if the Defence were able to prove that he deliberately failed or omitted to employ all reasonable means to locate the Contractors, which still will not amount to Perjury and without further ado, the Court finds this Issue unmeritorious.

Turning to the Substantive Issues, the Court would determine, **Whether from the totality of evidence, orally or documentarily adduced, the Prosecution has successfully proved beyond reasonable doubt the Offence of Criminal Breach of Trust against all the Six Defendants in Count 2 through to Count 65.**

It is important to realise that even though there are Sixty-Four Counts of Offences under this Head, all the Counts basically involve just Two Sets of Contracts. The First Set of Contracts is in regard to the Solar Electrification Contracts, which alleged breaches are contained in Count 2 through to Count 20. The Second Set of Contracts is in regard to the Grid Extension Electrification Contracts and they are as contained in Count 21 through to Count 65.

It is also important to understand that all the Six Defendants before the Court are jointly charged under these Counts.

From all the Sixty- Four (64) Count of Offences under this Head, it is clear that each Count of Offence, refer to Separate and Individual Contract Sums of Money awarded to differently named Contracting Companies, who were contracted to engage in the provision of either the Solar Electrification Contracts and/or the Grid Extension Electrification Contracts.
It is equally important to recognise, at the get-go, the fact that **NONE** of these Contracting Companies, their Managing Partners/Sponsors, their Directors,

Principal Staff or Employees are charged before this Court for Criminal Breach of Trust or for Non-Performance, Poor Performance or any other Conceivable Offence. The Court also notes that none of the Defendants are said to occupy such capacities in these Companies, and therefore, the Court will embark upon a fruitless journey of discovery if it begins to probe and rely on the outcome and performance arising from the Award of the Contracts, as that is not what is before this Court for consideration and determination.

What **IS** before this Court for determination is not the **END RESULT OF THE AWARD OF THE CONTRACTS,** but the **PROCEDURE, MODE OR MEANS, WHETHER THE END** was successfully achieved or not.

It is clear that the thrust of the Criminal Breach of Trust in all the Sixty-Four (64) Counts of Offences is that **ALL** the Six Defendants **FRAUDULENTLY FACILITATED THE WITHDRAWALS** of various Sums of Money belonging to the Rural Electrification Agency (REA) domiciled in the Central Bank of Nigeria with Account Number 0103742014. As earlier noted, the Court of Appeal has discharged and acquitted the 2nd Defendant.
Therefore, it is the direct actions and participation of each of the remaining Five Defendants, individually and collectively, that is called to question in this trial.

The Definition Section of Criminal Breach of Trust punishable under Section 315 of the Penal Code is as contained in **Section 311** and is as follows: -
"**Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits Criminal Breach of Trust."**

Section 315 the Punishment Section states thus: -
"**Whoever, being in any manner entrusted with property or with any dominion over property in his capacity as a Public Servant or in the way of his business as a Banker, Factor, Broker, Legal Practitioner or Agent, commits Criminal Breach of Trust in respect of that property, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to a fine."**

There are two distinct parts involved in the Commission of the Offence of Criminal Breach of Trust. The first consists of the creation of an obligation in relation to the Property over which the Defendant acquires dominion or control. The second is 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 Person who comes into possession of the Property receives it legally but illegally retains it or converts it to his own use against the Terms of the Contract. The definition of "property" is not restricted to moveable or immoveable alone as the definition of the particular kind of property envisaged, could be extended to cover the purpose, i.e., whether that Property can be subject to the ambits/acts contemplated under this Section.

Therefore, the Defendant must be in such 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 to some unauthorized use, as Dishonest Intention to Misappropriate, Convert or Disposeare 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, 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: see the case **AIYEJENA VS THE STATE (CITED SUPRA).**

His LordshipCRAIG 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.

Therefore, 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 adduced during the Trial to determine whether the Prosecution has successfully established, beyond a reasonable doubt, the Counts of Offences for which the Six Defendants are charged with. It is worthy of note that aside of the 2nd Defendant, who was the Permanent Secretary in the Ministry of Power all other Defendants are in the employ of the Rural Electrification Agency.

The Prosecution must prove the following <u>throughout</u> the Sixty- Four Count Charges: -

1. **That the Six Defendants are Public Servants;**
2. **That in their Capacity as Public Servants, they were entrusted with the Monies or with dominion over the Monies;**
3. **That they committed Criminal Breach of Trust in respect of the Monies by-**

i. **Misappropriating; or**
ii. **Converting to their own use; or**
iii. **Disposing of the Monies or intentionally or willfully allowing any other person(s) to do so,**

4. **That they acted dishonestly in Misappropriating, Converting or Disposing of the Monies.**

5. **That they 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. **They intentionally allowed some other persons to do so or commit the above stated.**

PROSECUTION'S 1st DUTY TO PROVE: PUBLIC SERVANT

For each of the Sixty-Four Counts of Offences in the Charge, the Six Defendants were referred to as Public Servants/Officers, so the question to be determined here is whether the Defendants actually fall under the classification of Public Servants/Officers.

Section 318 of the 1999 Constitution does not define who a Public Servant is but defines what is Public Service and who is the Staff and Member contemplated under this definition. Public Service of the Federation, means the Service of the Federation in any capacity in respect of the Government of the Federation, and includes Service as…Member or Staff of any Commission or Authority established for the Federation by this Constitution or by an Act of the National Assembly.

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.

In the case of **WILSON VS A.G. OF BENDEL STATE (1985) NWLR PART 4 PAGE 572, His Lordship OPUTA, J.S.Cat 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 in the case of **HENLY VS LYME 5 BING. PAGES 107, 108** 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; above all else that a Public Officer has the power to exercise some amount of Sovereign Authority or Function of Government."

The evidence led during Trial and which remained uncontroverted is the fact that the 1st Defendant is the Managing Director and Chief Executive Officer of the Rural Electrification Agency; the 2nd Defendant is the Permanent Secretary from the Ministry of Power who acted, in the absence of a Substantive Minister of Power or Minister of State for Power; the 3rd to the 5th Defendants are Directors of the Rural Electrification Agency and the 6th Defendant is the Head of Legal and Secretary to the Tenders Board of the Agency.

They were all performing Public Functions, all paid from Public Funds and were empowered by the Law setting up the Agency to carry out Public Duties for the benefit of the Public and could exercise some amount of authority or function on

behalf of the Federal Government. Through their jobs, it is expected that they had a relatively fixed tenure of Office with some sense of permanency or continuity.

Further, and more compelling are the acknowledgement by each of the Defendants in their Written Statements, the admissions of Learned Counsel to all the Defendants in their Written Addresses, where they all acknowledged this fact, categorically recognizing their status as Public Servants.

By the above Statutory Definitions, and by the Documentary Exhibits and Oral Testimonies, which confirmed their Status as Public Servants/Officers,all the Defendants qualify to be regarded as Public Servants.
So without further ado, this Court finds that, the first essential element to be established by the Prosecution beyond a reasonable doubt has been satisfactorily proved and remains proved from Count 2 through to Count 65.

PROSECUTION'S 2nd DUTY TO PROVE: ENTRUSTMENT

The Second Essential Element necessary to Ground Counts 2 to 65 is the proof by the Prosecution that in their Capacity as Public Servants, they were entrusted with the Monies or with dominion over the Monies. These monies were Public Monies, in that the monies were held by the Officers in the Public Service of the Federation or State on behalf of the Government of the Federation or its Agent in his 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.**

Learned Counsel for the Prosecution, on this point, juxtaposed the oral evidence of PW5 and PW7 with **Exhibits 160, 161, 162, 179, 182, 192, 193 and Exhibits 165 & 158,** which are in sum, documents related to the Minutes of the Meeting of the Procurement Planning Committee, the Certificates of No Objection for both the Solar Based and Grid Extension Electrification, One Sample of the several Agreements between REA and the Contractors, the Report on the Procurement Audit, Letters from the 2nd Defendant to the 1st Defendant and the Reply Letter, as well as the Budget of 2008 and the Amended Budget of 2008.
He argued that as Public Servants, they had dominion and stressed the fact that but for the meeting held on the 10th of December 2008 and but for Exhibits 160, 161, 200 and 201, it would have been impossible for REA's money in the Central Bank of Nigeria to exit REA's Account. Furthermore, the legal basis upon which the 1st

Defendant issued the Cheques in Exhibits 6 to 151, were premised on the decisions reached at the meeting, and it also did not matter whether all the defendants were signatories to REA's Account. As long as the other Defendants concurred and approved, they can be said to also have dominion over the money of REA in their Account with the Central Bank of Nigeria. According to Learned Silk, they facilitated the withdrawals and applied the huge sums now in contention to the payment of Contracts in a manner contrary to the prescription of the Law.

Learned Silk representing the 1st Defendant did not submit on the issue of dominion as an element in this Offence, except to acknowledge the fact that the 1st Defendant had the duty to award the Contracts and the fact that he was a Member of the Tenders Board/ Procurement Planning Committee of REA. He also argued that REA had sought approval to pay 15% of the contract sum in advance and to issue Cheques for the balance of 85% against Advance Payment Guarantees to be issued by the Contractor's Bank, and had given out the jobs in accordance with the Approval obtained from the 2nd Defendant.
Learned Silk further submitted that it was uncontroverted the fact that the Contracts awarded were all provided for in the Amended Budget of REA, and the 1st Defendant as well as the other Defendants, were empowered and had the duty to award the Contracts. He submitted that the 2nd Defendant, as Permanent Secretary acting in the absence of the Minister of Power, had the authority to give approval to REA for the Contracts sought, as the Ministry was the Parent Head of REA.

Learned Silk, representing the 2nd Defendant, on his own part, argued that there was no evidence to show that the 2nd defendant had been entrusted or given control over the money in the Central Bank of Nigeria, in REA's Account. According to him, there was a Bank/Customer Relationship between REA and the Central Bank of Nigeria, and going by the English case of **FOLLEY VS HILLS & ORS (1848) 2 HLC PAGE 28 AT PAGES 36-37**, monies paid into a Bank belongs to the Bank, making the Bank in principle, to have control. According to him, immediately upon payment or receipt of such inflow, the amount becomes the property of Central Bank of Nigeria, as Bankers of REA. Therefore, the Central Bank of Nigeria was the person entrusted with or having control over the money in the banking account established to receive deposits from REA.
He went further to say that by that relationship, the money was a chose in action, in respect of which entrustment by way of dominion could only exist in the form of a claim of right to control, by a person designated as having the mandate of a

customer and is recoverable by action and relied on the case of **R VS GOLECHHA (1989) 3 ALL ER PAGE 908 AT PAGE 911.**

In this instant case, REA gives instructions to the Central Bank of Nigeria, who is under a legal obligation to honour such instruction. He relied on the cases of **CHIEF FESTUS YUSUF VS CO-OPERATIVE BANK LTD (1994) 7 NWLR PART 359, PAGE 676 AT PAGE 692 PARAS B-C; CATLIN VS CYPRUS FINANCE CORP (LONDON) LTD (CATLIN 3RD PARTY) (1983) 1 ALL ER PAGE 809 AT PAGES 816 H-817 A-B.**

Learned Silk went on to submit that the source of control on a credit balance lies with the customer, who manifests that control in the Agreement on the Mandate reached between the Customer and his Bank. The secondary duty of control by way of active supervision was the responsibility of the Customer.
Further,he argued that the Prosecution failed to prove that the 2nd Defendant was signatory to the Account of REA at the Central Bank, and it is clear that the 2nd defendant did not sign any of the Cheques in contention and was not a Member of REA. Therefore he was not in the position to control when withdrawals could be made from the account of REA with the Central Bank.

Continuing his line of arguments, Learned Silk referred to the Corporate Personality of REA, citing Section 88 (1) (2)(a) and (b) of the Electric Power Sector Reform Act, Cap E7, stating that REA had control over its own funds and was responsible for its own actions, including opening and closing accounts and determining who its signatories should be. It is his position that no evidence was led beyond reasonable doubt that the 2nd Defendant was statutorily designated a person or alter ego, entrusted by REA with control over the Account at the Central Bank of Nigeria, nor did the Prosecution establish that the 2nd defendant directed the mind of REA. According to Learned Silk, the Prosecution's argument was misconceived, as Exhibits 6 to 151 were Cheques governed by **Section 75 of the Bill of Exchange Act Cap B8, VOL 1 LFN 2012**. Secondly, it is a matter of common knowledge in the Law and Practice of Banking, that a Mandate needs to be given in order to operate the Account and he contended that PW2, did not in any way testify that he was part of the Mandate established to enable the Central Bank of Nigeria to honour the Cheques withdrawn on REA's Account.

Furthermore, no witness testified and no evidence was led to prove that without the concurrence of the 2nd Defendant, payment for the Contract could not have been made.

Finally, on this point, it is the understanding of Learned Silk that by **Section 16 (2) of the Public Procurement Act**, the only document prescribed that may prevent a Bank from honouring a Cheque is a Certificate of No-Objection issued by the Bureau of Public Procurement, and not an Approval issued by the 2nd Defendant. Thus with or without an Approval given by the 2nd Defendant to the award of a Contract or Payment, by the terms of Section 16(2), a Bank has no obligation to refuse payment of any Cheque issued by REA.

Learned Counsel to the 3rd Defendant on his own part, made a general submission and did not at any point refer to the question of dominion.

Learned Counsel to the 4th Defendant submitted that the 4th Defendant, as Director of Projects, had no dominion whatsoever over REA's money and even any money concerning the award of Solar and Grid Electrification Contracts in the 2008 Amended Budget of REA. He was never entrusted with REA's money in Central Bank or any other Bank, in his Official Capacity, either openly or privately. He also did not have control over the liquid cash or monetary instruments of the Agency in its Official Vault or anywhere else. He argued that this fact was not contradicted, controverted or challenged by the Prosecution during his cross-examination. His schedule of duties only mandated him to monitor the successful implementation of the awarded Contracts, referred to his office. Learned Counsel further stated that the 4th defendant did not sign Cheques or execute any monetary instrument or participate in effecting any payment or keeping the account books of the Agency.

Learned Counsel to the 5th Defendant referred to his elaborate testimony that the meeting of the 10th of December 2008 was only a briefing by the 1st Defendant, wherein the 1st Defendant informed them that the implementation of REA's Amended Budget would soon commence and that Committees would be constituted to do the scoping, valuation and costing works. He stated on behalf of his client, that he was not the Chief Executive of REA, he was never the Director of Finance of REA, never the Custodian of funds of REA, either at the Central Bank of Nigeria or any other Commercial Bank and finally, he was not a signatory to any of the Cheques in Exhibit 6 to 151, issued in favour of the benefitting Companies.

Learned Counsel to the 6th Defendant, on his own part, and on this point, submitted that the 6th defendant, being the Head of Legal, had nothing to do with being entrusted with money. He placed reliance on the evidence of PW6, Mr. Sharmaki,

who stated that the 6th Defendant was not the Chief Accounting Officer of the Agency. He was also not in charge of disbursement of money and this piece of evidence was unshaken, un-denied and was accepted.
He went further to state that he was not a signatory to any of the accounts of REA and his signatures were not evident on the Cheques.

All these facts, automatically takes the 6th Defendant out of the realm of those who have dominion over money, and he questioned whether any transfer of money to third parties could take place with his signature on the Memos or by his letter to the Bank, and answered in the negative. The 6th Defendant did not have an account where the said monies were paid into. He relied on the cases of **MUHAMMAN BATSARI VS KANO NATIVE AUTHORITY (1966) NNLR PAGE 151 AT PAGES 152-153; SAMUEL AHMADU SABO (1973) NNLR PAGE 207 AT PAGE 209 AND SANI ABACHA FOUNDATION FOR PEACE AND UNITY & ORS VS UNITED BANK FOR AFRICA PLC (2010) 17 NWLR PART 1221, PAGE 192 AT PAGE 209; AND R VS OKON (1933-1966) 1 NBLR PAGE 241 AT PAGE 253,** where he argued that monies paid by a Customer into a Bank belongs to the Bank from the moment of such payment, creating a Debtor/Creditor relationship. The Banker receives the money as a Loan from the customer against the promise to honour the customer's Cheques or other orders.

Finally, he argued that the Prosecution, did not tender the mandate from the Central Bank or any of the Bankers of REA to show that the 6th Defendant was actually a signatory and urged the Court to hold that he did not have control or dominion over the money or property of REA.

In Reply on Points of Law, on the question of dominion, Learned Silk for the Prosecution submitted that the view adopted by Learned Silk representing the 2nd Defendant, that the 2nd Defendant had no dominion over REA's money, clearly ignored the very obvious fact that without his Approval, the withdrawal of funds from REA's Account with the Central Bank of Nigeria, would not have been possible. The "Approval" of the 2nd Defendant, ostensibly acting as the Minister of State for Power implies dominion and/entrustment of REA's monies and was as good as signing the Cheques. His Approval was the Catalyst and the Official Seal, Ratification, Permission and Confirmation required to consummate the series of activities that eventually led to his being jointly charged along with the 1st, 3rd to 6th Defendants. Without the Approvals as seen in **Exhibits 200 and 201**, which the 2nd Defendant intercepted and acted upon and from the testimonies of **PW5, PW6 and PW7**, the

1st, 3rd to 6th Defendants would not have proceeded with the withdrawals. Therefore, the seeking of those Approvals implies he was entrusted with dominion.
According to Learned Silk to the Prosecution, what was material was the loss of REA's propriety right and dominion over the money, which started the moment the entire money exited REA's Account in December 2008, prior to the execution of the Contracts.

Now, after considering all the above Submissions and Arguments, it is clear that before there can be a conviction on a Charge of Criminal Breach of Trust, there must be evidence of Entrustment and of Dishonest Misappropriation of what was entrusted, see **BATSARI VS KANO NATIVE AUTHORITY (1966) NRNLR PAGE 151 AT PAGES 152, 153.**

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 such Capacity, of the Person reposing trust in him, and in that capacity, 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…"
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 other 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 and in **ANG TECK HWA VS PP [1987] SLR (R) 513**

AT [27], it was held that it is not necessary that the loss to the owner should have been actually suffered by that time. 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 expressed, 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 ANDSUPERINTENDENT 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 of 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.

At the start off, it is important to note that the Monies said to have been misappropriated by the Defendants are Public Funds held by REA on behalf of the

Federal Government of Nigeria and held in Trust to satisfy the 2008 Appropriation Act as well as the Supplementary/Amended Budget of REA for the Year 2008.
As gleaned from the Principles enunciated from the Case Law Authorities as cited above, there is no requirement for the creation of a formal trust as long as the Government funds REA, upon certain contingencies and requires certain compliances with the mode of discharging the trust. The money, being committed funds, can only be affected by the actions of those entrusted with it to ensure its proper use. It is clear that when the Government is entrusting the money to REA, it does not personalize the name of the person or persons mandated to discharge the money. The Budget Funds were not remitted to REA in the personal name of Gekpe, Nanle, Orekoya, Jahun and Kayode. It was remitted to REA's Account at the Central Bank of Nigeria and it is the Officers of REA, who had the power to affect the deployment, movement or disposal of the money that can properly be said to be entrusted with the funds.

It is not being an Official of REA alone that confers dominion and entrustment because a Cleaner or Clerical Officer working in REA even though sitting at that Meeting and signing any document such as the Certificates of No-Objection can never confer authority on REA to move the money. There had to be provisions in the Public Procurement Act, Rules, Directives and Regulations limiting the category of persons empowered to be a Member of the Procurement Planning Committee and there had to be set guidelines, once the initial criteria is satisfied.
Therefore, any individual or group of individuals 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.

In other words, the Federal Government of Nigeria, being the owner of the money, freely reposed confidence in REA by committing the Budgetary Allocations of the Year 2008, with the assurances that REA will render proper accounts for the use of the money. It can be safely implied that REA, then assumed control and the Officers who can be liable are the Officers that effected the disposal of that money. To this extent, the actual Members, who took the decisions to disburse the funds in the manner they did can be said to have had been entrusted with control and dominion.

Further, the individual participation of the Five Defendants in signing the Certificates of No-Objection, disbursing the funds, showed entrustment. They were

all relevant Members otherwise they would not have been invited to participate in the Meeting of the 10th of December 2008.
As earlier held, it is the ostensible or apparent scope of a Public Servant's Authority when receiving and disbursing the money that has to be taken into consideration. With the assumption that the Five Defendants understood the technical limitation of their powers through Internal Rules and Directives, Circulars and the Guiding Sections of the Public Procurement Act, the use by each of the Five Officials of REA of their Actual Official Capacity, and the appending of their Signature on the Certificates of No-Objection determined the sufficient nexus or connection between the Acts complained of, and their Official Capacity. I agree with the Submission of Offiong SAN on this point when he cited Section 16(2) of the Public Procurement Act as far as the requirements necessary to be furnished to a Bank before payment on any Cheque issued by REA is honoured.

Therefore, the Submissions made by Learned Counsel to the 4th, 5th and 6th Defendants that they did not have control over the liquid cash or monetary instruments of REA, and they were not the Chief Executive of REA nor Director of Finance or Custodian of REA's funds does not hold water in the light of the above Case Law Authorities. Being a Signatory to REA's Account, or being empowered to sign Cheques for REA is not a compulsory factor to establish entrustment. It is clear that but for the Meeting held on the 10th of December 2008, where all the Five Defendants approved the Resolutions and the Certificates of No-Objection, it would have been very difficult for REA's money in the Central Bank of Nigeria to exit the Account. The 1st Defendant had issued out 151 Cheques based on the decision reached at the Meeting.

As regards the Submission made by Learned Silk representing the 2nd Defendant on Banker-Customer Relationship, the question of Section 75 of the Bill of Exchange Act CAP B8 Volume 1 LFN 2012, and the fact that the money was a Chose in Action, and dominion could only exist in the form of a claim of right to control, the Court finds that these Submissions are elementary and trite and there is no contention on that as well as the fact that under Section 88(1), (2) (a) and (b), REA does indeed have control over their own funds and were responsible for all transactions regarding their Accounts.

The 1st Defendant had the duty to Award the Contracts and was a Member of the Procurement Planning Committee, prominently presiding over the Decisions on that fateful day. He suggested that it was the 2nd Defendant as Permanent Secretary,

acting in the absence of the Minister of Power that had the authority to give Approval to REA for the Contract sought, as the Ministry was the Parent Head of REA.

What then is the position of the 2nd Defendant in regard to entrustment?
It is clear that the 2nd Defendant was not a Member of REA. He was not a Member of their Procurement Planning Committeeand was not present at the Meeting held on the 10th of December 2008. He was not a signatory to their Accounts. He did not sign any Certificate of No-Objection.

But, and a very big BUT, REA could not possibly have gone ahead to actualize the contractual transactions with those Contractors, without HIS APPROVAL.
Without his Approval, the Committee Members sat in vain. He represented the Supervising Parent Ministry and they could not have gone ahead without his knowledge and Approval. He was the Catalyst and Propellant in this transaction and to that extent, controlled the movement and employment of the funds in REA's Account and his signature on Exhibits 200 and 201 confirms this fact. By his signature, he can be said to agree with the actions proposed to be carried out by REA. However, he is not a co-defendant on whom a definite pronouncement can be made upon and as decided by the Court of Appeal, he is found not to have been entrusted with the funds.
Therefore, the 1st, 3rd to 6th Defendants on Record are found to have been entrusted with REA's Funds in the Central Bank of Nigeria and this remains true from Counts 2 to Count 65.

PROSECUTION'S 3rdAND 4THDUTY TO PROVE: MISAPPROPRIATION, OR CONVERSION OR DISPOSAL AND DUTY TO PROVE ANY OF THE MODES WERE CARRIED OUT DISHONESTLY.

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 **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 Defendants as Public Servants,being Entrusted and having Dominion over REA's Amended Appropriation Budget:
a) Misappropriated REA's Funds;**OR**
b) ConvertedREA's Funds to their own Use; **OR**
c) Used REA's Funds; **OR**
d) Disposed REA's Funds **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 them to Dispose of the Property.

After determining any of the above from the evidence adduced at Trial, the Prosecution is then mandated to prove through the Sixty-Four (64) Counts of Offences that the Defendants committed these Offences, Dishonestly and 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 they made touching on the discharge of such trust.

Learned Counsel to the Prosecutionin his Written Addresses, both the Main and Replies on Points of Law, contended that sometime on the 10th of December 2008, the 1st, 3rd to 6th Defendants purporting to be the Procurement Planning Committee of the Rural Electrification Agency met and awarded Contracts totaling the Sum of N5, 150, 000, 000.00 (Five Billion, One Hundred and Fifty Million Naira). The Grid Extension Rural Electrification Contracts were awarded in the Sum of N3, 565, 267, 289.00 (Three Billion, Five Hundred and Sixty-Five Million, Two Hundred and Sixty-Seven Thousand, Two Hundred and Eighty-Nine Naira) and the Contracts in regard to the Solar Electrification amounted to the Sum of N1, 624, 164, 660.00 (One Billion, Six Hundred and Twenty-Four Million, One Hundred and Sixty-Four Thousand, Six Hundred and Sixty Naira). They had sought and obtained Approval of the Honourable Minister of State for Power in the Person of the Permanent Secretary of that Ministry, the 2nd Defendant.

It is his position that the Contractors were allegedly selected from a List of Pre-Qualified Companies forwarded by the Parent Ministry and none of the Defendants produced to the Investigators or the Procurement Auditors of the Bureau of Public Procurement, any Criteria or Scores for that Pre-Qualification Exercise. From the One Hundred and Thirteen (113) Companies on the List, only Twenty-Four (24) Companies were awarded the Grid Extension Contracts and none of the Forty-Five Companies that were awarded the Solar Electrification Contracts were from the Pre-Qualified Ministry's List.

The Amounts awarded under these Contracts exceeded the N50Million Threshold of REA, who did not secure the Approval of the Tenders Board at the Federal Ministry of Power or the Federal Executive Council. This was contrary to the provisions of Section 31 of the Public Procurement Act on Bid Evaluation and the 2nd Defendant's Memo dated the 2nd of June 2008, in **Exhibit 191**. He referred to **Exhibits 186A-H,** the 1st Defendant's Statements, wherein he had admitted that the names of the Contractors were given to him by named Legislators, such as Dan Jubril & Co. Ltd, owned by Jibo Mohammed, a Member of the House of Representatives in the National Assembly as seen in **Exhibits 1 to 5, 152 to 156 and 178**. He further illustrated this point by noting that in one instance, Nine (9) of the Companies awarded Twenty-One (21) out of the Forty-Five (45) Solar Electrification Contracts, had their Office Addresses in Asaba with the same Telephone Number on their Letterhead Paper and had their Cheques collected by the same person, indicating a breach of Section 24(1) of the Act on Competitive Tendering. He further observed that most of the Contracts' Letters of Award were bereft of Addresses.

As deciphered from **Exhibit 179**, the Contract Agreement and from the Public Procurement Act, the recognized mode for payment of the Contract Sum is that there should be an initial payment of 15% backed by an Advanced Payment Guarantee from a Reputable Bank. The next payment is the payment of 75% which is payable after Completion of the Project and a Retention Payment of 10% after Six (6) Months.
Contrary to the above, the Procurement Planning Committee of REA issued Certificates of No-Objection for the Total Amount in **Exhibits 161 and 162**, which was signed by all the Defendants excepting the 2nd Defendant, notwithstanding their Limitation of N50Million. The Director of Procurement, a Statutory key Member and/or his Subordinates were not invited to this Procurement Planning Committee Meeting and were not involved the procurement of the Contracts as seen in

Exhibits 160 to 162 and 184, where the Signature of the Director of Procurement, Mr. Gurin, was conspicuously absent.

He submitted further that 100% of the Contract Sum had exited REA's Account in Two Installments of 15% and 85%, at the Central Bank of Nigeria between the 30th of December 2008 and early January 2009. Then, between the 7th and 14th of January 2009, all the Cheques issued in respect of the Contracts, which informed **Exhibits 6 to 151**, had passed through Clearing and REA's Accounts at the Central Bank of Nigeria, depleted by approximately N5.1Billion into various Treasury Accounts of named Banks. The Speed or Timeframe through which the withdrawals of funds were facilitated was called to question and the Court was urged to infer fraudulent intention against the Defendants.
As a result of the Decisions reached at the purported Procurement Planning Committee Meeting held on the 10th of December 2008, the consequent steps of the Defendants, manifested in **Exhibits 159, 160, 161, 200 and 201**, set the stage for the exit of these funds.

According to Learned Counsel, most of the Advanced Payment Guarantees were received by REA between January 2009 and March 2009, a period after the exit of the 100% payment from REA's Account, which in Sum, made no provision for Retention of 10% payment. By the un-denied evidence, Learned Counsel argued that full payment was unlawfully made to the Contractors even before the commencement of the Projects.

He contended that the justification raised by the Defendants that the Contractors were not directly paid with the money, does not change the fact that the Defendants misappropriated it. In response to the submission made by the 6th Defendant that the Prosecution did not lead evidence to show that the 6th Defendant converted to his own use and used or disposed REA's money, the Prosecution submitted that having established misappropriation in the manner in which the Defendants jointly paid out the monies to the Contractors, it was needless to prove the other elements since they are set out in their alternatives.
Whether or not the Defendants benefitted unjustly from the procurement exercise was irrelevant as this is not one of the elements requiring proof from the Prosecution. The eventual unlawful payment, did not in Law afford the 6th Defendant and others any defence.

Learned Silk to the 1st Defendantstarted off by highlighting the fact of the Former President Umar Musa Yar'adua's Seven (7) Point Agenda for the Nation, which created a Task Force on Electricity to fast-track Power Delivery in Nigeria and who on the 31st of October 2008, amended the Appropriation Act 2008 by the inclusion of One Hundred and Thirteen (113) Grid Extension and Forty-Five (45) Solar Electrification Projects for the Rural Areas into the REA Budget.

According to him, on the 14th of December 2008(sic), when the Ministry of Power directed REA to implement the Amended Budget, only Four Weeks were effectively available and therefore, REA had just One Month to complete the Contract. As there was no time to advertise, only One Method could be employed, which was by Direct Procurement under **Section 42(1)(b) of the Public Procurement Act**. The Defendants wrote to the Minister of State for Approval and the 2nd Defendant, who was the Permanent Secretary acting for the Minister, gave Approval on the 14th of October 2008(sic). The Approval was to pay 15% of the Contract Sum in advance and to issue Cheques for the 85% balance against Advanced Payment Guarantees from the Contractors' Bankers, which was to ensure that unless the Contractors presented Certificates of Job Completion, their Bankers should not pay them.

As a result of the Parent Ministry granting the Approval, REA gave out the Contracts. Whilst the Projects were ongoing, the Defendants were arrested by the EFCC and charged with Criminal Breach of Trust on grounds that the Projects were not advertised and that Contractors were paid 100% of the Contract Sum even before mobilizing to Project Site. Meanwhile, the EFCC failed to indict its Parent Ministry, who had also carried out similar Projects without meeting up with the advertisement requirement. The Prosecution did not explain why the actions of the Ministry were not viewed as criminal whilst those of REA were.
According to Learned Silk to the 1st Defendant, the Prosecution claimed that the Contracts awarded was in the Sum of Five Billion, One Hundred and Fifty Million Naira (N5, 150, 000, 000), yet none of the Prosecution Witnesses testified in regard to this Sum nor did any Count contain such a Sum. Rather, all the Prosecution Witnesses testified that each awarded Contract was less than the N50Million Threshold and no evidence to prove the contrary had been led.

Apart from the above, Learned Silk submitted that the meaning of the word "purported" as used in Count 1 in the Charge, would suggest that the Contracts were not real in that the 1st Defendant conspired to fraudulently pretend to award the Contracts. In Counts 2 to 65, the 1st Defendant was alleged to have fraudulently

facilitated the withdrawal of REA's funds by pretending the funds were used to pay for the Contracts. In other words, the entire Charge is alleging that the Contracts awarded and paid for was a Sham, which is for the Prosecution, who had the burden to prove and as it stands, no proof had been led in this regard. Rather, the evidence adduced showed that the Grid Extension Contracts and Solar Electrification Contracts were real. The Contracts were contained in the Appropriation Budget, assented by the President, awarded to Contractors and **Exhibits 226 to 254** have shown that the Projects were completed, handed over, commissioned by the Government and put to use, and even the Prosecution during Trial had conceded that the Contracts were actually awarded.

Further, on the allegations that the Contracts and the Contract Sums paid into each of Contractor's Account were all fraudulent and secured by false pretense, Learned Silk argued that the Prosecution only tendered the Letter of Awards and one Contract Agreement in relation to Count 3 but failed to do so for the remaining Counts. The Prosecution had also refused to tender the remaining One Hundred and Fifty-Seven (157) Agreements and told the Court that the Agreements were in the custody of the EFCC Exhibit Keeper. Learned Silk questioned why the Contract Agreements and Contract Award Letters were not tendered, adding that the Court could not know whether Contracts were awarded to One Company or not, their Value, the Date of Signing as well as the Terms.
The Original Cheques used to effect payment were not tendered and neither were the Bankers who processed the payment at the CBN called as witnesses and more importantly, not all the Cheques were tendered. Instead, the Prosecution tendered Certified Copies of the Cheques that were not legible and their Contents were never explained to the Court.

Similarly, the Statement of Account of REA with the CBN from where the monies were withdrawn and the Statements of Account of each Contractor or Teller evidencing the fact that money was paid into their Account was not tendered. The Prosecution also did not call any Banker to testify that 100% of the Contract Sums had exited REA's Account with the CBN as at the 30th of December 2008 and early January 2009.

Furthermore, Learned Silk Paul Erokoro contended as barefaced lies the Submission of the Prosecution that the 1st Defendant in his EFCC Statements, **Exhibits 186(A-H)** had admitted that the names of Contractors were given to him by Legislators and in one instance, Nine (9) of these Contractors, who took the benefit of Twenty-One

(21) Solar Contracts, had their Office Addresses in Asaba and used the same Telephone Number-08034523189. According to him, the 1st Defendant never said such in his EFCC Statements. He noted that the Prosecution did not summon any witnesses to testify in this regard and did not highlight the stated Companies names and details before the Court as the 1st Defendant only mentioned the fact that Legislators introduced Companies to REA for consideration. The 1st Defendant had in one of his Statements written on the 20th of April 2009, categorically stated that no preferential treatment was given to those Companies.

Further, the interest of the Legislators was made known to the Procurement Committee as seen in **Exhibit 160**- the Minutes of the Meeting of the 10th of December 2008, but the Committee Members had resolved to award the Contracts only to Qualified Contractors. PW7 in his testimony under cross-examination had admitted that Legislators wrote Seventy-Nine (79) Letters recommending Companies but only a few were found to be qualified.

Learned Silk submitted that the Prosecution did not call any Witness to testify about the Nine (9) Companies that had the same Telephone Numbers nor did he give details of their Addresses in Asaba or go further to identify the Twenty-One (21) Contracts awarded to these Companies. More so, the Prosecution never tendered the Award Letters that bore only the names of the Companies awarded Contracts without stating their Addresses.

Moreover, he contended that no Law forbade REA from conducting in-house estimates. In **Exhibit 160**- the Minutes of Meeting of the Procurement Planning Committee, the in-house estimates for Quality was based on that of the United Kingdom (UK) and United States of America (USA) and no Contractor was allowed to provide lower quality. The Prosecution did not lead testimonial evidence to show that the in-house estimates by REA were whimsical. The Bureau of Public Procurement did not see anything wrong with REA's in-house estimates and neither did the PW5 nor PW7 allege that the Contracts were inflated or that the Government never got good value for money spent.

In response to **Exhibits 1-5** and **152-156**, the documentation in regard to Dan Jubril & Co. Ltd, where the Prosecution led evidence to show that Jibo Mohammed, then Member of the House of Representatives, owned this Company, Learned Silk submitted that no evidence was shown that Jibo Mohammed was a Member of the House of Representatives, no Gazette was tendered to that effect, nor his Oath of

Office tendered before the Court. Further, no evidence was also called from the National Assembly in this regard. PW7 as a Policeman was not the Speaker, Clerk or a Member of the House of Assembly and therefore, his evidence was of no value. Even if it was established that Jibo Mohammed was a Member of the House of Assembly, there was still no proof that he remained a Member at the relevant time of this case and in any event, it was immaterial whether the owner of the Company with a winning bid was owned by a Member of the House of Representatives, as that is not the Charge before the Court.

On the contention that the 1st Defendant fraudulently facilitated withdrawals from REA's Account with the Central Bank of Nigeria, Learned Silk argued that the Prosecution did not through evidence, explain what was meant by "facilitating the withdrawal" nor led any evidence to show that the 1st Defendant or other Persons fraudulently facilitated the withdrawals. No witness was called to give evidence on how the Cumulative Sums contained in each Count were arrived at and neither Court nor Counsel can do so, as that responsibility was solely for the Prosecution to do in Open Court. Reliance was placed on the cases of **UCHA VS ELECHI (2012) 13 NWLR PR 1317 PAGE 330 AT PAGES 367 TO 368, PARAS H-A; OMISORE VS AREGBESOLA (2015) 15 NWLR PART 1482 PAGE 205 AT PAGES 280, 333 PARAS A-B; IVIENAGBOR VS BAZUAYE (1999) 9 NWLR PART 620 PAGE 552,** to say that, where a Party dumped Documents on a Court, it was not the duty of Judge to embark on an inquisitorial examination of documents outside the Courtroom. In this instant case, that was exactly what the Prosecution had done by not calling a Banker in respect of the Cheques issued and an Accountant in respect of the Payment Vouchers, and this failure was fatal to the Charge.

According to Learned Silk, no Documents were tendered evidencing the creation of a Trust or the fact that the 1st Defendant was a Trustee although his control over REA's expenditure made him, in a sense, a Trustee. As long as he acted on behalf of Government by way of his employment, and as long as he did not misappropriate or convert the monies to his own use, he could not have been in Breach of Trust even if he flouted the provisions of the Public Procurement Act.

Learned Silk submitted that **Section 2 of the Preface, Chapter 1 Regulation 113 (i)** and **the Act** provided for vicarious liability and therefore, cannot be the basis for a Charge of Breach of Trust, where an essential ingredient is the evidence of a fraudulent intent.

PW6 could not answer whether the actions of the 1st Defendant was unreasonable and he urged the Court to follow the decision in the case of **UZOAKA VS THE STATE (1990) 6 NWLR PART 159, PAGE 680 AT PAGE 686,** in considering the favourable interpretation of his answer. The evidence of PW5 was referred to, where he said that in an emergency, what is presented to the National Assembly is a Supplementary Appropriation. Therefore, the Defendants' recourse to **Section 42** of the Public Procurement Act was an emergency and as narrated by PW6, their mistake in lumping the Contract Sums into One Certificate of No-Objection in both **Exhibits 161 and 162**, as opposed to Separate Certificates of No-Objection was because in an emergency, people act under extreme pressure and are prone to error.
The Procurement Audit Report in **Exhibit 182**, which was signed by PW5, found nothing wrong with the way the Certificates were signed and further, the National Council on Procurement had not yet been set up and so, all Thresholds on No-Objection Certificates were illegal and not binding. Reference was made to Section 2(a) of the Public Procurement Act.

He likened the actions of the 1st Defendant and his Management Team to the actions taken by the Parent Ministry, who employed Selective Tendering and who avoided Advertisement and were not charged to Court. The Prosecution did not explain why the actions of the Ministry were not viewed as criminal whilst those of REA were.

Learned Silk found it curious that the Prosecution rejected most of the evidence led in his Written Address and he submitted that the Prosecution, having decided to jettison its evidence is estopped from resiling by Section 169 of the Evidence Act. According to him, the Prosecution tried to make a new case in Paragraph 5.34 of their Written Address by claiming that there was no Approval in Exhibit 201 for the issuance of Cheques for 85% of the Contract Sums and to him, this was too late as it should have been raised at the Trial and evidence led on it.

According to Learned Silk, the evidence adduced before the Court explained the reasonableness of domiciling the 85% balance of the Contract Sums with the Contractors' Banks, as REA would have had to return all the unspent monies in its Account to the Treasury leaving nothing to pay the Contractors and incurring the risk of abandoned projects and wastage of the 15% advance. He made reference to **Exhibits 193 and 209**, to say that no such funds were provided for in the 2009 REA Budget. REA actually saved the Government from Interest Payments as stipulated under **Section 37** of the Public Procurement Act and Contract Exercise would have

been illegal under **Section 16(1) (b)** of the Act if they had not ensured funds were available to meet their obligations. The steps taken by REA to place the balance of 85% in Escrow, was to forestall this problem.
Further, **Exhibits 255(1 to 32)**, the Letter written by the 1st Defendant to all the Banks, negated the allegation of improper payment as he gave stringent conditions on how the balance was to be handled.

The Banks had imposed stringent conditions and were reluctant to release the initial 15% payment to the Contractors and even for the 85% balance, a Certificate of Job Completion from REA as well as REA's Letter authorizing payment was required.
The Prosecution was unable to explain why the EFCC were able to obtain a Court Order in May 2009 freezing the entirety of the 85% balance payment in the Banks, and why the Order to Freeze granted on the 18th of May 2009 was lifted in 2011and finally, why the Ministry of Power was able to pay the 85% balance in 2011 if these payments had already been disbursed to the Contractors in December 2008. He referred to **Exhibits 226 to 254,** which were the Letters written by the Minister of Power in 2004 to the Contractors' Bank, authorizing payment after the Freezing Order was lifted. The Contractors had sued the EFCC for the illegal freezing of the 85% balance and had won the case as seen in Exhibit 225, the Enrolled Order of the Federal High Court made on the 22nd of November 2010.

According to Learned Silk, Central Bank of Nigeria would not have made payment if there had been anything wrong with the Contracts or their Documentation. He referred to **Exhibits 226 to 254,** the Certificates of Job Completion and Payment Instructions issued by the Minister of Power in 2011 authorizing payments to the Contractors. Also relied on were **Exhibits 222, 223, 224 and 225** where the Vacation Order was made, and the Affidavits in Support of that Motion before the Federal High Court, which he argued, were not controverted.

He also relied on the Letter written by the Chairman of the EFCC dated the 18th of August 2009, which notified the Bureau of Public Procurement to ascertain the level of completion of the Projects at the various locations and make appropriate recommendations for payment to deserving Contractors. Therefore, there was no conspiracy, as only 15% was paid and the balance was held under a Freezing Order and he finally, concluded that the Prosecution deliberately set out to mislead the Court on the 100% advance payments by stating that the Contractors had immediate access to the Total Sums.

On his own part, ***Learned Silk representing the 2nd Defendant,*** *submitted that* once REA entered into the Contracts, they were under a duty to pay the Contractors at some point in time and he noted that the Prosecution had no issues with the propriety of the payment of 15% of the Contract Sum. As for the payment of 85% balance, the 2nd Defendant only approved the issuance of Cheques to Contractors against the submission of an Advanced Payment Certificate from an acceptable Bank to secure the amount. By the Terms therein, payment was not released by the Banks issuing the APGs except on presentation of Interim Certificates issued by REA. Therefore, no one's Right was infringed by this arrangement, which is a general accepted commercial arrangement for payment and REA as a Corporate Entity, was entitled to secure their funds pursuant to **Section 88 of the Electric Power Reform Act**.
Whether Officials of the Procuring Entity faithfully implemented the arrangement approved by the 2nd Defendant, is not a matter that should engage the responsibility of the 2nd Defendant.

Learned Silk to the 2nd Defendant further discussed what Misappropriation entails in **NWAMARA (SUPRA) AT PAGE 27 PARA 807** and the cases of **I.G. TIRAH VS COP (1973) NNLR PAGE 143; AND HON. AZUBONCHIN EMEKA IFEANYI VS FRN (2014) LPELR- 22984 (CA) AMINU SANUSI JCA,** andargued that Misappropriation could be occasioned where the credit balance in the Banking Account Number 010372014 belonging to REA funds with the Central Bank of Nigeria, was improperly used or misapplied for purposes other than that as provided by the 2008 Amended Appropriation Act. The Prosecution, in this instance, had not led any evidence to show the Defendants had misappropriated the monies for purposes other than those contained in the Amended Appropriation Act or through violation of a mode prescribed by Law.

Under this heading of Misappropriation, he discussed the complete and total exclusion of the Procurement Department of REA in the procurement process of contracts over N50Million. According to Learned Silk, the Procurement Planning Committee is a body set up under **Section 21** of the Act. This Committee should consist of seven (7) Members, but in evidence, PW5 testified that the Committee had five (5) Members. Therefore, a decision made by any four of its Members is by Law regarded as a decision of that body, whether or not the Director or Representative attended or participated. As long as a Quorum was reached, the Director or Representative of the Procurement Unit does not possess a veto power over the

decision of the Procurement Planning Committee, and his absence does not render the Meeting pretentious or having powers or skills it does not have. When looked at from the perspective of the value involved in the Contracts or the authority of the Committee to make valid decisions, the non-participation or presence of the Procurement Department does not evidence fraudulent action or conduct on the part of the 2nd Defendant, who had no role to play in the convening or holding of that Meeting.

Also discussed was the execution of the Certificates of No-Objection beyond the limit of REA, and he referred to the testimony of PW5 who had stated that none of the Contracts were above N50 Million and PW6, who testified that it was within the authority of the Procurement Planning Committee to issue Certificates of No Objection for Contracts of N50Million and below. He queried the assertion of the Prosecution that REA had issued Certificates of No-Objection for Contracts above the N50 Million Threshold. The Prosecution had read **Exhibits 161 and 162** in isolation, without paying attention to the Annexure A, in finding fraudulent conduct in the Defendants. He cited the case of **NIGERIAN ARMY VS AMINU KANO (2010) 5 NWLR PT. 1188 PAGE 429 @ 457 PER MUHAMMED JSC AND ALHAJI M.K. VS FIRST BANK OF NIGERIA AND ANOR (2011) LPELR-8971 CA**
Although on its face value, the Certificates bore the aggregate sums, these sums represented all the separate and individual rural electrification projects, reflected in the attached Schedule and were less than N50 Million each. He urged the Court give the exculpatory meaning to the **Exhibits 161 and 162**. The mistake was in using one document to express what could have been expressed in One Hundred and Fifty-Eight (158) Documents and cannot qualify as a fraudulent action or conduct. In any case, the 2nd Defendant was not a Member of the Procurement Planning Committee nor did he take part in issuing the Certificates of No-Objection.

As regards the absence of Retention Funds, Learned Silk referred to PW7's testimony that he had collected the Contract Agreements and by Clause 9 therein, provision was made for retention of funds and the Prosecution failed to prove beyond reasonable doubt, this fact, and the fact of the presence of fraudulent actions. He urged the Court to hold that had the other Contract Agreements been provided, it would have been unfavourable to the Prosecution.

As regards Speed and/or timeframe through which the funds were withdrawn and the deliberate avoidance of any form of Competitive Tendering or Advertisement required under the Public Procurement Act, he referred to **Clause 5 of Exhibit 189**

and the testimony of PW5 to say that the Prosecution failed to prove any fraudulent action or conduct with regard to the timing and handling of the arrangement to secure funds for the Contract and to ensure Contractors were paid timely, avoiding punitive interest.

As regards the deliberate avoidance of any form of Competitive Tendering or Advertisement as required under the PPA, **Section 42 (2) and 42 (1)(b)** allows REA to procure goods and services by inviting proposals or price quotation from a single Supplier or Contractor, and justification for employing this Mode should be stated in its Record of Procurement Proceedings. This was done in their Minutes of Meeting in **Exhibit 159 and 160**.

Further, there was no requirement of approval from the Tenders Board of the Federal Ministry of Power as the Approving Authority is the person in overall control of the functioning of the Ministry.

Learned Silk contended that the Prosecution failed to prove beyond reasonable doubt through Count 2 to 65, how the Sums alleged in each Count in the Charge were withdrawn from REA's Account with the Central Bank of Nigeria. Even though Cheques in Exhibits 6 to 151, which were alleged to have been misappropriated by the Defendants were tendered, yet none of the figures therein, matched with the figures contained in each Count. It was necessary therefore, for the Prosecution to call witnesses who would through some form of mathematical calculations relate the Cheques to the Counts in the Charge. In this instance, the Prosecution did not do so but merely dumped the Exhibits without tying the Cheques to the Charge levied against the Defendants. Reference was made to the cases of **SENATOR IYIOLA OMISORE & ANOR VS OGBENI RAUL ADESOJI AREGBESOLA & ORS (2015) 15 NWLR PT 1482 PAGE 205 AT PAGE 323H TO 324A PER OGUNBIYI JSC; AZEEZ OKORO VS THE STATE (1998) 14 NWLR PART 584 PAGE 181 AT PAGE 211, 213, 215, 219 AND 220; DURIMINIYA VS COP (1961) 1 NRNLR PAGE 70; QUEEN VS WILCOX (1961) 1 SCNLR PAGE 296; AWUSE VS ODILI (2005) 16 NWLR PT 952 PAGE 416; ZIMIT VS MAHMOUD (1992) 2 LRECN PAGE 286 AT PAGE 307; ONIBUDO VS AKIBU (1982) 2 FNR PAGE 244.**

Learned Counsel representing the 3rd Defendant made no mention by way of Legal Authorities and Submissions in regard to this Heading.

Learned Counsel to the 4th Defendant made no specific Legal Submission by way of Principles or Case Law on this duty, except a wide sweeping denial, stating that there was no evidence of the commission of this Offence. He referred to the testimony of PW7 where he had stated that from the Incorporation Documents, none of the Companies awarded the Contracts belonged to the 4th Defendant. He stated further that the Particulars of the Shareholders of these Companies revealed that the 4th Defendant was also not a Shareholder.

There was also no evidence against the 4th Defendant to show that he had the *Mens Rea* and *Actus Reus* to fraudulently facilitate the withdrawal of the Contract Sum to various Companies and there was no ulterior motive by the 4th Defendant in signing **Exhibits 161 and 162** and no attempt was made by the Prosecution to prove the intention of the 4th Defendant in signing **Exhibits 161 and 162**. Further, no connection was established to show that the 4th Defendant was connected to the Advanced Payment Guarantees nor derived gains or benefits, monetary or otherwise, from the signing of these Exhibits. The testimonies of all the Prosecution Witnesses as well as their Exhibits did not correlate with the allegations in all the Counts.
The 4th Defendant was officially obligated to attend the Procurement Planning Committee Meeting and added that the Contract Beneficiaries were not tabled at that Meeting. He only got to know about the Contracts when the Contract Files were sent to his Office as Director Projects with the sole aim of Monitoring the Projects as awarded and he was not aware that payments were made in respect of the Contracts. He also had no control over the funds of REA, whether liquid cash, cheques or monetary instruments in Central Bank of Nigeria or in any other Commercial Bank or Vault. He was not linked to or connected with the Award of Contracts or the issuance, signing, delivery or dispatch of the Cheques and therefore, did not Criminally Conspire to facilitate the withdrawal of funds as he did not personally execute any Monetary Instrument or Cheques and did not participate in effecting any payment or keeping the Account Books and had nothing to do with the Advanced Payment Guarantees.

He referred to the evidence of PW7, Ahmed Ibrahim, the Star Witness, who did not testify that any benefit from the Award, Payment and Execution of the Contracts accrued to the 4th Defendant as contained in the Counts of the Charge. All the evidence adduced, oral or documentary, also did not correlate with the allegations levied against the 4th Defendant that he fraudulently withdrew the specified

amounts paid the Contractors or that in any way he facilitated, in any manner or form, the withdrawal of the Sums of Money awarded.

He referred to the Supreme Court case of **NACENN (NIG) LTD VS BEWAC AUTOMATIVE PRODUCERS LTD (2011) 11 NWLR PART 1257 PAGE 193 AT PAGE 209 PARA H** on the effect of unchallenged evidence. He heavily challenged the admissibility of **Exhibits 161 and 162.** Further reference was made to **Section 135(1) of the Evidence Act; Section 36(1) of the 1999 Constitution; the case of OLUWASEUN AGBOOLA VS UBA PLC & 2ORS (SUPRA); OFFOBOCHE VS OGOJA LGA & 1 OR (2001) 16 NWLR PART 739, PAGE 458 AT PAGE 485 PARAS E-F; ABACHA VS THE STATE (2002) 11 NWLR PART 779 AT PAGE 437 AT PAGE 521 PARA A-B; AND ADEYEYE VS THE STATE (2013) 11 NWLR PART 1364 PAGE 47 AT PAGE 80 PARA G.**

Learned Counsel to the 5th Defendant on his own part, submitted that it was not established that the 5th Defendant dishonestly used or disposed of the monies in violation of any direction of Law prescribing the mode in which the Trust was to be discharged as, he was not shown to have awarded any Contract and the execution of **Exhibits 161 and 162** were done in the course of his normal duties and in good faith without any Criminal Intent established and neither where his actions, "Approvals". He argued that assuming signing **Exhibits 161 and 162** was wrong, there was no criminal intent established on his part to confer any advantage to himself or to any other 3rd Party. He also did not participate in any Meeting where the said Contracts were awarded to the beneficiary Companies and did not write, execute or issue out any Award Letters, nor recommend any benefiting Company and was not linked to these Companies, either as a Director or Shareholder.

The 5th Defendant was also not linked to the Account Opening Packages of Dan Jubril & Co. Ltd and therefore could not be said to have misappropriated or converted the funds of REA through this Company. Further, the 5th Defendant was not linked to any of the other Companies. Learned Counsel urged the Court to note thatthe 5th Defendant's evidence in chief,on this point, was not contradicted in any manner.

Finally, the 5th Defendant did not willfully suffer any other person to do so citing the cases of **DR. OLU ONAGORUWA VS THE STATE (1993) 7 NWLR PART 303 AT PAGE 49 RATIO 4; AND MRS. PAULINE AKIKA & 3 ORS VS CHARLES CHUKWUMA ATUANYA (2008) 17 NWLR PART 1117 PAGE 484 AT PAGE 499 RATIO 16,** to say that a Court should after evaluation of the material evidence,

ascribe probative value and make necessary findings to arrive at a logical conclusion and he urged the Court to discharge the 5th Defendant.

Learned Counsel to the 6th Defendant, referred to the case of **I.G. TIRAH VS COP (SUPRA)** and the testimony of PW7, to submit that the money was used for the purpose for which it was intended and the use of the money was not beyond the amount appropriated in the Budget. The 6th Defendant acted in honest belief in ensuring that the Budgetary Provisions were used for the Projects. He argued that there was no evidence to show that the awarded Companies belonged to the 6th Defendant, as a Director or Shareholder and no payments were made either to the Contractors or to him. He was not confronted with any Bank Account belonging to him that showed lodgment of funds, property of REA. There were also no Land Papers, Phone Logs, Corporate Affairs Commission Papers showing he had any interest in any of the Companies awarded the Contracts and therefore did not derive any personal benefit from the Contract awarded. Reference was made to **ISHOLA VS SGP (NIG) LTD (1997) 2 NWLR PART 488 AT PAGE 405 AT PAGE 427 PER IGUH JSC.** There was also no shred of evidence to show that the 6th Defendant paid the monies of the Contract to his Account or that of his cronies.
It is his further submission that had the 6th Defendant acted dishonestly, the Federal Ministry of Power would not have given Job Completion Certificates to the Contractors and they would not have written Letters to the Banks having Custody of the 85% balance, telling them to release funds to the Contractors, on completing the Projects. He stated that had the 6th Defendant acted dishonestly, there would also not have been the Advanced Payment Guarantee Certificates to secure the 85% balance and the Contractors would not have executed and completed the Projects.

Further, if the 6th Defendant had acted dishonestly, the 85% balance would have been traceable to his Private Account and the Former EFCC Chairman, would not have written a Letter in August 2009 stating that some of the Projects had been completed whilst others had reached an advanced completion stage. He submitted that had he acted dishonestly, REA through the 1st Defendant would not have written a Letter in January 2009, directing the Banks not to pay any part of the 85% balance until the Projects were completed and a Written Instruction was received from the Agency.

Learned Counsel to the 6th Defendant in his Reply on Points of Law to the Prosecution's Address submitted that there was nothing on Record to show that the 6th Defendant facilitated through **Exhibits 160, 161, 200 and 201**, the withdrawal

of the Sum. The 6th Defendant did not appropriate to himself nor have dominion over the money or had association with any of the Companies and the Mode of Payment, which the Charge seeks to make reference to as the reason for the Breach of Trust is not a Mode enshrined in our Statutes. Finally, he stated that there was no single Auditor's Report tendered to show a financial deficit or loss suffered by the Federal Government.

Learned Counsel to the Prosecution **in his Reply on Points of Law**, made a wide sweeping and encompassing range of arguments, most of which have already been set out. In essence, there was a complete and total exclusion of the Procurement Department of REA in the process of the Contract Award and the signing and execution of the Certificates of No-Objection was beyond REA's Limit of N50Million. Further, they had sought Ministerial Approval from a Permanent Secretary purporting to be a Minister and all the funds exited from REA's Account with the Central Bank of Nigeria contrary to Policy and to the Contracts. The Defendants made no provision for the Retention of Funds and the Speed through which the Withdrawals of Funds were facilitated and the Deliberate Avoidance of any form of Competitive Tendering or Advert made them liable for Dishonest Conduct.

On the question of dumping, he distinguished the case of **UCHA VS ELECHI (SUPRA),** where Documents were tendered from the Bar from that of **NYAKO VS CAN (2013) ALL FWLR PART 686 PAGE 424,** where no Documents were dumped but adequately demonstrated. He argued that in this case, PW7 had identified and explained that the Cheques were issued for the total payment of the Contracts. Therefore, no document was dumped as contended.

On the question of the Prosecution rejecting and jettisoning its evidence, Learned Counsel to the Prosecution submitted that his earlier responses in his Written Address to the 1st Defendant's No-Case Submission had no relevance at this stage,since the Court had ruled on the No-Case, and the 1st Defendant had appealed against it. What determines the guilt or otherwise of the 1st Defendant is hard evidence and not concessions contained a Counsel's Written Address, which cannot take the place of evidence and he cited the case of **NDU VS THE STATE (1990) 7 NWLR PART 164 PAGE 550.**
According to him, it is the 1st Defendant, who made the U-turn. When initially called upon to open his Defence, he withdrew further participation in the Proceedings but now turned around to file a Final Written Address. Therefore, if the 1st Defendant was not tied to that earlier concession, the same should apply to the Prosecution.

In response to the submission of the 1st Defendant's Legal Representation, he stated that tendering all the Contract Agreements was a non-issue as there was no denial from the Defendants that the Contracts were awarded and this fact could be seen from their respective Statements to the EFCC, which requires no further proof, and he relied on the case of **AJIBADE VS THE STATE (2012) LPELR-15531 (SC).** The Defendants having admitted the Award of One Hundred and Fifty-Eight (158) Contracts, the Prosecution was under no obligation to further prove the Award of such Contract by tendering all the Contract Agreements.

Further, he argued that the Law only provided for 15% payment in advance not 100%, and any payment made in excess of 15%, and in violation of the manner of payment even though it was made towards the intended purpose, amounted to misappropriation. The Defendants' challenge that 100% were not paid to the Contractors, was immaterial as what is material is the fact that the REA's propriety right and dominion over its money became lost and extinguished the moment the entire monies existed REA's Account in December 2008 into the Contractors' Nominated Bankers' Account prior to signing the Contracts.

In addition, the 1st Defendant did not dispute the fact that 100% of the Contract Sum exited the Account of REA by the end of December 2008 and much of this fact was contained in his Statement to the EFCC, which obviates further proof from the Prosecution. Reference was made to the case of **EMEKA VS THE STATE 7 NSCQR PAGE 58.** The Defendants' justification as to why they hurriedly awarded and made payments into the Accounts of the Contractors was an implied admission of breaching the Rules regulating the release of funds for the Contracts awarded by facilitating the Withdrawals of the Funds from REA's Account with the Central Bank of Nigeria. It was needless therefore for the Prosecution to prove facts already conceded by them.

Apart from that, the Prosecution submitted that it is judicially acknowledged that direct evidence of Fraudulent Intent is seldom proved and the Courts could infer it from certain Criminal Acts of the Parties concerned. Reference was made to **MUFUTAU BAKARE VS THE STATE (1987) LPELR-714 (SC).** According to him, Fraudulent Intent could be inferred from the circumstances of the Meeting of the 10th of December 2008, wherein the Director of Procurement or any of his Subordinates were not invited to the Meeting as seen in **Exhibit 184,** and were conspicuously absent. There was no contrary evidence provided and the Minutes

and its Summary in **Exhibits 159 and 160** contained no Statement suggesting the reasons for their absence.

Fraudulent Intent could also be inferred from the fact of the Signing and Execution of the Certificates of No-Objection beyond the Agency Limit of N50Million and the Seeking of Ministerial Approval from the Permanent Secretary, purporting to be a Minister. The Defendants facilitated the exit of all the funds from the Central Bank of Nigeria contrary to Policy and the Contracts, with no Provision made for Retention of Fund. There was also the fact of the Speed/ Timeframe through which the Withdrawals were Facilitated and the Deliberate Avoidance of any form of Competitive Tendering or Advertisement as required under the Act. There was also their failure to provide the Criteria and Scores of any Pre-Qualification of the Contractors, who enjoyed their benevolence and generosity with REA's Funds, and there was no Tender Exercise and Evaluation. Further, there was no evidence that the Contracts were approved by the Tenders Board of the Federal Ministry of Power and contrary to the assertion that the Prices were procured from both Local and REA's in-house estimates, all the Contractors were paid the total sum of the Contracts, through their respective Banks.

According to him, the line of defence adduced by the Defendants that they never benefitted unjustly in the procurement exercise and the resultant unlawful payments is tenuous and does not in Law, afford the Defendants any Defence to the Charge of Breach of Trust, as these are not part of the elements of the Offence requiring proof from the Prosecution.

Now, after a careful consideration of theabove Submissions made by all Learned Silks/Counsel, in this regard, where each Party Representation defended their various contentions, the Court would initially consider **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 heis 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 thatthe 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.**

From the sum total of the evidence led, one cannot pick on any aspect of the facts, which supports the foregoing definition of Conversion, in relation to breach of trust. The Mens Rea to establish the offence of Conversion is very relevant and it is absent here and so without further ado, the Prosecution failed to establish this element beyond a reasonable doubt.

As regards the **Use** of REA's Funds, it is clear that the Prosecution failed to establish any personal benefit, whether financial or otherwise, accruing to any of the Defendants on Record showing beyond a reasonable doubt that the deployment of the Funds was to their own personal use. It would have been expected that the Prosecution through their Bank Statements or participation/ownership of some of these Companies showed that the Five Defendants got their hands grubby with filthy lucre. The Prosecution could have proved the Defendants gained from the Contract Sums in a sordid, distasteful or in a dishonourable and shameful way, but this fact, they failed to do.

As regards **Disposal**, it refers to the act of transferring the Property or relinquishing the control over the Property to another's care or possession, where by the Operation of Law, the Title over that Property is lost. This act of Disposal could either be done by the Defendants for their own personal interests or could be done by the Defendants on behalf of Third Parties.
In this case, it remained uncontroverted, the fact that the Defendants did in fact dispose off REA's Funds, as the Monies under the Amended Budget were depleted from the Account of REA at the CBN.

After finding satisfactory proof of disposal, it is important to decide whether REA's Funds were **Misappropriated**?
Misappropriation and a clear understanding of what the Term actually means is important. It is the Intentional and Illegal Use of Property or Funds. It is 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) NNLR 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.

Learned Silk representing the Prosecution had argued that any payment made in excess of 15%, even though made towards the intended purpose, amounted to Misappropriation as REA's propriety rights and dominion over its money became lost the moment the funds exited the Account of REA at the Central Bank of Nigeria. However, there is also the contention by the Defence that the money was used for the purpose for which it was intended and was not beyond the amount appropriated in the Amended Budget. Paul Erokoro SAN also contended that the Contracts were in the Appropriation Budget, assented to by the President, and awarded to Contractors, which by Documentary Evidence, shows the Projects were completed, and handed over and put to use. He submitted on the Prosecution's failure to tender One Hundred and Fifty-Seven (157) Contract Agreements, Cheques, Statements of Accounts of REA and the Contractors, the failure to call vital witnesses such as the Bankers and the Persons, who would testify in regard to the Nine (9) Companies with the same Address in Asaba and on the use of in-house estimates. He discussed also the paucity of evidence in regard to the Cumulative Sums, the dumping of documents and finally, the reasonableness of the Defendants' action to secure the 85% balance.
Offiong SAN representing the 2nd Defendant, submitted that the Prosecution failed to show how the monies were misappropriated for purposes other than those contained in the Amended Appropriation Act or violation of a Mode prescribed by Law. He went on to discuss the process of procurement by striving to justify the absence of the Procurement Department.

It is clear that Counsel across board descended heavily on facts that would be analyzed anon in the Judgment. 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.

In this instant case, there is the Amended Budget 2008, promulgated with very Clear Purpose and with Ultimate Set Goals. That Ultimate Goal was to fund both Solar and Grid Electrification Projects. The funds were already assigned for these Projects. The Amended Budget 2008 did not specifically mention who the Contractors should be. Therefore, it was up to REA, the Procuring Entity, to seek Competent Contractors using the Public Procurement Act as a Guiding Lamp. The questions to be asked therefore are: (1) Whether as long as the end result is achieved, what then is the problem? (2) Can it be rightly termed a Misappropriation if the Channels/ Modes/ Means are different from that mandated by the Law? (3) Does the Short Circuited Route or Bypass Route from the Official Standard Route, matter? (4) Does the fact that money was used for the purpose intended, solve every headache?And finally, (5) Is Misapplication of funds the same as Misappropriation of funds?

The answer to all the above Questions will be discussed anon.

Before dealing with whether the Actions of the Defendants constitutes Misappropriation, which was carried out dishonestly, it is important to tarry awhile and probe into the issues regarding what Law or Regulations or Directions of Provisions of the Law or Contract they are alleged to have been violated and the manner in which these violations occurred, would be a pointer and a strong indicator of whether there was misappropriation and whether the mode of disposal was dishonestly carried out.

PROSECUTION'S 5TH DUTY TO PROVE: VIOLATION OF LAW OR CONTRACT

The Prosecution must establish that the **Six Defendants,** did soin 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. They intentionally **allowed** some other Persons to do so **OR** commit the above stated.

These are terminal issues on whether there were Violations of Law, Contracts, Rules, Regulations, and Directives and in the event there are Violations.

As earlier stated supra, **Section 35 (2) of the Public Procurement Act**, and **Section 311 of the Penal Code Act**by recognizing the Contract Agreement, invariably imported and elevated the Terms of the Contract, giving it Statutory Force of Law on how Mobilization Fees and Subsequent Payments, upon issuance of Interim Performance Certificates, were to be disbursed or released.

The Prosecution's evidence is that the Ministry of Power had earlier forwarded to REA the Pre-Qualification Lists of Contractors and of the One Hundred and Thirteen (113) Companies on the Pre-Qualified List for Grid Extension Contractors, only Twenty-Four (24) Companies were awarded Grid Extension Electrification Contracts, whilst for the Solar Electrification Contracts, only One out of Forty-Five (45) Companies were on the Pre-Qualified List for Solar Electrification Contractors. *Learned Counsel representing the Prosecution* contended that despite the 2nd Defendant's Directive contained in **Exhibit 191**, a Memo where he had directed inter alia "…**the era of personal and political patronization on important National Project is over and neglect of such Orders by any Chief Executive shall attract Relevant Sanctions as provided by the Public Procurement Act of 2007**…", the 1st Defendant, as Chief Executive breached this Directive when he admitted in his Statements marked **Exhibits 186(A- H),** that Legislators in the National Assembly gave him the names of Contractors. An example is the recommendation by Jibo Mohammed, a then Member of the House of Representatives who recommended Dan Jubril & Co. Ltd, a Company he owned and whose Company was awarded contracts as seen in **Exhibits 1-5, 152-156**.

Further, the Prosecution submitted that most of the Contractors' Letters of Award had no addresses and in one instance, Nine (9) Companies having the same Addresses in Asaba and the same Telephone Number, were awarded Twenty-One (21) of the Forty-Five (45) Solar Electrification Contracts with only One Person, Miss Uduak Akpan, collecting all the Cheques on their behalf.

This act indicated a flagrant breach of the Order for Competitive Tendering as set out in **Section 24(1) of the Public Procurement Act**, which states that: -
"**Except as provided by this Act, all procurements of goods and works by all procuring entities shall be conducted by Open Competitive Bidding."**

Further, none of the Defendants produced the Criteria and Scores of the Pre-Qualification Exercise to the Investigators or the Bureau of Public Procurement Auditors, indicating yet again the fact that all the Contracts were awarded based on

the 1st to 6th Defendants whimsical in-house estimates, contrary to the requirement of Bid Evaluation as set out in **Section 31(1) of the Public Procurement Act**, which states:

"**All bids shall be first examined to determine to determination if they: -**

a) **Meet the minimum eligibility requirements stipulated in the Bidding Documents;**
b) **Have been duly signed;**
c) **Are substantially responsive to the Bidding Documents; and**
d) **Are Generally in Order."**

The Prosecution also contended that the Defendants failed to advertise any of the Projects for Competitive Bidding contrary to **Section 25(1) of the Public Procurement Act.** This Section is to the effect that, "**Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Bureau from time to time set the Monetary Thresholds for which Procurements shall fall under either System."**

On the 10th of December 2008, the 1st, 3rd to 6th Defendants who purportedly formed the Procurement Planning Committee and Tenders Board of REA sat and made decisions without Director of Procurement, Mr. A.S. Gurin being present. According to Mr. Gurin, he did not attend nor was he aware, as he was not invited to that Meeting. Further, none of his Staff in the Procurement Department were notified or invited to that Meeting. He did not sign both the Minutes of that Committee Meeting in **Exhibit 160** and the Certificates of No- Objection in **Exhibits 161 and 162**.

The Prosecution's evidence is that as a result of this Meeting, Two Certificates of No-Objection for Solar Electrification in the sum of **One Billion, Six Hundred and Forty-Two Million, One Hundred and Sixty-Four Thousand, Six Hundred and Sixty Naira (N1, 642, 164, 660)** and for Grid Extension in the sum of **Three Billion, Five Hundred and Sixty-Five Million, Two Hundred and Sixty Seven Thousand, Two Hundred and Eighty-Nine Naira (N3, 565, 267, 289)** were issued, notwithstanding the Statutory Prescription of the Public Procurement Act which mandated the Bureau of Public Procurement, to issue Certificates of No-Objection in these amounts. There was no evidence to show that the Tenders Board of the Parent Ministry, the Federal Ministry of Power or the Federal Executive Council approved the Contracts. Therefore, by subsequently awarding the Contracts, REA exceeded her Threshold.

It was submitted that the Approval sought and obtained from the 2nd Defendant in **Exhibit 200**, related to payments on the Grid Extension Contracts. By the admission of the Defendants in their respective Statements and by the unchallenged testimonies of PW5, PW6 and PW7, the Prosecution was able to ground the allegation of employing an unlawful Mode of Payment by the Defendants.
Reference was also made to the Limited Terms of the Approval given in **Exhibit 201** for the Solar Based Electrification Contracts, which was consistent with the position of the Law in authorizing no more than 15% upfront on the Contracts but did not go further to grant Approval for Advance Payment Guarantees of the balance Sum of 85%. The Defendants clearly breached this express Terms of Approval by paying the 85% of the Contract Sum, which they backed up with Advance Payment Guarantees. They failed to explain the basis for this action, perhaps it was because they knew they had violated the mode of discharging the Trust reposed in them. They had to have some form of awareness on the position of the Law in regard to the maximum percentage payable upfront on a Contract.

Referring to **Exhibits 6 to 151**, the Cheques issued in favour of the Contractors for the Contract Sums, the Prosecution contended that it could be seen that 100% Payment of the Contract Sum exited the Account of REA with the Central Bank of Nigeria between the 30th of December 2008 and early January 2009. This exit ran contrary to the Public Procurement Act as well as the Terms of the Contract, as seen in **Exhibit 179**.

The Terms of the Contract prescribed an Initial Payment of 15% backed by an Advance Payment Guarantee from a Reputable Bank. The next payment to be made was 75% and this was to have been furnished on Completion of the Project in the Contract Agreement. The final Payment was the 10% Retention Fee, which was to have been paid Six (6) Months after Completion.

The Provisions of **Section 35 of the Public Procurement Act**was referred to in relation to Payments for Contracts, where Learned Counsel submitted that most of the Advance Payment Guarantees provided by the Contractors, were received by REA between January 2009 and March 2009, a period after the exit of the 100% Payment from REA's Account.
It was further contended that no provision was made for Retention of 10% and the Certificates of No-Objection were signed for without this reservation of the Contract Sum.

On the contention by the 6th Defendant that since REA's money was used towards the Budgeted Projects as per the Amended Appropriation Act 2008, it could not have been said that the monies were misappropriated, the Prosecution argued this contention to be misconceived, as the Charge queried the Defendants' contravention of the Mode of Payments as prescribed by Law. Their misappropriation was not restricted to the purpose of payment but in the manner of payment, which is not merely administrative practice or direction but as set out in an Extant Law, namely **Section 35** of the **Public Procurement Act**. Therefore, the decision in **GEORGE VS FRN (CITED SUPRA)** will not avail the 6th Defendant's argument. The Mode of Payment need not be provided for and the question of conversion or disposal need not be established as the Prosecution has already established misappropriation.

It was also irrelevant that monies were paid to the Bankers for the benefit of the Contractors, as what is relevant is the fact that as at the end of December 2008, 100% Payments had left REA's Account with the Central Bank of Nigeria and any dominion exercisable by the Defendants over the said money became immediately lost. This money was no longer available to the credit of REA's Account with the Central Bank of Nigeria and the money was also not available to the credit of REA with the said Bankers to whom it was paid.

The Mode of Payment need not to have been provided for in **Section 315 of the Penal Code** or anySection of the Code, as what is required is that the Mode of Payment is contained in an Existing Law and in this instance, the provisions of **Section 35** of the **Public Procurement Act** prevails.

Finally, he submitted that the contention of the Defence on this point is in fact an admission of the violation of the Prescription of the Law regarding the Mode of Payment and could only qualify as an Allocutus as opposed to a Justification.

In answer to the above, Learned Silk to the 1st Defendant submitted that the 1st, 3rd to 6th Defendants were confronted with a number of realities, amongst which included: -

Firstly, the National Assembly's Warning Letter to the 1st Defendant dated the 29th of October 2008, on the non-implementation of the New Projects introduced into REA's Budget in **the Amended Appropriation Act 2008**, wherein it was stated that

any flagrant disregard of the Law would have attendant consequences. Further, the Ministry of Power had directed REA to implement its Budget.

Secondly, Section 118(1) (b) of the Financial Regulations, which required the 1st Defendant, as the Political Head of REA, to implement the Political Programmes of the Government.
Thirdly, there would be Punitive Interest on the delayed payments against the Government as set in **Section 37 of the Public Procurement Act,** which in essence dealt with prompt and diligent payments for the procurement of goods and services and prescribed a penalty of interest in delayed payments over Sixty Days.
Fourthly, there was the fact of the Return of all Unutilized Funds at the end of the Financial Year into the possession or control of the Accountant- General of the Federation as confirmed in the Testimonies of PW5 and PW6.

Fifthly, Learned Silk referred to **Section 16(1)** of the **Public Procurement Act,** which dealt with the availability of Budgetary Appropriations and Funds before Procurement Proceedings could be formalized, which had to be subject to the Thresholds set by the Bureau, who will then issue out a "Certificate of No-Objection" to Contract Award.

Sixthly, the Public Procurement Act required all Contracts to be advertised for a period of not less than Six (6) Weeks for submission, processing and evaluation of bids before Awards can be issued out, but there was no time to do so. Therefore, the only available Method was Direct Procurement as set in **Section 42(1)(b) of the Public Procurement Act,** which is usedin emergency situations,where there is urgent need of goods, works or services and it is impractical to do either a Tendering Proceedings or adopt any other method of procurement, and no dilatory conduct can be attributed to the Procuring Entity.

On the basis of **Section 42of the Act** above, REA's Tenders Board or Procurement Planning Committee as seen in **Exhibit 160**- the Meeting of the 10th of December 2008, decided to use the Direct Procurement Method and wrote to the Minister of State for Power seeking Approval. On the 14th of October 2008, the 2nd Defendant, as Permanent Secretary acted in the absence of Minister of State, gave REA the Approval to proceed with the Direct Procurement, which Method dispensed with the requirement to advertise. Learned Silk stated that the Approval further gave REA the mandate to pay in advance 15% of the Contract Sum and to issue Cheques

for the remaining 85% balance secured by Advance Payment Guarantees issued by the Contractors Bankers.

Apart from the above, Learned Silk representing the 1st Defendant, argued as false the proposition made by Prosecution that the 1st, 3rd to 6th Defendants were not genuinely the Members who ought to make up the composition the Procurement Planning Committee. He contended that from the Record of the Court, none of the Prosecution Witnesses had testified that the 1st, 3rd to 6th Defendants did not make up the Procurement Committee of REA. In fact PW5, Nasiru Bello the Assistant Chief Procurement Officer of the Bureau of Public Procurement, in his testimony under cross-examination had named the 1st, 3rd to 6th Defendants to be Members of that Committee. Further, by the provisions of **Section 17(a)(i) of the Act,** they also constituted the Tenders Board for the purposes of awarding contracts on behalf of REA.
On this note, Learned Silk urged the Court to hold as inadmissible and expunge from its Record, the Statement of A.S. Gurin, REA's Director of Procurement, on the ground that his Statement was Documentary Hearsay since he was not called as a witness.

Learned Silk to the 1st Defendant further argued that the 1st Defendant is charged through Counts 2 to 65 for violating the mode the trust was to be discharged but the Prosecution failed to prove this allegation by tendering the Regulations, Circulars or Written Directives he was said have violated, even though PW6 had stated that such Regulations were contained in Government Circulars.

Therefore, he argued that it was insufficient for the Prosecution to state that only the Public Procurement Act embodied the Directions for the way and manner the trust was to be discharged. The Act is just one of several Enactments that deal with the expenditure of Government Monies andhe listed out several others to include: the 1999 Constitution, the Revenue Mobilization, Allocation and Fiscal Commission Act, the Allocation of Revenue (Federal Account, Etc.,) Act, the Finance (Control and Management) Act, the Fiscal Responsibility Act, and the Financial Regulations. Reference was made to **Chapters 1, 3, 4 and 7 of the Financial Regulations No. 72 Volume 96, 2009 Edition**, which guided Contract Awards, Payments, Operation of Bank Accounts, Issuance of Cheques, Raising of Vouchers, obtaining of Approvals for Expenditure, etc.
The Public Procurement Act also did not regulate how Monies were allocated, how Accounts are opened, how Signatures to the Accounts are determined, the Controls

and Approvals for Expenditure, Preparation of Payment Vouchers, Deduction of Taxes and other Charges, as they are provided for in the Financial Regulations. There were also no Directions in the Act guiding the manner the 1st Defendant was to discharge his duties in relation to REA's Budget or Bank Accounts.

Finally, he submitted that the Offence of Criminal Breach of Trust was contained in the Penal Code Act of 1960, long before the advent of the Public Procurement Act and therefore, it was absurd for the Prosecution to suggest that it was the Act that introduced the Directions for Expenditure of Public Funds. According to him, the Act only deals with the process of Contract Award but not the Terms of any Trust.

Learned Silk, representing the 2nd Defendant on his own part, focused on **Exhibits 200 and 201** tendered before the Court. **Exhibit 201** is the Rural Electrification Agency Memorandum dated the 11th of December 2008, written by the 1st Defendant to the Minister of State seeking his Approval to award Forty-Five (45) of the Solar Electrification Systems and the payment of the 15% Mobilization Fee to each of the Contractors handling the Project. He stated that the 2nd Defendant, in issuing **Exhibit 201**, acted lawfully and did not violate the requirement of the elements of the offence charged in Counts 2 to 20. Since this element of violation of mode of trust was not proved, then the 2nd Defendant is entitled to an acquittal on those Counts.

Exhibit 200 is the Letter written by the 1st Defendant on the 17th of December 2008, yet again addressed to the Minister of Energy (Power) seeking his Approval to award One Hundred and Thirteen (113) Grid Extension Rural Electrification Projects. This Exhibit 200 went far beyond Exhibit 201, by further seeking the issuance of Cheques for 85% balance against Advance Payment Guarantee Certificates from Reputable Banks, meant to secure the funds.

Learned Silk argued that if the Prosecution had paid attention to the lucid language of the request for Approval and the Terms of Approval, they would not have concluded that there was a violation of **Section 35** of the Act. What was suggested was the issuance of Cheques to secure 85%, on the submission of Advance Payment Guarantees, which ensured that the Contractors did not have access to the funds covered by the 85% balance, unless they presented Interim Certificates of Job done,

issued by REA. The Banks also, were to allow partial drawdown according to the extent of work done.

Therefore, the 85% payments for the Contracts were not beyond REA's Control even after the issuance of the Cheques. The Banks were constituted as REA's Agents, for the purpose of making payments when the Interim Certificates for Jobs done were issued. On this contention, reference was made to an Advance Payment Guarantee in**Exhibit 189 at Clause 5.** This measure taken, was the appropriate arrangement, approved by the 2nd Defendant in **Exhibit 200**.

According to Learned Silk, this arrangement worked, in that none of the Bankers to whom REA permitted the release of the funds, for payment to the Contractors, did so without the presentation of an Interim Certificate of Job done as intended by **Section 35** of **Public Procurement Act**. Further reference was made to **Exhibits 255(1-32)-** the Series of Letters written by the 1st Defendant to the various Banks, titled, "Firm Instructions on Disbursement of Proceeds of 85% Contract Sum released to your Representative on behalf of Rural Electrification Contractors";**Exhibit 272-**is a Letter written by UBA Plc. to the 1st Defendant titled "Request for written clarification on payment of 15% Contract Sum to Solar Contractors"; **and Exhibits 226- 254-** the Series of Letters written by the Federal Ministry of Power to the Managing Directors of the various Contractors titled, "RE: Rural Electrification Agency Power Projects executed under the Year 2008 Amended Budget, Certificate of Job Completion**".**

Finally, he concluded that the Prosecution failed to prove beyond reasonable doubt that the 2nd Defendant violated the mode of exercising the trust prescribed in **Section 35** of the **Public Procurement Act**.

Learned Counsel for the 3rd Defendant, in his very Short Address, made absolutely No Submission on the question of Violation.

Learned Counsel for the 4th Defendant submitted that since the 4th Defendant was not shown to have had dominion over monies of REA or to have signed any of the Contract Agreements as confirmed by PW5, and the Audit Report in **Exhibit 182**nor was it shown that he knew about the payments of the various sums to various Incorporated Companies, he could not then be said to have reasonably facilitated such withdrawals in an alleged violation of the mode in which such Trust is to be discharged.

He did not possess the Mens Rea and Actus Reus to establish an offence under the Penal Code. The 4th Defendant had noted at the Meeting, the need to ensure that only performing Contractors was awarded the Contracts.
By signing **Exhibits 161 and 162** alongside others, he was performing his ordinary Official Duties as a Public Servant without any Criminal Intent or for any Pecuniary Benefit.
Furthermore, the act of signing the Two Exhibits, without more, is not an Offence known to **Sections 97(1) or 315of the Penal Code**.

Learned Counsel for the 5th Defendant, argued along similar lines as the 4th Defendant, stating that he was not responsible for the Award and Execution of any of the Contractual Agreements and was not a Director or Shareholder of any the Beneficiary Companies. During his evidence in chief, he heavily discredited **Exhibits 159 and 160**, which covered the deliberations at the Meeting, by stated that these Exhibits did not represent the correct events at the Meeting. He was also not invited to any of the Meetings where the Contracts were awarded and this fact was corroborated by DW6.

Furthermore, assuming the 5th Defendant's action of signingor endorsing **Exhibits 161 and 162** amounted to awarding the Contracts, it was argued that he still did not violate any direction of Law, as he was justified under **Sections 42(1), 43(2) and (3) of the Public Procurement Act**, which provided for emergency circumstances as in this case.

Learned Counsel for the 6th Defendant submitted that the allegations that the Contractors were paid 100% of the Contract Sums were bare, and no Documentary Evidence backed up the allegations. The Prosecution did not also prove that actual lodgements of the proceeds that were paid into the Contractors' Accounts. He cited **UBA PLC VS G.S. IND (NIG) LTD (2011) 8 NWLR PT 1250 PAGE 590 AT PAGE 621 PARAS A-C; AND SALEH VS B.O.N. (2006) 6 NWLR PT 976 AT PAGE 315.**
The Prosecution ought to have tendered the Receipts, the Defendants' Statements of Accountand the Contractors' Accounts to show that the money left the Account of REA with the Central Bank of Nigeria. Further, none of the Contractors or their Statements of Account was brought before the Court to show that they had received value for money. Had they done this, the Statements of Account would have confirmed that at the time the Defendants were arrested, and their Statements taken, between March and May 2009, no money was credited into any Contractor's

Account. He cited **Section 167(d) of the Evidence Act** on withholding unfavourable evidence and stated that the allegation of 100% advance payment is based on ignorance of law on delivery in escrow.

By the Terms contained in the Advance Payment Guarantees, none of the Contractors were paid 100% in advance, contrary to the oral testimony of PW7 and he noted that the Cheques were released to Nominated Banks only and notto the Contractors, who could not have access to the 85% of the Contract Sum, without the instruction from the 1st Defendant, as illustrated in **Exhibit 255 (1).**
The evidence given by PW7 that the Bankers had denied receiving the 1st Defendant's firm instruction and had orally told him so, is hearsay, having not brought them to Court to testify. On this, he cited the case of **OKOYE VS C.O.P (2015) 17 NWLR PART 1488 PAGE 276** and he urged the Court to expunge that piece of evidence.
Learned Counsel further referred to **Exhibits 157 and 272** to argue that they have justified the existence in fact of **Exhibits 255 (1-32),** and therefore these Exhibits discredited the testimony of PW7, on the above, thereby failing to prove beyond a reasonable doubt, the non-receipt of Exhibits 255 and the fact that monies had exited the dominion of REA.
To further validate his contention, he referred to the Letter dated the 18th of August 2009, written by the then Chairman of the EFCC to the Director-General of the Bureau of Public Procurement, acknowledging that the funds were still frozen in the Contractors Banks as seen in the last page of **Exhibit 224**.

In **Exhibit 224**, the Certified True Copy of an Application in **Suit No: FHC/ABJ/M/273/09**, wherein the Contractors mentioned in this Charge had filed an action for payment of the 85% balance of the contract sum after satisfactorily completing their projects, the EFCC did not oppose this Application, having been properly served. He noted that the Federal High Court subsequently discharged the interim order it made freezing the Accounts.

Also, by an Enrolled Order of the Federal High Court, Abuja presided over by Hon. Justice H.T. Soba dated the 22nd of November 2010, which discharged the Interim Freezing Order made on the 18th of May 2009, it showed that Five Months after the cheques had been given to the Banks, none of the Contractors had accessed to the funds, even at the time when there was no Freezing Order.

Again, on the 18th of April 2011 and 20thof December 2011, the Ministry of Power wrote to the various Banks authorizing them to pay the 85% Balance to the Contractors as each Contractor had completed, commissioned and put to use the Rural Electrification Grid Extension/ Solar Based Projects and went further to issue Job Completion Certificates to the Contractors to enable them get paid.

All these Documentary Exhibits clearly showed that the Contractors were not paid 100% in advance as orally alleged by the Prosecution's Witnesses and only the 15% permitted, was paid in advance. He cited the cases of **UBA PLC VS G.S. IND. LTD (SUPRA) AT PAGE 620 PARAS F-H; AND C.D.C. NIG LTD VS SCOA NIG LTD (2007) 6 NWLR PART 1030 AT PAGE 300.**

Learned Counsel referred also to the Contents of **Exhibits 255(1-32),** where REA had referenced the Written Undertaking made by the Banks to furnish REA with the Advance Payment Guarantee Certificates for the 85% Cheques on or before January 14th 2009. Therefore, he concluded that the Advance Payment Guarantees were given in accordance with the agreement reached with REA and the undertaking given by the Banks to provide a Bank Guarantee on a future date, as their consideration for the receipt of the monies was binding on the Bank. He referred to the evidence of PW7, who admitted that he knew nothing of the process by which Advance Payment Guarantees were issued and processed. According to him, the Advance Payment Guarantees are initially given in principle and formalized later by the Legal Department and Board of the Banks. Assuming the Advance Payment Guarantees were issued late, he opined that the most important thing is that the Banks never released the funds to the Contractors and there was no Breach of Trust bearing on dishonesty, fraud or wilful default on the part of the 6th Defendant. Therefore, the Government did not lose any money as a result of the alleged delays by some Banks in formalizing the delivery of the Guarantees.

Learned Counsel to the 6th Defendant had argued that the 6th Defendant did not violate any law and the provisions of **Section 35**of the Public Procurement Act. None of the witnesses testified as to the correct procedure to follow in the case of Direct Procurement. He also relied on **Sections 42, 43 and 60 of the PPA and Exhibits 182, 189, 190 1-40; 210 (A-D); 211(A-B); 220, 221, 254(1-75) and 255(1-32)** citing further the cases of **AWOJUGBAGBE LIGHT IND. LTD VS CHINUKWE (1995) 4 NWLR PT 390 AT PAGE 379 AT 425 PARA D AND VINCENT VS PREMO ENTERPRISES LTD (1969) 2 QB PAGE 609.**

He discussed **Section 43** of the Act, in detail about Emergency Procurement where he alluded that under this Situation, it dispenses with the need of many Rules of Procedure, including the issuance of the Certificates of No-Objection before Contracts are commenced, to enable the Procurement be done expeditiously and with ease and there was no recourse to the Bureau of Public Procurement needed at the onset.
Learned Counsel to the 6th Defendant submitted that the Public Procurement Act empowers the Procuring Entity to carry on with its processes and therefore, "it is immediately after the cessation of the situation warranting any emergency procurement" and after the conclusion of the Contract, that the Certificates of No-Objection is even issued and in essence, any Certificate issued earlier was just a surplusage.
He set out **Section 60** of the Public Procurement Act to define what a Certificate of No-Objection is, and submitted that **Section 43(4)** of the Act was complied with.

Learned Counsel further referred to the Documentary Evidence to say that the 6th Defendant only mentioned, requested and prayed for the Payment of the 15% advance. The endorsement on **Exhibits 167 Series** "DFM" was not referring to the Head of Legal and the instructions for the payment were not made to the 6th Defendant and neither was the 6th Defendant minuted to, by the "DFM" to pay. The 6th Defendant had only acted on the Approvals granted and he had nothing to do with the Second Minute on the Memo that instructed the processing of payment. All the 6th Defendant did was to seek the processing of the 15% payment allowed by Law and not the 85% payment in contention.

As regards the absence of the 10% Retention Fee, Learned Counsel submitted that there was no conflict, as the Advance Payment Guarantees was to lapse at the completion of the entire Project but the money would not be released until REA gave the go-ahead.

According to Learned Counsel, the 6th Defendant has not in any way deliberately or otherwise breached the Trust reposed on him and none of the ingredients for which he is charged with, has been proved in order to secure a conviction.

Finally, PW5 had testified that all the Five (5) Methods of Procurement listed in the Act were lawful and he had also agreed that all the unspent revenue had to be returned to the Treasury at the end of the year. The Prosecution failed to lead evidence to show that there was no emergency at the time, warranting payments by

installment and there was no proof of direct payment to any of the said Companies, coupled with the fact that the Mode of Payment referred to in the Charge was not enshrined in the Statutes.

In his Reply on Points of Law, he submitted that the word "**MAY**" used in Section 35 of the Public Procurement Act, did not suggest compulsion.

The Prosecution in his Separate Reply on Points of Law and in answer to Learned Silk to the 1st Defendant's argument that the Prosecution failed to state the Mode in which the Trust was to be discharged, and inattributing credence to the Financial Regulations over the Public Procurement Act, Learned Counsel for the Prosecution referred to his earlier Submissions and Arguments on the Question of Violations and went on to say that the Financial Regulations was a Subsidiary Legislation whose provisions could not override the express and unambiguous provisions of a Statute, citing the case **CO-OPERATIVE & COMMERCIAL BANK (NIG) PLC VS ATTORNEY GENERAL OF ANAMBRA STATE & ANOR (1992) LPELR-875 (SC).** Even where the Financial Regulations is elevated to categories of a Statute, its general provisions relating to Public Officers cannot override the specific provisions of the Public Procurement Act, which specifically touches on Modes and Manner of Payment for Procurement by Public Officers and on this point, he referred to **Section 15 of the Public Procurement Act** to be a specific provision in this regard and cited the case of **ATTORNEY- GENERAL OF THE FEDERATION & ORS VS ALHAJI ATIKU ABUBAKAR (2007) NWLR PT 1041 PAGE 1 AT PAGE 148 PARA H**.

After a careful consideration of the extensive Submissions of all Learned Silks/ Counsel on this point, what the Court would determine next is, whether there were any Violations of the Directions of the Law and/or Breach of the Terms of the Contract attributable to the actions of the Six Defendants. If so, then the Court would question what their mental state of mind was, at the time of the violation.

Violation of Law therefore is any act (or, less commonly, failure to act) that fails to abide by existing Law or something that needs to be treated with respect. Some acts, such as Fraud or Misappropriation, can violate both Civil and Criminal Laws. It 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.
This point is very important, in view of the fact that the Regulatory Laws place the Terms of the Contract on a high pedestal. The Terms of the Contract appears to be elevated from its Civil Rights, Obligations and Remedies to have Criminal Obligations and Liabilities by giving it Statutory Flavour under **Section 35 (2) of the Public Procurement Act and by Section 311 of the Penal Code Act**,where it was so recognized.

In this instant case, the Regulating Laws, Directives and Guidelines as well as the Obligatory Terms under the Contract between REA and all the Contractors, will be examined to determine if the actions taken by the Officials of REA and the Ministry of Power were in Strict Compliance with the Terms of their Contract Agreements.

Learned Silk representing the 1st Defendant, did not fault Count 3 of the Charge on the basis that the Contract Agreement, being one of the Documentary Components enclosed in the Count, was in evidence for consideration. But he faulted the remaining Sixty-Three (63) Counts, for the failure of the Prosecution to tender the Contract Agreements entered into with each of the Contractors named in the Counts. On this contention, Learned Counsel for the Prosecution reacted by referring to the cases of **AJIBADE VS THE STATE (2012) LPELR-15531 SC AND EMEKA VS THE STATE 7 NSCQR PAGE 58,**to argue that admitted facts needed no further proof. The Defendants had admitted the Award of the One Hundred and Fifty-Eight (158) Contracts and the Prosecution was under no obligation to prove the Awards further by tendering the various Contract Agreements.

Now, to evidence the fact of more than One Contract in this Charge, there is evidence before the Court showing that 15% Payment was made in Separate Cheques from the 85% Payments, that is, there were Cheques made out to different

Contractors. The Defendants in their Oral Submission and Written Statements and by the Documentary Evidence, did not dispute this fact and so it is not a question of only One Contract Agreement being tendered before the Court that enables the Court arrive at this conclusion. The Prosecution Witnesses, and the 4th to the 6th Defendants also said as much.
Another example evidencing more than One Contract is seen in the **Exhibit 255 Series**, especially **255 (2),** where the 1st Defendant wrote to UBA Plc., stating in its Preamble recalling the fact that REA awarded contracts to Forty (40) Rural Electrification Contractors to execute Solar Projects…This Statement on its own, has told the Court that there were more than One Contract.
Further, there are also **Exhibits 170 (A1 to 113)**, the Payment Vouchers Bundle of Documents for the sum of 15%, paid on the Grid Extension Projects and with **Exhibits 169 (A1 to 111)**, the Payment Vouchers Bundle of Documents for the sum of 85%, paid on the same Grid Extension Projects.
Exhibits 168 (A1-A40), on their own part, are the Payment Vouchers Bundle of Documents for the sum of 15% paid on the Solar Projects and with **Exhibits 167 (A1 to 37)**, the Payment Vouchers Bundle of Documents for the sum of 85% balance, paid in regard to the Solar Projects.

Therefore, all the above, evidence the fact of more than One Contract Agreement and it was not compulsory for the Prosecution to tender all the remaining Contract Agreements into evidence. Had the Defendants, especially REA as a Body, denied the existence of these Contracts and had performance under the Contract been an issue before this Court, the Prosecution would then have been required to tender all the Contract Agreements before the Court. But that is not the case and therefore, **Exhibit 179**, the Contract Agreement before the Court would suffice.

To have a clear understanding about any possible violation of Contractual Terms, it is perhaps expedient to discuss the Two Approvals granted by the 2nd Defendant to see if the Contract Agreement complied with the Terms of the Approvals given.

From the Documentary Evidence, especially in **Paragraph 8 of Exhibit 159**-the Summary of the Procurement Planning Committee Meeting's Decision held on the 10th of December 2008, it was agreed by the Convening Members that Two Memoranda be sent to the Minister of State, Federal Ministry of Energy (Power) to seek Approval for Award of Contracts on Solar P.V.s and Grid Extension Projects.
The 1st Defendant as Managing Director/ Chief Executive of REA wrote the First Request for Approval vide **Exhibit 201**, a Memorandum dated the 11th of December

2008 addressed to the Honourable Minister of State seeking Approval for Execution of the Solar Based Rural Electrification Projects. It is noted on the Second Page of this Memorandum, that the 2nd Defendant, in his capacity as Permanent Secretary of the Federal Ministry of Energy (Power), assumed the position of the Minister of State and minuted his Approval on the same day the Memorandum was addressed to him. Consequent upon his Approval, Letters of Offer of Award of Contract for the Solar Based Projects dated the 12th of December 2008 were written by the 1st Defendant to the Managing Directors of various Contractors.

Six days after the First Approval in **Exhibit 201**, the 1st Defendant sent on the 17th of December 2008, the Second Request for Approval in **Exhibit 200** addressed yet again to the Minister of State seeking Approval for the Grid Extension Rural Electrification Projects and again, the 2nd Defendant in that Capacity as Minister of State minuted his Approval on that same day. On the same 17th of December, 2008 the 1st Defendant issued out Letters of Award of Contract to various Contractors for the Grid Extension Rural Electrification Projects.

It is evident from the Records that consequent upon these Two Approvals secured from the 2nd Defendant on the 11th and 17th of December 2008, Offers of Award of Contracts for the Solar Based and Grid Extension Projects were issued to Contractors and Contract Agreements were entered into between REA and the various Contractors. As an example is Dan Jubril & Co. Ltd, one of the Contractors to whom was offered an Award for the Provision of Solar Street Lighting System (SLS) on the 12th of December 2008 as seen in **Exhibit 203**. On the 30th of December 2008, a Contract Agreement in **Exhibit 179** was entered into between 1st Defendant, as Managing Director/Chief Executive of REA and Dan Jubril & Co. Ltd, which he together with 6th Defendant jointly signed on behalf of REA, on the one hand and with the Managing Director and Secretary of Dan Jubril & Co. Ltd, on the other hand. PW7 led evidence as to the Comparative Documentary Analysis conducted by his Team in relation to Dan Jubril & Co. Ltd, showing that this Contractor took the benefit of 15% and 85% of the Contract Sum for the Solar Based Projects awarded to it by REA.

By the 30th of December 2008, when the Contract in **Exhibit 179** was entered into, Approval had been sought and obtained for the provision of Solar Based Rural Electrification in Niger State on the 11th of December 2008. In **Exhibit 201**, the Approval was for: -

"1) The award of Contracts for a total number of 45 Rural Electrification Projects to wit: 4N0 Solar Home Systems (SHS), 31N0 Street Light Systems (SLS) and 10N0 of Mini Grid Systems (MGS) in various Constituencies across the Country in favour of the 45 Contractors listed in the document marked Annexure A attached herewith in the total sum of N1, 624, 164, 660.00 (One Billion, Six Hundred and Twenty-Four Million, One Hundred and Sixty-Four Thousand, Six Hundred and Sixty Naira) only, with a completion period of Twelve (12) Months;
2) The Payment of 15% Mobilization Fees to each of the Contractors handling the Project."

The 2nd Defendant had minuted **"MD REA Approved"** and signed it, dating his approval on the 11th of December 2008, for the payment of 15% Mobilization Fees **ONLY**. There was nowhere stated in this Exhibit that Approval was given to proceed in the manner the Contract Sum was eventually disbursed. If there had been an express approval for the payment of the 85% balance covered by Advance Payment Guarantees, it was not produced before the Court.

By the Mandate given in **Exhibit 201**, any Payments made contrary to this Approval could only have emanated from Statutory backing, empowering the Managing Director and his Procurement Team to disburse in the way and manner they eventually paid out the Contract Sum. The Statutory Backing of the Regulatory Law is the only authority that could override the Ministerial Authority and Directive.

The Approval given by the 2nd Defendant for Payment of 15% Mobilization Fee of the Solar Based Rural Electrification Projects was in order to the extent of the Percentage approved on the individual Contracts, in that, it complied with **Section 35 of the Public Procurement Act**. At the end of the Contract, they could then write for 75% and then Six Months Later, write for 10%. Whether or not, the 2nd Defendant was then empowered to approve the **Total Amount** of the Contract Sum is another issue, as the Total Figure approved, exceeded not only REA's Threshold but also that of the Minister, he represented. It is in evidence that the 2nd Defendant had a Threshold Limit of One Million Naira (N1, 000, 000.00).

As regards the Grid Extension Rural Electrification Projects, **Exhibit 200** dated the 17th of December 2008, was very clear on the manner of Approval sought and granted. It is observed that, in the Application for Approvals of the Grid Extension Rural Electrification Contracts, it specified for: -

"1) The award of Contracts for a total number of 113 (One Hundred and Thirteen) Grid Extension Rural Electrification Projects in various Constituencies across the Country in favour of 113 deserving Contractors of which said projects are listed in the Document marked Annexure A attached herewith in the total sum of N3, 565, 267, 289.00 (Three Billion, Five Hundred and Sixty-Five Million, Two Hundred and Sixty-Seven Thousand, Two Hundred and Eighty-Nine Naira) only, with a completion period of Twelve (12) Months;
2) The Payment of 15% Mobilization Fee to each of the Contractors handling the Project.
3) The issuance of Cheques for 85% balance of the Contract Sum to the Contractors against the submission of an Advanced Payment Guarantee (APG) Certificate from an acceptable Bank to secure the amount."

In it, the 2nd Defendant had minuted the following **"MD REA Approved as appropriate".** He then signed and dated his Approval on the 17th of December 2008. For this Grid Project, the Approval was specific to the Payment of 15% Mobilization Fee and the issuance of Cheques for 85% balance of the Contract Sum to the Contractors against the Submission of Advance Payment Guarantee (APG) Certificates from Acceptable Banks, who would secure the amount.

After the Defendants, excluding the 2nd Defendant, secured the above Approvals, they then drafted their own Contract Agreements in this manner typified in **Exhibit 179.**
The Court would now examine the Relevant Clauses to determine whether they complied with the Terms of the Approvals given and whether even by the Terms inserted/adopted by REA, they violated the Terms of the Contract.
Clause 3.0states that: -
"The following Documents shall be deemed to form and be read and construed as part of this Agreement:

i. REA's Letter of Offer of Award, Specifications, Drawings, Data and other Documents,
ii. Letter of Acceptance of the Award,
iii. Written Statement attesting to the Country of Manufacture of Materials and Equipment to be used in the execution of the works,
iv. Bill of Quantities/ Specifications."

Clause 5.0stated that: -

"The Employer hereby covenants to pay the Contractor the Contract Price at the times and in the manner prescribed in the Clause relating to Terms of Payment in this Agreement."

Clause 9.0
"The Employer shall pay an amount representing 15% of the total Contract Sum to the Contractor as Down Payment/Mobilization Fee upon the execution of this Agreement and on the presentation by the Contractor of an Advance Payment Guarantee (APG) Certificate for the same amount from a reputable Bank acceptable to the Employer."

9.1- The Second (2nd) Payment of an amount representing 75% of the Total Contract Sum shall be made at 100% Completion i.e. installation of the equipment, poles, earthing, and pre-commissioning tests.

9.2- The Third (3rd) Payment of an amount representing 10% of the Total Contract Sum shall be made Six (6) Months after Completion (Defects Liability Period) and in the absence of any Defect during the said months period, the said 10% Retention shall be paid to the Contractor.

9.3- The Payment Schedule described in Paragraphs 9.1 and 9.2 above is without prejudice to the right of the Contractor to proceed with the execution of the works without **any** advance payment, and non-payment of money shall not be an excuse for non-performance on the part of the Contractor.

9.4- The Contractor shall comply with any instruction of the Employer for the purpose of effecting Payments described in Paragraphs 9.1 and 9.2 above."

At a glance, it is easy to see that REA did not comply with the Terms of the Approvals given and it did not make any iota of sense for these Terms enclosed in the Contract Agreement to be set out contrary to the above Express Approvals given. Since the Consent had been granted, there was little or no point in the Drafters of the Contract Agreement failing to set the Terms of the Contract as per the Approvals granted. The Approvals had been granted **before** the Award, so there was nothing to hide and no reason adduced by any of the Defendants, as to why Payments were made contrary to each "Approval" given. If the Approvals were legitimate, the question must be asked, why were the specific terms of the

Approvals ignored when encasing the Terms of Payment into the Agreement, as they were to be bound by the Terms? It is strange indeed!!

The Defendants, excluding the 2nd Defendant, cannot reasonably say that they utilized a Standard Contract Agreement because the Names of the Parties, the Specific Projects, the Contract Sums, the Timing and Location were peculiar to these Contracts and even if, the Standard Contract Agreement was modified to include these peculiar details, there was no reason adduced by any of the Defendants as to why they did not go further to modify the Standard Agreement to include the peculiar Terms of the Approval granted.

Turning to the Terms of the Contract Agreement itself, whether authorized or not, (because this is the Agreement that binds REA), it is clear that the expressly stated Timeframes and Percentage Stage for payment was to be the initial 15% payment on production of Advance Payment Guarantees, the next was 75% of the total sum due on Completion of the Works and a Retention Fee of 10% to be withheld for Six Months after Completion of the Projects. Any deviation from the Terms of Payments to the Contractors would be a violation as per Clause 5 and definitely outside the mandate of the Contracting Parties. They violated the Terms of the Contract when they made the Payment Structure Twofold as opposed to Threefold and therefore, Clauses 9.0, 9.1 and 9.2 of this Contract Agreement deviates sharply from the Terms of the Approval.
Had the 1st Defendant taken the specifics of the Approvals granted to heart, these were unnecessary Clauses to breach, as they ought not to have been included into the Contract Agreement in the first place. The Contract is silent on the Interim Performance Certificates, which inclusion was imperative, in view of the fact that the Defendants claimed they wanted to secure the balance payments already made.

By Clause 9.3 of the Contract Document, the Contractors could have proceeded with the execution of the works without **any** advance payment, as non-payment of the Contract Sum was not to be regarded as an excuse for non-performance on the part of the Contractors. So, the argument that the Contract would have been frustrated without the manner and the speed of payment is not supported by this particular term of the Contract Agreement and Clause 9.3 appears to defeat the unanimous contention of the Defendants that REA would have incurred great liability or incurred Interest Penalty, had they not made provisions for the payments of the 100% Contract Sum. Since the Contractors were to read the terms of acceptance into the Contract Agreement by Clause 3.0, their simple acceptance of the terms of payment, would not have attracted any modicum of interest. This is because the

Contractors knew they were going to be given 15% by the Contract Agreement they signed and ought not to expect payment of 100%.
Clause 9.0 of the Contract Agreement had mentioned that 15% was to be paid as down payment upon presentation of Advance Payment Guarantee, which did not extend to the 85% Balance.
Further, 75% was to be paid on completion and the third payment of 10% would have been on completion after Six Months. The Clause further says that non-payment shall not be an excuse for not executing the Contract. It is only when the Contractors have finished the Job and were not paid the 75% that interest would accrue.
Clause 9.4 imposes a compulsion with the word **"SHALL**", which brooks no argument or contention or even a subjective belief.

Again, by **Clause 17.0,** the liability/ Interest, appeared to fall on the side of the Contractors and was in favour REA and it was expected that the 1st Defendant testify before the Court to clarify these Clauses. The Terms of this Clause only made available liquidated damages for the benefit of the Contracting Party, REA, and not the Contractors. Interest is payable from the Contractors and not the Employer. So, if there is anything holding REA liable, it is by the provisions of the Act and not the Contract.

Under **Section 37(3) of the Public Procurement Act**, it refers to the Interest specified in the Contract Agreement. On the assumption that it was not specified, one could apply the nexus or affiliation rule to say that the interest due would be 1% of the Contract Sum. Even the fact that REA ended up giving Cheques in January, outside the Year 2008, this was already a delayed payment, because by this time, the money was supposed to have rolled over into the Federal Treasury.

The 1st, 3rd to 6th Defendants also breached the Terms of the Approval by going beyond the 15% approved Contract Sum for the **Solar Projects** unless they had already got another Approval that is not produced before the Court. Their Approval was only for 15% and nothing more.
They cannot be exempted from the Breaches that flowed from the Violation of the Terms of the Approval regarding these Solar Projects.
As regards the Grid Extension Projects, even though they appeared to have full approval, they went outside the Mandate of the Approval and made payments contrary to the Terms encased in the Contract Agreement.
Therefore, the Court is satisfied that the 1st, 3rd, 4th, 5th and 6th Defendants breached Certain Contract Terms.

As regards the 2nd Defendant, no evidence was adduced to show his participation in the Contract and therefore, he is found not liable on this Head.

Now, before delving into the consideration of Violation of Law, it is important to Study the Exhibits tendered and Evidence adduced in regard to the Two Projects and the Court notes that the Procurement Planning Committee convened on the 10th of December 2008, sought Approval for the Solar Projects the next day, which was the 11th of December 2008, and the Approval by the 2nd Defendant was given on the same day, the 11th of December 2008. Thereafter, the Letter of Award of Contract was issued out on the 12th of December 2008.

For the Grid Projects, the Approval was sought on the 17th of December 2008, granted on the same day and the Award of the Contract was issued on the same day. From this Meeting of the 10th of December 2008, Two Summaries of the Procurement Planning Committee Meeting's Decisions are before the Court in **Exhibits 159 and 160**. Mr. Matthew Onwusoh Esq. wrote **Exhibit 159**, as Acting Secretary/ Legal Adviser and it was dated on the 10th of December 2008.
Exhibit 160 dated the same day, had almost the same content except for the Preamble, the Numbering and the Closing Paragraph and the fact that Mr. Kayode Oyedeji Esq. as Secretary/Legal Adviser, signed it.
There is also a marked difference in the instructions given at the Meeting. In **Paragraph 8 of Exhibit 159**, which is **Paragraph 9 of Exhibit 160**, it can be seen that the Director of Projects was instructed to raise a Memo on Approval for the award of Grid Extension Projects, while the Secretary/Legal Adviser should raise another Memo on Approval for award of Contract for Solar P.V.s. In the reproduced version of **Exhibit 160**, the 6th Defendant wrote that it was for the Secretary/Legal Adviser to prepare a Draft of the Two Memoranda for the MD/CE's consideration. It can further be seen that while one instruction was for the actual Memo, the other was for a Draft.

The evidence before the Court revealed that Mr. Kayode Oyedeji had been absent at the Meeting held on the 10th of December 2008 but on his arrival, he reproduced the said Minutes, as if he was present. His Written Statement before the EFCC in **Exhibit 185B,** had stated that he attended this Meeting but in his oral testimony before the Court, he recanted this, stating that when he made the Statement, he was under tension. Even though he had not explained what or who caused the tension, the ability to tell the truth must be constant regardless of any tension or pressure. He

only reproduced what he was given to him by the Acting Secretary and not what he personally witnessed.
Therefore, the Court would prefer to focus intently on **Exhibit 159** for the purposes of understanding what actually took place at the Meeting and who were in attendance.

Turning to the Meeting of the 10th of December 2008 itself, the purpose of the Meeting as narrated by the 1st Defendant was to resolve potential challenges militating against deadlines for the delivery of the Agency's Programmes before the end of the year, in respect of the deployment of both the Solar P.V.s and the Conventional Grid Extension Projects. The 1st Defendant affirmed being aware of the indisposition of the Director of Procurement and frowned at the absence of any other Officer from the Directorate of Procurement at this important Meeting.

From this Summary, it appears that the 1st Defendant **hadalready** commissioned a Technical Team composed of the Assistant Director (REE) and SM (Electrical) to collaborate with the relevant Zonal Offices to carry out scoping and surveying of deserving locations as well as productions of designs and corresponding BOQs. The Assistant Director was invited to brief the Members on his Teams' activities and he stated that his assignment covered Four States including Niger, Ogun, Kogi and Delta States. He explained that the prices were sourced from both Local and International Sources. He also reported on the mechanism adopted to arrive at the in-house cost estimates of the various packages, noting amongst others, that Budgetary Provisions under the 2008 Budget as Amended limited the Designs. In reaction to his explanations, the Meeting resolved not to compromise standards and specifications for the Solar P.V. Systems and since the Costing was based on USA and Western Europe, the Supplies must originate from those Countries.

From the above, there is an indication that the question of the issuance of the Contracts in the Charges before the Court, were not discussed at the Procurement Meeting. This is because a Technical Team had already been **constituted** to collaborate with the **relevant**Zonal Offices to carry out surveys, scoping etc., of the deserving locations and produce designs and BOQs. The question of **when** the Team was constituted is not indicated and neither is it indicated **why** the Zonal Offices visited, were peculiar and relevant. Since it was not a Nationwide Visit to all the Six (6) Zonal Offices, **what** makes the visited Zonal Offices relevant? This needed an explanation from the 1st Defendant, who constituted that Team.

Yet another indicator that the Project Preparation was well in progress, is the Offer of Award of the Contracts, because immediately after the Approval was given by the 2nd Defendant, the Location was known, the Numbers of Installations and Pricing were already set. It would have been an uphill task and almost impossible to arrive at these specifications without any prior investigation and enquiry. Had it been One Contract in all that was awarded, this may be difficult but not impossible. But for Forty-Five (45) Solar Contracts in different Locations awarded to different Companies with different Prices, is a near impossibility to prepare, unless the Companies were known prior to the Meeting held on the 10th of December 2008 and before the Approval was granted by the 2nd Defendant.

This is further validated by the Memorandum raised by REA in **Exhibit 201** to the Honourable Minister of State, seeking Approval of the Minister where he attached as Annexure A, the Total number of Forty-Five (45) Solar Projects within a completion period of Twelve (12) Months and this Annexure contained not only the names of Contractors but the Location, the Numbers and the Unit Cost of each. The Specifications were also annexed as **B1, B2 and B3** as well as the relevant Pages of the **Budget as Annexure C**.

The 1st Defendant as Managing Director could only have included this List of Companies if he had "**already decided**", which Companies were to be awarded the Contracts. So if the Meeting of the 10th of December 2008 did not discuss the names of the actual Awardees of the Contract, where then did the List come from? There is no evidence before the Court of any other Meeting convened to set the Criteria, Standards, Scope and Costing as well as other Preliminaries, so where and when was this List compiled and who decided the Criteria for Award since the Procurement Department distanced themselves from the Award of these Contracts in the first place?

These are very valid questions that the 1st Defendant needed to have answered, had he testified.

From the Award of Contract Letters admitted as **Exhibits 169 (A1 to A111)**at Paragraph 4, it was stated that, "You are to report to Director (Projects), Rural Electrification Agency at REA Corporate Headquarters, N0. 16 Gwani Street, Off IBB Way, Wuse Zone 4, Abuja for detailed briefing and collection of Contract Documents to wit: Bill of Quantities, Design Drawings, etc."

Since the Pricing was already done, the Court can see in **Exhibits 169 A1** that the Supplies and Prices were already inserted into the Offer, which indicates premeditation because the Award of Contract was dated the same date as the Approval. It would have been expected that the Contractors would supply the Bill of Quantities and Unit Pricing, as they are the persons to engage with the Local or International Suppliers and not vice versa. Had this been a Competitive Bidding Process, this manner of Contract Award would not have been known at the onset, but would have arisen after the Bid Evaluation Committees, would have narrowed down the Bids. This fact was further attested to by PW5, Mr. Nasiru Bello, the Assistant Chief Procurement Officer of the Bureau of Public Procurement and byMr. Abdulkareem Sa'adu Gurin, the Director of Procurement of REA in **Exhibit 184**, his Written Statement, wherein he had explained the procedure for Procurements. This Statement was admitted without any Objection by all Learned Counsel, and the fact that he was not called to testify, cannot take away the value of what he said, in regard to an area of his personal experience.

In the Written Address of Learned Silk Erokoro, he challenged the admissibility of this Statement on the ground that the Maker was not called to testify as a Witness rendering his Statement as Hearsay Evidence.

In the first instance, this argument is belated because when it was sought to be tendered, there was no Objection from any quarter challenging its admissibility. It was held in the cases of **C.F.A.O. VS THE ONITSHA INDUSTRIES LTD (1932) 11 NLR PAGE 102 AT PAGE 103; ADEBAYO & ORS VS CHIEF SHONOWO & ORS (1969) 1 ALL NLR PAGE 176 AT PAGE 190; EZOMO VS OYAKHIRE (1985) 1 NWLR PT 2 PAGE 195 AT PAGES 202, 203** that, "It has since been established by a plethora of authorities that the appropriate time at which a Party to a Proceeding should raise an Objection based on Procedural Irregularity, is at the Commencement of the Proceedings or at the time the Irregularity arises. If the Party sleeps on that right and allows the Proceedings to continue on the Irregularity to finality, then the Party cannot be heard to complain at the concluding stage of the Proceedings or on Appeal thereafter, that there was a Procedural Irregularity, which vitiated the Proceedings."

In the case of **OLABODE VS THE STATE (2009) LPELR- 2542(SC) PER ADEREMI JSC,** His Lordship held that the Prosecution was not duty bound to call all witnesses. Therefore, the need to call any witness must first arise and it is not a matter of course that the Maker is called. See also **STEPHEN JOHN & ANOR VS THE STATE (2011) LPELR-8152 (SC).**

Besides, **Section 83 of the Evidence Act 2011 (As Amended)** permits the admissibility of Documentary Evidence, where direct oral evidence of a fact would be admissible and any Statement made by a Person in a Document, who had personal knowledge of the matters and whose Statement seems to establish that fact, shall on production of the Original Document be admissible as evidence of that fact and provided the Conditions under the Act is satisfied.
The Document is considered relevant with evidential value placed on it having been written by the Director of Procurement of REA and in the absence of a timely Objection, and in view of the above Section 83, the Court finds the Statement in **Exhibit 184** to be relevant and will remain admissible for the purposes of this Judgment.

The next question that arises is, how were the prices **sourced** from both Local and International Sources? The issue of Price Sourcing was put in the past tense and so it can only be deduced that the pricing had been done before the Meeting of the 10th of December 2008. Also these costing were reportedly based on Western Europe and USA Prices and so, it is safe to deduce that the process for the award of the Projects were already in progress by the time the Meeting was held. Any doubt that the foregoing observations referred to other Projects not under the 2008 Amended Budget, were dispelled by **Paragraph 4(c)**, which stated that the designs were limited by the Budgetary Provisions "**under the 2008 Budget as amended."** This was a revelation indeed. It showed that all the Site Locations, Pricing and Location of Supplies, were related to the Contracts under consideration in this Judgmentonly. If it did not, then the claim by the 4th Defendant that only performing Contractors be awarded the Contracts does not make any logical sense. Further validating this deduction, is the Statement made by the 1st Defendant that the Surveys, Designs and BOQs for the various "new Projects <u>have been</u> conducted and compiled for onward transmission to the Federal Ministry of Energy (Power) for necessary action.

It is also important at this point to inject the consideration of certain Exhibits. **Exhibit 191,** the Circular written and issued out to all Ministries, Departments and Agencies dated the 2nd day of June 2008, wherein the 2nd Defendant, as Permanent Secretary, intimated them of the Public Procurement Act and instructed them to set up a Department of Procurement with Set Organogram. He stated that the Chief Executive Officers must also ensure that payments are **made on agreed milestone basis** and that **full payments** for Contracts can only be **made after full completion of projects.** Further, the **Accounting Officers/CEOs shall be held responsible for all Procurements and poor implementation of the 2008 Appropriation**. He

must also ensure that jobs are only **awarded to Competent, well-established Companies with "proven records of performance".** As a finale, he noted that the era of personal and political patronization on important national projects is over and neglect of such orders by any Chief Executive Officer shall attract relevant sanctions as provided by the Public Procurement Act of 2007.

There is also **Exhibit 194A**, the Statement of Dr. Abdullahi Aliyu, the 2nd Defendant, who was the Permanent Secretary of the Ministry of Energy (Power), where he referred to **Exhibit 191** and where he emphasized that as provided by the Financial Regulations, No Payment should ever be made for a Job not done. In his Statement dated the 5th of May 2009, he stated that there was correspondence between the National Assembly and REA on the Projects and that the Grid Extension and Solar Projects implemented by REA were the ones introduced by the National Assembly. He stated that the Managing Director of REA is self-accounting and released monies to the Contractors without his knowledge.
The 3rd Defendant in his Written Statement as **Exhibit 197**B mentioned that Projects were Constituency Projects for the National Assembly Members. The Projects were listed State-by-State and the names or list of names of Contractors were not given to the Members of the Procurement Meeting and the only thing given was the Appropriation List. Further, he stated that the Committee did not discuss the Payments of the Contracts but as per the Minutes of the Meeting, a Memo was written to the Minister of State of Power. When the Approval was obtained, the 1st Defendant minuted to him, directing the Payment of 15% and 85% to be secured by Advance Payment Guarantees.

The 4th Defendant in his Written Statement as **Exhibit 198C** stated that at the Meeting, discussions were made on how to implement the Year 2008 Amended Budget and even though it was agreed that the Projects should be executed, the List of Contractors to execute the Projects were not tabled at the Meeting.

The 5th Defendant in his Written Statement as **Exhibit 196B** stated also that the Names or the List of Contractors were not presented at the Meeting.

The 6th Defendant in his Written Statement admitted as **Exhibit 185B**, stated that he prepared the Draft Letters of Award for vetting, which was approved. He was given the List containing the Addresses of the Contractors and he prepared the Letters of Award. He did not say that the Names of the Contractors were discussed at the Meeting.

Turning back to the Summary of the Meeting, in **Paragraph 5 of Exhibit 159**, the 1st Defendant as Managing Director, explained to the Members that there were no provisions for new Projects in the 2008 Budget but noted that the manifestation of new Projects in the 2008 Budget as Amended, was a result of a **special arrangement between the Executive and Legislative Arms of Government.** He noted that Legislators, who had already indicated interest in their execution, introduced these Projects into the Budget. The 4th Defendant then stressed the need to ensure that only Performing Contractors were awarded the Contracts.

The 1st Defendant in his Statements **Exhibits 186(A-H)**, stated that the Agency commenced Site Visitations and Projects Scoping on November 14th 2008, after series of meetings with the House Committees on Power and Steel, Committee on Rural Development and the Senate Committee on Power and Steel. He had sought their assistance in identifying the respective Project Sponsors in the National Assembly, as they were Constituency Projects.
According to him, these Committees assisted the Agency in its surveys by contacting individual Senators or House Members, who nominated or ~~inserted~~ sponsored the Constituency Project(s) for inclusion in the Budget. The Scoping, Designs and Preparation of Bills of Engineering Measurement and Evaluation (BEME), were all developed by Engineers from the Six Zonal Offices, depending on the Project's Location and forwarded to REA's Headquarters. A Total of Forty-Five (45) Solar and One Hundred and Thirteen (113) Grid Extension Projects were certified and presented for consideration. Further, he stated that the Contractors selected for the Grid Extension Project were from the List of Pre-Qualified Companies supplied to REA by the Ministry of Power and the Prices used were those approved by the Budget Monitoring and Price Intelligence Unit (Due Process Office) in 2005, which was revised in 2006.

For the Solar Based Projects, quotes were invited from Suppliers and Contractors with records of such dealing and their Prices were compared with International Benchmark Prices of similar materials and equipment and the emergent rates thereafter were negotiated with some Shortlisted Contractors complying with **Section 42(2) (a) and (b) of the Public Procurement Act** and finally, Approval was sought and obtained from the 2nd Defendant.

According to the 1st Defendant, further consideration was given in the Companies Selection Process, to the history of the Company's previous performance, the

deployment of similar technology, the affiliation with, or to some renowned equipment manufacturers relevant to the scheme, their acceptance of the negotiated prices, their ability to complete the Projects within the given scheduled timeframe and the presentation of financial capacity to embark on such Projects. He had developed a Draft Working List of new Projects for award under the 2008 Amended Budget, which he extracted from the Budget with the Honourable Members who had presented them for inclusion in the Budget as Constituency Projects.

In **Exhibit 186E**, he specifically listed out the Members of the National Assembly that proposed the execution of these Projects to include amongst others, the then Speaker of the House of Representatives, Rt. Honourable Dimeji Bankole for Ogun State Projects, Honourable Ndudi Elumelu the Chairman of the House Committee on Power for locations in Delta State, Senator Nicholas Ugbane the Chairman Senate Committee on Power and Steel for locations in Kogi State and Honourable Jibo Mohammed the Deputy Chairman House Committee for some locations in Niger State.
The choice of Companies awarded the Contracts was made by REA under his leadership and he listed out the criteria he used.

These are the factual circumstances as gleaned from the Exhibits and Testimonies of Witnesses across the board and the confirmation of these facts would be seen under the consideration of Dishonesty.

In the instance of Violation of any Direction of Law, the Guiding Laws are the **Penal Code Law**, which defines the Offence and sets the Punishment, and the **Public Procurement Act of 2007**, which regulates the prescribed Mode for the Procurement of Goods and Services by a Procuring Entity or Agency.

As submitted in totality by all Learned Silks/Counsel across board, the Guiding Sections are **Sections 2, 16(1), 17(a)(i), 24(1), 25(1), 31(1), 35(1) and (2), 37, 42(1), 43(2) and (3) of the Public Procurement Act 2007.**

Before delving deeply into the determination of Violation of Law, it is important to settle the question of the Mandate assumed by the 2nd Defendant in his action of signing the Approvals for the Award of these Two Sets of Contract.
Learned Counsel for the Prosecution had challenged the validity of his actions stating that the 2nd Defendant, as Permanent Secretary, did not have the Mandate to

assume the role of Minister for the Ministry of Power, in the absence of any Statutory or Administrative Policy, Directive or Guideline.

PW6, Mr. Yahaya Sharmaki, the Deputy Director Planning, Research and Statistics and Secretary of the Ministerial Tenders Board, testified that as at 2008, **ONLY** the Federal Executive Council was the Approving Authority for Procurements *above* N50Million. The Ministerial Tenders Board as well as Tenders Board of Other Agencies, all had an Approval Limit of N50Million and *below*. He had also stated that the Permanent Secretary's had an Approval Limit of One Million Naira (N1, 000, 000.00).

PW7 under cross-examination by Learned Counsel representing the 3rd Defendant, A.D. Tyoden Esq., about the question of Approvals and Instructions of the Parent Ministry over REA, responded that the Federal Ministry of Power had supervisory powers over REA. It depended on the circumstances, to determine whether REA received instructions from the Ministry of Power, but not all Approvals made by REA goes through the Ministry. Concerning the 113 Solar Extension Contracts, he testified that none exceeded the Fifty Million Naira (N50, 000, 000) threshold and was approved through the Ministry of Power.

Learned Silk to the 1st Defendant, on this challenge to the 2nd Defendant's authority, contended that none of the Prosecution Witnesses, particularly PW6- Mr. Sharmaki, disputed the authority of the 2nd Defendant as Permanent Secretary of the Ministry of Power, to act in the absence of a Substantive Minister. Even the Bureau of Public Procurement who had conducted Procurement Audit and tendered its Report saw nothing wrong in the 2nd Defendant acting in the absence of the Minister. Assuming a doubt arose as to the authority of the 2nd Defendant to act, it was for the Prosecution to dispel such doubt by adducing evidence, otherwise it is the Law that any doubt should be weighed in favour of the 2nd Defendant. Reference was made to the cases of **ANEKWE VS THE STATE (2014) 10 NWLR PT 1415 PAGE 353 AT PAAGE 373 PARA G; STATE VS OKECHUKWU (1994) 9 NWLR PT 368 PAGE 273.**

Learned Silk, representing the 2nd Defendant submitted that since the 2nd Defendant was acting in the absence of the Minister pursuant to **Section 60 of the Public Procurement Act (sic)**, no inference of fraud could be legitimately drawn that he did not honestly believe he possessed that authority to act. The 2nd Defendant committed no Offence even if he had acted under a mistake of fact in giving the Approvals in **Exhibits 191 and 192**, unless the Prosecution can prove he lacked

good faith when he acted in that capacity as Minister and reference was further made to **Section 45 of the Penal Code,** which states that nothing is an Offence which is done by any Person who is justified by Law, or who by reason of a Mistake of Fact and not by reason of a Mistake of Law, in good faith believes himself to be justified by Law in doing it**.**

He also referred to the testimony of PW6, who presumed him as Acting for the Minister in the absence of a substantive Minister. Further, the 4th Defendant, had explained the practice in the Civil Service of forwarding Correspondence to the Permanent Secretary in the absence of a Minister, and this Statement was not cross-examined by the Prosecution. Therefore, the 2nd Defendant enjoyed the Presumption of Law under Section 168 (2) of the 2011 Evidence Act that he was duly so appointed and entitled to act.
By the 2nd Defendant acting in a Public Capacity, which the Law presumes due appointment and entitlement to act, the actions of REA in seeking Approval from him, did not amount to fraudulent action or conduct.
He urged the Court to take judicial notice of the fact that the 2nd Defendant acted in the Minister's stead.

Now, Learned Silk to the 2nd Defendant had referred to Section 60 of the Public Procurement Act, which is the Interpretation Section, to justify the acting capacity of the 2nd Defendant. The Court has had a very careful look at the said Section and notes that there is no definition contained therein that bestows a Mandate or Authority on the 2nd Defendant to assume the role of the Minister. At best are the definitions of an Accounting Officer, who is a Person, charged with line supervision of the conduct of all Procurement Processes and the definition of Accounting Authority, who is also defined as a Person endowed with the overall responsibility for the functioning of a Ministry, Extra-Ministerial Department or Corporation. Therefore, this Section cited by Learned Silk does not avail his arguments.

However, it is clear that the Machinery of Government never stops working and it is conceivable that in the absence of a Substantive Minister or Minister of State, the next most Senior Official holds the fort to provide continuity and therefore, even though the 2nd Defendant needed an Express Mandate to manage the Ministry of Energy (Power), the absence of an Express Mandate is not entirely fatal, if he, as Permanent Secretary acted within the limit of his own authority and powers.

He can surely receive correspondence and if urgent, strive to minimize any damage or detriment to the Ministry but he must do so firmly within the limit of his powers. Any act outside his powers needs express backing or endorsement. This deduction can be likened to a situation where the Minister of Energy (Power) is expected to commission an Official Building and the 2nd Defendant as Permanent Secretary,then cuts the Red Ribbon in his stead without being expressly authorized. Can the 2nd Defendant also attend the Federal Executive Council Meeting on behalf of the Minister? Even though he is acting for the Minister, there are certain things that he cannot shoot beyond and certainly cannot assume the full powers of a Minister by a wrongful assumptionof the extent of his official responsibilities.

The question must then be asked, to what extent and in what circumstances can he wear the shoes of the Minister or to what extent do the limits of his own powers and those of the Minister curtail his authority?

The 2nd Defendant cannot by any stretch of imagination, exceed the Minister's or the Ministerial Tenders Board Approval Limit of N50Million. A Person who is Acting for a Substantive Person, cannot go beyond the powers and authority of that Substantive Person. There must be a specific directive instructing the 2nd Defendant to act in the position of the Minister of State, and empowering him to award Contracts running into billions of Naira without Approval from the Federal Executive Council in the absence of the Minister of State.

Had there been Separate Certificates of No-Objection each showing a sum below N50Million on each Contract for the Forty-Five (45) Solar Based and One Hundred and Thirteen (113) Grid Extension Projects, and the 2nd Defendant had signed Separate Approvals on each Contract, then it could reasonably be said to be within the Mandate of the Substantive Minister. Therefore, it was imperative for Alhaji Abdullahi Aliyu, the 2nd Defendant to have entered the Witness Box to testify that the Substantive Minister could authorize what he did and in the manner he did it. However, the 2nd Defendant has been cleared of these Charges and it would be pointless to determine his culpability under this aspect.

Now, it is important to initially determine whom the Approving Authority of REA is for the Award of Contracts, its functions and the Composition of the Procurement Planning Committee, to see whether they all met the Standards set by the Law. The Sections in focus are **Sections 17, 22 and 21 of the Public Procurement Act**.

Section 17 provides that, **"Subject to the monetary and prior review Thresholds for Procurement in this Act as may from time to time be determined by the Council, the following shall be the Approving Authority for the conduct of Public Procurement:**

a) **In the case of:**
    i. **A Government Agency, Parastatal or Corporation, a Parastatal Tenders Board;**
    ii. **A Ministry or Extra- Ministerial Entity, the Ministerial Tenders Board."**

Section 22 on its own part **states:**

1) **There is hereby established by in each Procuring Entity a Tenders Board in this Act referred to as the "Tenders Board"**
2) **Subject to the Approval of the Council, the Bureau shall from time to time prescribe Guidelines for the Membership of the Tenders Board.**
3) **<u>The Tenders Board shall be responsible for the award of Procurements of goods, works and services within the Threshold set in the regulations</u>.**
4) **In all cases where there is a need for Pre-Qualification, the Chairman of the Tenders Board shall constitute a Technical Sub-Committee of the Tenders Board charged with the responsibility for the evaluation of bids which shall be made up of Professional Staff of the Procuring Entity and the Secretary of the Tenders Board who shall also be the Chair of the Evaluation Sub-Committee.**
5) **<u>The decision of the Tenders Board shall be communicated to the Minister for implementation</u>."**

In this case, the Procurement Planning Committee of REA constituted the Tenders Board and was the Approving Authority for the conduct of Public Procurement in the sum of N50Million and *below*. It is also in evidence that the 1st and 2nd Defendants and in fact, all the Defendants acknowledged this fact.
For Contract Sums of N50Million and *above*, REA needed the Approval of the Federal Executive Council.

The Prosecution in his Final Written Address maintained that neither the Federal Ministry of Power's Tenders Board nor the Federal Executive Council approved the Two Lots of Contracts, as the Contracts exceeded REA's Threshold.

PW5, Mr. Nasiru Bello from the Bureau for Public Procurement had testified that as at Year 2008, any project above N50Million, needed a Certificate of No-Objection from their Bureau and the Federal Executive Council was the Approving Authority for Procurement above N50Million.

PW6, Mr. Yahaya Sharmaki from the Ministerial Tenders Board of the Federal Ministry of Power testified that the Ministerial as well as the Agency's Tenders Board had an Approval Limit of N50Million and below. ONLY the Federal Executive Council had an Approval Limit of N50Million and above. He corroborated the testimony of PW5 on the fact that the Bureau of Public Procurement was the Issuer of Certificates of No-Objection for Contracts above N50Million. It was his view that **Exhibits 161 and 162**, REA's Certificates of No-Objection were beyond their power to issue, as the Contract Sums were lumped up together in the Certificates of No-Objection and had the lumping not occurred, there would not have been any problem.

From **Exhibit 182**, the Report of the Bureau Audit Team, it can be seen in **Paragraphs 4.1.7 and 4.2.8,** that they observed that REA did not provide any evidence to them indicating whether the Contracts were approved by the Tenders Board of the Federal Ministry of Energy (Power).
In **Exhibit 194A**, the 2nd Defendant in his Written Statement, confirmed that for all Projects below N50Million, the Permanent Secretary is expected to approve/endorse those Contracts, after due process at the Agency had been followed. The necessity for the Approval of the Minister of State for Energy (Power) is evident from **Exhibits 200 and 201**, where his Approval had to be sought before the Contracts were awarded.

Section 21 of the Public Procurement Act sets out the Composition of the Procurement Planning Committee and it mandatorily sets out the Composition of Members to include: -

1. The Accounting Officer or his Representative as Chairman;
2. A Representative of: -
    a. The Procurement Unit as Secretary;
    b. The Unit directly in requirement of the Procurement;
    c. The Financial Unit;
    d. The Planning, Research and Statistic Unit;
    e. The Technical Personnel with expertise in the subject-matter; and
    f. The Legal Unit.

From the evidence led during the Trial, there was no Notice of Meeting circulated to every Participant at that Meeting. The 3rd Defendant in his Written Statement, **Exhibit 197B**, stated that he was summoned for the Meeting, while the 4th Defendant in his own Written Statement at **Exhibit 198**C, stated that he was called for a Procurement Planning Committee Meeting. The 5th Defendant testified he was summoned through a Telephone Call to attend the Meeting, while the 6th Defendant was not at the Meeting. Even though in his Written Statement, **Exhibit 185B**, the 6th Defendant stated that he attended the Procurement Planning Committee, he did not say he prepared the Notice of Meeting for the Meeting of the 10th of December 2008, which was part of his Secretariat Duties as Company Secretary/ Legal Adviser.He also did not prepare the Agenda for that Meeting, which had he prepared both, he was expected to have tendered them during his testimony in chief.

Further, Alhaji A.S. Gurin, REA's Procurement Director, in his Written Statement in **Exhibit 184** had stated that he was not aware of any Contract Awards necessitating any Meeting. He had received no Notice of Meeting and no Staff from his Directorate was invited.
The 1st Defendant in his Written Statement, **Exhibit 186D**, stated that upon the direction from the 2nd Defendant to implement the Budget given to him on November 14th 2008, the Procurement Planning Committee met and resolved to recommend Projects. He was silent as to the mode of convening the Meeting and whether proper procedure and proper participants were invited to that Meeting.

PW7, Assistant Superintendent of Police Ibrahim Ahmed, the Investigation Police Officer testified that REA never obliged his Investigation Team with any Letter inviting the Members that sat at the Meeting of the 10th December 2008.
PW5, Mr. Nasiru Bello the Assistant Chief Procurement Officer of the Bureau of Public Procurement testified that under normal circumstances, all Heads of Department were expected to be part of the Tenders Board of REA.

Now, in the Letter, which informs **Exhibit 191**, written by the 2nd Defendant to all Ministries, Departments and Agencies dated the 2nd of June 2008, he directed that they should establish a Procurement Planning Committee with specific composition, one of which is that the Accounting Officer/CEO of the Agency shall be the Chairman in compliance with the Public Procurement Act. To this extent, the 1st Defendant sitting as Chairman was proper. Since REA as a whole, required the goods, works or services, the requirement for a Director Requiring the Procurement may be difficult

to streamline. Simon Kirdi Nanle, the 3rd Defendant, who stated that he was appointed the Director of Funds Management in REA, has satisfied the requirement for being a Representative from the Financial Unit of REA. The 4th Defendant, Engineer Lawrence Orekoya attendance as Director of Projects also satisfied the requirement of the Act. The 5th Defendant, Mr. Abdulsamad Garba Jahun, who testified that he is the Deputy Director Human Resources and Administration, is not a Member expected to be at the Meeting and his attendance was superfluous or was a surplusage and utterly irrelevant to anything important in the Procurement Process except for the fact that he was a Director. Mr. Matthew Onwusoh, the Acting Legal Secretary can be said to represent the Legal Unit of REA.

But the absence of the Director Procurement, who was to serve as the Secretary or a Representative from the Directorate of Procurement at this Meeting, constitutes a breach of **Section 21(2)(b)(i) of the Act**.

In **Exhibit 184**, the Written Statement of the Director of Procurement, he stated that once there is a Budgetary Allocation and Approval, it is for the Procurement Planning Committee to award the Contracts. According to him, he was not personally aware of these Contracts and he did not attend the Procurement Planning Committee Meeting, where the decision was taken for the Award of the Contracts. Further, he stated that the New Projects under the Year 2008 Amended Budget did not meet the Requirements of the Procurement Act as the Process of Award did not pass through the Procurement Department and none of the Staff of the Procurement Department were invited to attend the Meeting.

This is an important breach in view of the Directive issued out by the 2nd Defendant on the **2nd of June 2006 in Exhibit 191**. In the Fourth Paragraph, REA was urged to note that it is only the relevant Director of Procurement Department that **shall** issue Letters of Awards for Contracts duly approved. In this instant case, the 6th Defendant as Secretary prepared the Letters of Award and by his Signature on them, the 1st Defendant issued out the Letters.

The Pre-Contract Procedure ought to be the deliberations of the Procurement Planning Committee of REA, which was to discuss the Contracts to be awarded, how they would be executed as well as formulate the Terms that would form part of the Contract Agreements but it fell short of the Public Procurement Act,the Regulatory Law. No Member of the Procurement Planning Committee of REA, contributed in the Procurement Award Process, as they did not know when and how the Contracts

were executed. They only heard about it when the Contracts were already awarded and when the Director of Procurement was to sign the Minutes of Meeting and Certificates of No-Objection, which he refused to do.

Therefore, the Procurement Planning Committee was not properly constituted. It was an Impromptu Meeting without any Notice of Meeting and an Agenda. Had these been issued out ahead of the Meeting, there would have been awareness by all relevant Committee Members who would have attended the Meeting.

So what was the purpose of the Meeting, since no Contracts were awarded and as seen from **Exhibits 159 and 160**, **NOTHING** was discussed about the Payment Modes of Advance Payment Guarantees? The 3rd Defendant, the Director of Funds Management in **Exhibit 197B**, his Written Statement, specifically stated that the Names or List of Names of Contractors were not given to Members. The only thing that was given was the Appropriation List and not the Contractors List. He stated that, "The Committee **did not**discuss the Payment of the Contracts but as per the Minutes of the Meeting but there was a Memo written to the Minister of State…"

On the aggregate, the Purported Procurement Planning Committee, which convened in the absence of the Mandatorily imposed Secretary, the Director of Procurement, was improperly constituted as regards the composition of its Members and fell short of the requirements of the Public Procurement Act. Any Committee that is not composed in accordance with the Law, is not, and cannot be a Procurement Planning Committee and any Meeting held by an improperly composed Committee is not a Meeting, so the question of whether a Quorum was reached, is irrelevant. The convening of the Meeting was Illegal and Unlawful and any decision arrived at, cannot stand. It is trite in Law that one cannot build something on nothing and expect it to stand, as it would certainly collapse. See **UAC VS MACFOY(1962) AC PAGE 154.** The Purported Meeting had no power to take the decisions they did, according to Law. By the time of this Meeting, the monies were already allocated in principle to the Companies, who eventually got them and so, all the 1st, and 4th Defendants' contention that they discussed the Contracts at the Meeting was not factually true. The Purported and Unlawful Procurement Meeting only served to ratify past actions already irregularly embarked upon.

Other Sections said to have been violated were **Sections 19, 23, 24 and 25 of the Public Procurement Act.**

Section 19 provides, "Subject to Regulations as may from time to time be made by the Bureau under direction of Council, a Procuring Entity <u>shall</u> in implementing its Procurement Plans:

a) Advertise and solicit for bids in adherence to this Act, Guidelines as may be issued by the Bureau from time to time;

Since this Section is made subject to Regulations as may be made by the Bureau of Public Procurement, it is flexible for compliance, as long as there are indeed Regulations. From the evidence of both the Prosecution and the Defence, none was produced before the Court and since they both failed to utilize the opportunity to submit and tender any Regulation before the Court, the Court must of necessity assume that there were none, and if any, they were not relevant for the purposes of the issues before the Court. The Court would therefore act on Section 19 as if there were no Regulations.

A closely related Section of the Public Procurement Act is **Section 25(1),** whichprovides that, "**Invitations to bid may be either by way of National Competitive Bidding or International Competitive Bidding and the Bureau from time to time set the Monetary Thresholds for which Procurements shall fall under either System."**

Subsection (2) provides**, "Every invitation to an Open Competitive Bids shall:**

i. …

ii. In the case of goods and works valued under National Competitive Bidding, the invitation for bids shall be advertised on the Notice Board of the Procuring Entity, any Official Websites of the Procuring Entity, at least Two National Newspapers and in the Procurement Journal not less than Six Weeks before the deadline for Submission of the Bids for goods and works."

Under this Section, REA could invite Bids for Projects, by way of National Competitive Bidding or International Competitive Bidding and in Subsection (2), the advertisement was to be pasted on the Notice Board of REA, their Official Website, and the Procurement Journal as well as, published in at least Two National Newspapers. This invitation was to prospective Bidders who desired to supply goods, works and services and is tantamount to informing the general public about the services or works or goods needed and inviting "the whole world" to participate, if they can meet up with the expectations, criteria and scores, if any, of REA.

The options given to a Company by the use of the word "MAY" is only applicable to whether it is National or International Competitive Bidding because thereafter, the proceeding Sub-sections imposes compulsion by the word "SHALL".
Of particular reference is Subsection (2), which requires the invitation to be advertised for not less than Six (6) Weeks, before the deadline for submission of the Bids for the goods and works.

Yet another related Section is **Section 24(1),** which on its own part, states that: -
"**Except as provided by this Act, all procurements of goods and works by all procuring entities shall be conducted by Open Competitive Bidding."**
Subsection (2) further provides that**:**
"Any reference to Open Competitive Bidding in this Act means the process by which a Procuring Entity based on previously defined criteria, effects Public Procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed."

Now, a careful look at **Exhibit 182**, the Report of the Procurement Audit carried out by the Bureau of Public Procurement, shows their findings in respect of both the Grid and Solar Projects and the Audit Team came to the conclusions that the Grid Extension Projects as well as Solar Electrification Projects were not advertised in any of the National Dailies as stipulated under **Part IV of the Public Procurement Act 2007**, which regulates Procurement Methods (Goods and Services) at **Clause 25(1).**

PW5, Mr. Nasiru Bello, the Assistant Chief Procurement Officer from the Bureau of Public Procurement had testified that REA did not carry out National Competitive Bidding or Bid Evaluation and any Procurement other than the National Competitive Bidding, must initially secure the Bureau of Public Procurement's Objection before the Bidding commences. Further, he stated that as at 2008, any Project above N50Million needed a Certificate of No-Objection from the Bureau of Public Procurement. In the instance of REA, he stated that the Procurement for the Two Sets of Contracts were not advertised. According to him, under normal circumstances, in Competitive Bidding, Bidding Companies did the fixing of Unit Prices.
PW7, ASP Ibrahim Ahmed also validated this contention.

The 5th Defendant Abdulsamad Garba Jahun, in his Written Statement, **Exhibit 196A**, whilst describing the process of Contract Awards from Government Outfits, stated that the process of awarding Contracts, is very explicit. Once the need for works, services or purchase of goods has been identified, such Contracts are advertised based on the Financial Threshold. A date is fixed to open the Bid and Pre-Qualification follows for the Contractors that met the necessary condition. This shows that at least one of the Participants at the Meeting knew the Proper Procedure. Despite this, **Exhibit 159 and even Exhibit 160**- the Minutes of Meeting, at Paragraph 7, shows that the Committee resolved to dispense with the requirements for the advertisement of Procurement as required under the Act and decided to treat each Project as a Direct Procurement in line with **Section 42(b)** of the Act.
The 1st Defendant in his Written Statement, admitted as **Exhibit 186D**, had confirmed the above decision of the Procurement Planning Committee and went on to justify the reason for the departure from the Procedure.

Therefore, it is generally agreed that the Law mandated REA to advertise and solicit for bids, which was not done in this instance. The invitations to Prospective Bidders were to be either by National Competitive Bidding or International Competitive Bidding and the Projects advertised for, had to be within the Monetary Threshold of REA. It was expected that the advertisement be placed on the Notice Board of REA or in their Official Website and/or at least Two National Newspapers and in the Procurement Journal not less than Six Weeks before the deadline for Submission of the Bids for goods and works.
These they clearly failed to do, and so, without further ado, the Court finds there were violations of the provisions of **Sections 19, 24 and 25 of the Public Procurement Act 2007**, the Regulatory Law committed by the 1st, 3rd to 6th Defendants.

The next Section said to have been violated by the Defendants is **Section 23,**which provides**:**

1) **"Where a Procuring Entity has made a decision with respect to the minimum qualifications of Suppliers, Contractors or Service Providers by requesting interested persons to submit applications to pre-qualify, it shall set out precise criteria upon which it seeks to give consideration to the applications and in reaching a decision as to which Supplier, Contractor or Service Provider qualifies, shall apply only the criteria set out in the Pre-Qualification documents and no more.**

Subsections 5, 6 and 7 of Section 23 stipulated for notifications to the Suppliers, Contractors or Consultants as to their Pre-Qualification and permission to participate further in the Procurement Proceedings and also mandated communication to those disqualified.

Now, **Exhibit 182**, the Report of the Procurement Audit Team from the Bureau of Public Procurement arrived at the conclusion that the Federal Ministry of Energy (Power) and REA failed to provide the Criteria and Scores of the Pre-Qualification Exercise. The Audit Team had been informed by REA that the Contractors that had been selected, were Pre-qualified by the Ministry of Energy (Power) in 2007 and the List of the Pre-qualified Companies were forwarded to REA vide a Letter FMP&S/7084/I/T dated the 17th of April 2007. The Audit Team discovered that the Companies were pre-qualified based on the Six (6) Geo-Political Zones of the Country. Through their investigation, they also found that a total of One Hundred and Thirteen (113) Grid Projects were awarded by REA on the 29th of December 2008. From this figure, only Twenty-Four (24) out of the One Hundred and Thirteen (113) Companies on the List were awarded the Contracts.
The Audit Team also found that a total of Forty-Five (45) Solar Electrification Projects were awarded on the 29th of December 2008 and none of the Companies awarded the Contracts, were on the List of Pre-Qualified Companies.

The 1st Defendant in his Written Statement in **Exhibit 186A** had stated that the Directive to commence execution of the Listed Projects was given by the 2nd Defendant, who then as Permanent Secretary, covered the duties of the Minister of State for Power, yet to be appointed. The Agency had commenced Site Visitations and Projects Scoping on November 14, 2008 after series of Meetings with the House Committees on Power and Steel; Committee on Rural Development and the Senate Committee on Power and Steel. These Committees had assisted REA in its Surveys by contacting individual Senators or House Members, who nominated or sponsored the Constituency Projects for inclusion in the Budget. Engineers from REA's Zonal Offices developed all the Bills of Engineering, Measurement and Evaluation (BEME).

According to him, the Contractors selected for the Grid Extension Projects were selected from the List of Pre-qualified Companies carried out by the Federal Ministry of Power, the Supervising Ministry, which was made available to REA upon her inauguration. For the Solar Based Projects, Quotes were invited from Suppliers and Contractors who had records of such dealings in the Country and whose prices

were compared with International Benchmarks Prices for similar materials and equipment.
In his Written Statement admitted as **Exhibit 186D**, he confirmed the Award of One Hundred and Thirteen (113) for the Grid Extension Projects, adding that due consideration was given in their selection process for Nine (9) Companies that benefitted from the Forty-Five (45) Solar Based Projects. In this Statement, he further stated due to paucity of time, it was not feasible for REA to comply with the full provisions of the Public Procurement Act 2007, which required advertisement for Pre-Qualification, Evaluation Submission and Production of Shortlisted Pre-qualified Companies, Invitation to submit Tenders Bid and Evaluation of Tenders.

Furthermore, the 1st Defendant in his Written Statement admitted as **Exhibit 186E**, had stated that the Forty-Five (45) Solar Based Projects were Constituency Projects recommended for execution by some Members of the National Assembly and the choice of Companies that were awarded the Projects under his leadership and the criteria were based on due registration of Companies by the Corporate Affairs Commission (CAC), evidence of execution of similar Projects in Nigeria attesting to competency, evidence of partnership with competent Company or Group, with experience in Renewable Energy (Solar) Deployment, acceptance of negotiated rates of works proposed by REA and acceptance to complete the Project within the stipulated timeframe for completion and proof of financial competency and capacity to fund the Project execution. According to him, the Companies that were replaced after the Ministerial Approvals for Award, were those who did not meet the Terms of Award as contained in the Offer Letters issued to them. He stated that at the Meeting of the Procurement Planning Committee, all processes embarked upon, which led to the recommendation for the award of the Contracts to the shortlisted Companies, were presented and reviewed before the Committee, who unanimously agreed to proceed with further processes, leading to the award, which was the submission of Letters to the Office of the Honourable Minister of State for Power seeking the necessary Approvals.

Further, he stated in **Exhibit 186G**, that the Draft Working List of New Projects for award was a Working Document he developed to assist in matching the Projects as extracted from the Budget, with the Honourable Members who presented them for inclusion in the Year 2008 Amended Budget as their Constituency Projects and he proceeded to name several Members of the National Assembly who had sponsored their Constituency Projects.

In **Exhibit 186H**, he reaffirmed that the Projects were proposed by Members of the National Assembly as their Constituency Projects and they individually identified the Projects in their respective Constituency and allocated an amount against such Projects, which were all below the sum of N50Million. As regards the Grid Extension Projects, many Members of the House of Representatives that proposed Constituency Projects personally sent Letters to that effect or held discussions on implementation strategy given the paucity of time.
There were no prior costing of these Projects by the Agency prior to the Budgeting Process for the New Constituency Projects and he stated that REA was only involved in the Project Design, Preparation and Development of Bills of Engineering Measurement and Evaluation.

According to him, the Companies that received more than One Contract for execution, may have been adjudged in the Evaluation Process to possess both Technical and Financial Competency to handle such Projects. A File containing Copies of Letters from individual Members of the National Assembly, that is, Senators and House of Representatives Members, attesting to their sponsorship of the Projects and nominating Contractors for execution of same as well as a Letter from the Office of the Minister of State for Power dated the 5th of June 2008, were handed over to the Economic and Financial Crimes Commission (EFCC).

The 2nd Defendant, Dr. Abdullahi Aliyu also confirmed that there was correspondence between the National Assembly and REA on the Projects and also mentioned being aware of his Ministry's Pre-Qualification List with REA.

The 4th Defendant in his Written Statement, **Exhibit 198A**, stated that REA, through the Federal Ministry of Energy did not forward any New Projects, which were later discovered in Year2008 Amended Budget for Constituency Projects inserted by the National Assembly Members. REA's Zonal Coordinators carried out the Survey of the identified Locations, with the assistance of the National Assembly Members. According to him, the Procurement Planning Committee discussed the Contractors Selection Criteria and used the List of Pre-Qualified Contractors received from the Ministry of Energy as well as the Performance Evaluation of the Contractors by REA on the ongoing Projects, in order to determine the best Contractor suited for each of the identified Projects.

Engr. Lawrence Orekoya, the 4th Defendant, told barefaced lies in his Statement in **Exhibit 198A** as in the first place, this was not contained in the Summary of Meeting

Exhibit 159 and therefore, he had to be privy to the Selection of these Contractors at some other Forum not stated before this Court and the fact that he knew the intricacies of their Selection, may make him an Active Contributor to the Selection Process and not a Passive or Dormant Participant.As if recovering from amnesia, this witness in **Exhibit 198C**, returned to the EFCC to state that, while it was generally agreed that the Projects should be executed, the List of the Contractors to execute the Projects were not tabled at the Meeting.

The 3rd Defendant in his Written Statement in **Exhibit 197B,** practically disputed everything said by the 4th Defendant. He acknowledged and corroborated the evidence of the 1st Defendant that these Projects were Constituency Projects for National Assembly Members and were stated State-by-State. According to him, the Names or List of Contractors were not given to the Procurement Planning Committee Members. All they had been given was the Appropriation List. He also denied that the Procurement Planning Committee discussed the Payments of the Contracts.

The 5th Defendant in his Written Statement, **Exhibit 196A**, stated that the 1st Defendant called for a Meeting and informed them that he was directed by the 2nd Defendant to give a No-Objection and that the Contract's Evaluation and other needed Processes, had already taken place at the Ministry's Level. Under re-examination by Learned Counsel to the 5th Defendant, Haliru Esq., and in response to the question of who was responsible for fixing the unit price on the Award of Contracts, he explained that, under normal circumstances, Contracts were awarded based on a competitive process and the fixing of rates were performed by bidding Companies. But when further prompted, he claimed not to know who was responsible for budget proposal costing.

The 6th Defendant in his Written Statement, **Exhibit 185B**, just generally stated that issues relating to the Projects were discussed and Memos were raised for Approvals and he was aware that some Successful Companies received more than One Letter of Award.

Now, in regard to the Criteria, Scores and Requirements necessary to Qualify as a Contractor in the Bidding Process, it is clear that the provisions of the Governing Section mandated that these be known upfront. The Investigators were not availed with the Criteria, Scores and Requirements even though they asked the 1st Defendant to produce it, and it is telling that it was only in his Statements to the

EFCC that he proceeded to expatiate on the Criteria in great detail. It is clear also that these Criteria, Scores and Requirements for Qualification were not discussed at the Procurement Planning Committee Meeting and therefore, the eventual Award to the Contractors were founded on conjured criteria known only to the 1st Defendant. Since REA had alleged that the names of the Contractors were obtained from the 2007 prepared List of Pre-Qualified Contractors obtained from the Federal Ministry of Power, it was expected then that all the Contractors awarded the Contracts would have been included in this List. But the Audit Team discovered that out of a total of 113 Grid Projects, only 24 Companies were on the Pre-Qualified List, and out of the 45 Solar Projects, none were on the List of Pre-Qualified Contractors. Therefore, 89 Grid Contractors and 45 Solar Contractors appear to have been selected abstractly or based on some other unstated Criteria.
From the Statement of the 1st Defendant, he appears to have been persuaded by the National Assembly Committee Members, who had solicited orally and/or through writing for the inclusion of the names of the Contractors nominated by them. It is one thing for the Contractors to have nominated by the National Assembly Members, which nominations may suffice, but it is another thing for the Nominated Contractors to meet the set Criteria, and there was no evidence of this on record.

The 1st Defendant had stated that Quotes were invited from Suppliers and Contractors, who had records of such dealings but he never furnished the Court with the Letters of Invitation to these Contractors and he never explained to the Court the basis and results of his comparison of both the Local and International Benchmark Prices for similar materials and equipment.
It was therefore important for the 1st Defendant to testify as to the due diligence exercises he engaged in or commissioned, before selecting the participating Companies.
Contrary to his Written Statement where he said that all processes embarked upon, leading to the recommendation for the Award of Contracts to the shortlisted Companies were discussed at the Meeting, there was no evidence of this in the Minutes of the Meeting and no corroboration of this fact from the other Co-Defendants.

Therefore, there was a clear violation of **Section 23** of the **Public Procurement Act.**

The following Sections all relate and deal with the Method of Procurement employed by the Defendants as well as the Financial Regulatory Aspect of the

Contract Awards and would be set out and determined in one steady stream. They are: - **Sections2(a), 16, 19, 35, 37, 42(1)(a) and (b), and 43 of the Public Procurement Act.**

Section 2(a) of the Act provides, "The Council shall consider, approve and amend the monetary and prior review Thresholds for the Application of the provisions of this Act by Procuring Entities"

Section 16(1) of the **Act,** which states that: -
Subject to any exemption allowed by this Act, all Public Procurement shall be conducted:

a) ...
b) Based only on Procurement Plans supported by prior Budgetary Appropriations and no Procurement Proceedings shall be formalized until the Procuring Entity has ensured that Funds are available to meet the Obligations and subject to the Threshold in the Regulations made by the Bureau, has obtained a "Certificate of No-Objection" to Contract Award from the Bureau."

Section 19 provides, "Subject to Regulations as may from time to time be made by the Bureau under direction of Council, a Procuring Entity shall in implementing its Procurement Plans:
(d) Obtain Approval of the Approving Authority before making an Award;
(h) Obtain a "Certificate of 'No-Objection' to Contract Awards from the Bureau within the prior review Threshold as stipulated in Section 2(a) of this Act;
(i) Execute all Contract Agreements;

As regards the Method of Procurement permissible **Sections 42 and 43 of the Public Procurement Act 2007** are specifically on point.

Learned Silk Erokoro referred the Court to the Financial Regulations, stating that they provide the Guide for the Expenditure of Government Revenue, because they incorporate relevant provisions in all the applicable laws including the Public Procurement Act and the Court was referred to the **Financial Regulations No. 72 Volume 96, 2009 Edition**, which he claimed contains the do's and don'ts of Contract Awards, Payments, Operation of Bank Accounts, Issuance of Cheques, Raising of Vouchers, Obtaining of Approvals for Expenditure and similar matters

that featured in this case. He also took the precaution of forwarding the Financial Regulations as an Exhibit for the Court's perusal.

A close and careful look at the **Government Notice No. 291 this Official Gazette revised to January 2009**, it contains no such things as claimed by Erokoro SAN. In Paragraph 4, Public Officers are enjoined to acquaint themselves with these regulations, the **Finance (Control and Management) Act, Cap 144, LFN 1990**, as well as the relevant Sections of the Constitution dealing with public finance for proper guidance.

Section 42 (1) provides that,
"**A procuring entity may carry out any emergency procurement where**:

a) **Goods, works or services are only available from a Particular Supplier or Contractor, or if a Particular Supplier or Contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or**
b) **There is an urgent need for the goods, works or services and engaging in tendering proceedings or any other method of procurement is impractical due to unforeseeable circumstances giving rise to the urgency which is not the result of dilatory conduct on the part of the procuring entity;**

Subsection (2) goes on to state that, **The Procuring Entity:**

a) **May procure the goods, works or services by inviting a proposal or price quotation from a Single Supplier or Contractor.**
b) **Shall include in the Record of Procurement Proceedings a Statement of the Grounds for its decision and the circumstances in justification of single source procurement."**

Section 43, which sets out the situations and circumstances of emergencies provides:

1. **A Procuring Entity may for the purposes of this Act carry out an Emergency Procurement where:**
    a) **The Country is either seriously threatened by or actually confronted with a disaster, catastrophe, war, insurrection or Act of God;**
    b) **The Condition or Quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is**

urgently and necessarily taken to maintain them in their actual value or usefulness; or

c) **A Public Project may be seriously delayed for want of an item of a minor value**

2. **In an Emergency Situation, a Procuring Entity may engage in Direct Contracting of goods, works and services.**
3. **All Procurement made under Emergencies shall be handled with expedition but along principles of accountability, due consideration being given to the gravity of each emergency.**
4. **Immediately after the cessation of the Situation warranting any Emergency Procurement, the Procuring Entity shall file a detailed Report thereof with the Bureau which shall verify same and if appropriate, issue a Certificate of 'No-Objection."**

Now, it is a bit confusing what Method of Procurement the Defendants believed they were employing in the award and execution of the Contracts. This is because they sometimes used the words Direct Procurement under Section 42 interchangeably with the words Selective Tendering to justify the emergency situation necessitating a bypass of the regular process.
It is clear by **Sections 24(1) and (2),** that all Procurements of Goods and Works by all Procuring Entities **shall**be conducted by Open Competitive Bidding **except** as provided under the Act. **Section 42**, upon a literal interpretation appears to refer to Specialized Contractors or Suppliers who have exclusive rights in respect of the services, with no reasonable alternatives or substitutes, or where there is an urgent need.

PW5, Mr. Nasiru Bello had listed the Methods of Procurement under the Act to be by National Competitive Bidding, International Competitive Bidding, Restrictive Tendering, Emergency Tendering and Direct Tendering. For any Procurement Method outside the National Competitive Bidding Method, the Bureau of Public Procurement's Objection **must be first had and obtained** before the Bidding Process commences. His Team observed that the Contractors were selected based on the Selective Tendering Method and added that these exceptions had proper procedure and conditions to satisfy before they could be adopted. As regards the 45 Solar Electrification Contracts, his Team observed the Contracts were also not advertised in any National Daily. He noted that the Companies awarded the Solar Contracts, were not in the 2007Pre- Qualification List of the Ministry.

Under cross-examination by Learned Silk representing the 1st Defendant, PW5 was not in a position to determine whether or not the method REA adopted was in line with the procedure for direct procurement. When asked, which of the Methods for Procurement were abused as alleged by him, he replied that the Procurement Act generally ascribed that all Procurements were to be through the National Competitive Bidding process, however there were exceptions. He explained that these exceptional bidding methods had their own conditions before they could be adopted and he confirmed that the Direct Procurement method was stated in the Act.

Under cross-examination by Learned Counsel representing the 3rd Defendant, A.D. Tyoden Esq., PW5 stated that even though the Procurement Act had series of processes that may be adopted for the purposes of procurement, yet it was necessary to follow the proper procedure for each of the processes.

Under Re–Examination, PW5 had stated that the only MDAs exempted from the known Procurement Procedures, were Contracts emanating from the National Security and Defence, however, none this was not applicable to the Contracts awarded by REA.

PW6, Mr. Yahaya Sharmaki, an erstwhile Member of the Ministerial Tenders Board, confirmed these Procurement Methods. He described the Selective Tendering Method, as a situation where in order to ensure Competitive Prices, Pre- Selected Suppliers or Contractors are invited to bid, with the condition that tendering is determined by the nature of the Goods or Services required, the amount involved, time factor amongst others. From experience, where there are numerous bidders, the minimum number of bidders per Contract would be three (3) distinct-unrelated biddings. For instances, where there are three (3) Contracts, the minimum number of bidders per contract would be three (3) and for the entire Three Contracts the number of Bidders would be Nine (9).
Concerning the Direct Procurement Method, he stated that the method was directed towards a Single Supplier and there are no Competitors because the Supplier had monopoly over the supply of the goods or services.
In the affirmative, he answered that Electrification was part of the area the Ministry of Power controlled. Both Solar Electrification and Grid Extension were specialised areas but were not subject to monopoly by any Contractor.

Further, he stated that after the tendering process, the next step was the Bid Evaluation, which determined the winner of the bid. He explained that the Bid Evaluation had certain criteria, milestones, assessment or points through which a

sole winner of the bid would emerge, and one of such criteria was the value of the money. A Bid Evaluation Committee, a Sub-Committee, appointed by the Board Chairman of the Tenders Board, conducts the Bid Evaluation. He then explained that the Agency's Procurement Planning Committee had different roles or functions from that of the Bid Evaluation Sub-Committee of the Tenders Board.

The collective position of the Defence, in their Written Statements, is that they employed the Direct Procurement Method under Section 42 of the Public Procurement Act, which permitted REA tocarry out any emergency procurement when there was an urgent need for the goods, works or services and where engaging in regular tendering proceedings or any other method of procurement was impractical due to unforeseeable circumstances, giving rise to the urgency. This was permissible as long as the urgency was not caused by REA's dilatory conduct.

Throughout the Written Statements of all the Defendants, voluntarily admitted into evidence without any Objection whatsoever, the reasons for the departure of the Law were in sum, and as ably put out by the 1st Defendant, was that on the 14th of November 2008, his Agency received a Directive from the 2nd Defendant to commence execution of the Projects. After series of Meetings and consultations with Members of the National Assembly and after studying the Amended Budget passed in 2008 and being aware also of the late passage of this Budget, his Agency decided to execute the Projects based on the requirements of the Public Procurement Act 2007 because the Target Project Costs ranged within the Approval Limits of the Ministry of Power.

Given the paucity of time, as the Order to commence was received on the 14th of November 2008 and was to end before the 2008 Financial Year was to terminate, the Agency, due to the impracticability of engaging in the Project Preliminaries, Preparations, Award and Mobilization by Contractors to Site, which was to be concluded by the year's end, relied on the provisions of Section 42(b) of the Act, which recommended Direct Procurement.
REA, then reached the conclusion that complying with the full provisions of the 2007 Act requiring advertisement for Pre-Qualification, Evaluation of Submissions and Production of Shortlisted Pre-Qualified Companies, invitation to submit Tenders Bid, Evaluation of Tenders, Pre-Contract Price Negotiations etc., would definitely not be feasible within the timeframe available and therefore, resolved to treat the individual Projects as Direct Procurement in order to forestall the ultimate loss of benefits derivable from the execution of the Targeted Constituency Projects to the Target Communities.

In the 1st Defendant's Written Statement, he had placed reliance on this Section to treat each Project as Direct Procurement. In this case, the factor, giving rise to this emergency was the imminent end of the year, by which all actions not completed but associated to the execution of these Projects, would terminate thus frustrating the Projects' execution. Aside of the time factor, was the ultimate loss of benefit derivable from the execution of the targeted Constituency Projects to the Target Communities and the payment of interest penalties.

Now,the Direct Procurement Procedure can only be utilized where there is an emergency situation warranting the bypass of the regular process and **Section 43** of the Act specified in detail, the circumstances the Law would accept to justify the classification of an emergency situation. The 1st Defendant justified the need for Direct Procurement above and there is no need to restate it here again. The Court notes that there were available funds set out for the performance of the Contracts and so this aspect of the requirement was satisfied.
It is sufficient to note that the only emergency situations anticipated under the Act is where there is disaster, catastrophe, war, insurrection or Act of God, or where the Condition or Quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness,oralso where a Public Project may be seriously delayed for want of an item of a minor value.
It can be seen that REA's justification for adopting this Emergency Procedure was alien to the Law as set out under **Section 43** of the Act.
The reliance by the Defence on **Section 42(1)(b)** of the Act, citing the urgent need for the services, needed to have been proved before the Court by Documentary and other Real Evidence.
The only urgency the Court can perceive is that of **Time**. The Defence had stated that the Communities were in dire need of the services but produced no evidence to back up this claim. They could easily have submitted a Plea Letter from the affected Communities, and they could have tendered the Seven Point Agenda of the Late Yar'adua's Administration, specifically stating that against all odds and against the Law, his Seven Point Agenda takes priority and did not need to follow due process. Had these Projects been Priority Projects, they would have been included in the Original 2008 Budget and not as a Supplement in November of 2008. This is not forgetting the fact that the 1st Defendant, the other Defendants and REA itself, did not seek for any Projects and were not even aware of the Supplementary Budget.
The 1st Defendant in his Written Statements had stated that REA did not propose

any New Project during the preparation of the 2008 Amended Budget. Following the passage of the Amended Budget, he received on the 14th of November 2008, a Ministerial Directive to implement the content of the Budget as it affects REA. In order to implement the Grid and Solar Constituency Projects, REA contacted the individual Senators or House Members who nominated or sponsored the Constituency Projects for inclusion in the Budget and had sought assistance from the Three National Assembly Committees, having oversight functions on her activities, in identifying the Project Sponsors in the National Assembly. These individual Project Sponsors made arrangements with Staff of REA to visit the respective Constituencies where the Target Projects were proposed.

If the Projects arose as a result of a Presidential Drive to fulfill its Seven Point Agenda, then it is conceivable to expect that the Proposals for these Projects in REA's Budget be a Presidential Bill emanating from the Presidency to the National Assembly and not instigated by the Assembly itself. There was nothing contained in any of the Defendants' Statements and Oral Evidence regarding any Presidential Directive and so, waving the Seven Point Agenda at the stage of Trial, appears to be an afterthought.
Secondly, the fact that Electricity Project was one of the Seven Point Agenda of the Late President Musa Yar'adua's Administration was neither here nor there to the fact of an emergency situation. At least, it was not recognized under the Law, which made no exceptions for any Presidential Agenda. The National Assembly makes laws and the President is the Chief Executive of those Laws and therefore must execute his Policies in accordance with the Law. After all, none of the three arms of Government is above the Law. It is this mindset that Government Activities must be subject to the whims and caprices of anyone, that is the bane of our Society and is the actual impetus to Corruption.

It is important to note **Section 18(e) of the Public Procurement Act**, which states that it is the function of the Procurement Planning Committee to integrate its Procurement Expenditure into its Yearly Budget.

From the Minutes of Meeting in **Exhibit 159, at Paragraph 5** thereto, it was noted by the Committee Members that the manifestation of New Projects in the Amended 2008 Budget was as a result of a "special arrangement" between the Executive and Legislative Arms of Government, coupled with the fact that the Projects were urgently needed in the concerned Rural Communities. Therefore, the engagement of

complete Tender Proceedings or any other procurement method was impracticable due to imminent lapse of time by December 15, 2008.

The emphasis placed by REA on the date, December 15, 2008 as being the date of lapse, leads the Court to pause a little when considering any actions taken by REA after December 15th 2008. Could this mean that one of the Approvals, some Award of Contracts to Contractors and especially Payments, took place after the lapse of time? If so, were these actions then valid?
None of the parties before the Court made any observation as to the above. There was also the fact that REA did not carry out any Tender Proceedings and Bid Evaluation Exercise, and all that was seen was that the Contractors were selected and awarded the Contracts. REA also did not provide any evidence to indicate whether the Contracts were approved by the Tenders Board of the Federal Ministry of Energy (Power) and the Federal Executive Council.

It is clear that the Threshold of both REA and the Federal Ministry of Power was 50Million and any Contract Sum above this Threshold had to obtain an Approval from the Approving Authorities, which are the Federal Executive Council and the Bureau of Public Procurement who were to issue the Certificates of No- Objection. Each of the 113 Grid and 45 Solar Contracts were awarded below the Threshold of N50Million and so technically, REA had the authority to award such Contracts and the Minister of Power also had the authority to approve the Award of the individual contracts. This is a given fact. What is not given, is the consequence of combining the individual contract sums into a whole, whereby the cumulative total of the whole, far exceeds both the Authority and Power of the Minister and REA to so award. Had there been separate Certificates of No- Objection for each of the 113 Grid, and 45 Solar Project Contracts, there would have been no breaches of the provisions of these Sections of the Law.

As regards the Financial Aspect, **Sections 35 and 37 of the Public Procurement Act,** are on point.
Section 35(1) provides that: -
"**In addition to any other Regulations as may be prescribed by the Bureau, a Mobilization Fee of not more than 15% may be paid to a Supplier or Contractor supported by the following:**

a) **In the case of National Competitive Bidding- an Unconditional Bank Guarantee or Insurance Bond issued by an Institution acceptable to the Procuring Entity; and**

b) **In the case of International Competitive Bidding- an Unconditional Bank Guarantee issued by a Banking Institution acceptable to the Procuring Entity.**

Subsection (2) provides: -
"Once a Mobilization Fee has been paid to any Supplier or Contractor, no further payment shall be made to the Supplier or Contractor without an Interim Performance Certificate issued in accordance with the Contract Agreement."

Section 37 states that: -

"

1) **Payment for the procurement of goods, works and services shall be settled promptly and diligently.**
2) **Any payment due for more than Sixty Days from the date of Submission of the Invoice, Valuation Certificate or Confirmation or Authentication by the Ministry, Extra- Ministerial Office, Government Agency, Parastatal or Corporation shall be deemed a Delayed Payment.**
3) **All Delayed Payments shall attract Interest at the Rate specified in the Contract Document.**
4) **All Contracts shall include Terms, specifying the Interest for Late Payment of more than Sixty Days."**

Now, the Court will examine the various pieces of evidence, both Oral and Documentary that speaks to these above Sections of the Law in its determination of whether there were violations of these Laws.

PW5, Mr. Nasiru Bello had testified that the Procurement Act made provisions that for every Contract awarded, certain amounts of money must be made available to the Contractor. According to him, the Normal Payment Structure for any Procurement Contract was set out in **Section 35** of the Public Procurement Act, which stipulates that not more than 15%, being the maximum was to be paid as Mobilization Fee for any Contract.Where a Contractor was not paid, the Procuring Agency could attract to itself, punitive interest. Under cross- examination, he did not know that the reason REA entered into a Bank Bond with the various Contractors' Banks was to avoid punitive interest.

In the course of Auditing the Procurement for Grid Extension, his Team discovered that 100% payment were made in Two (2) Instalments on the same day.

Under cross-examination by Learned Counsel, B.A. Wali Esq., he confirmed that the initial payment of the 15% by REA, to the Contractors were in order. However, as regards, the Advanced Payment Guarantees (APG), meant to secure the remaining balance of 85% Contract Sum until instructed, he stated that this was improper and not in order.

PW6, Mr. Yahaya Abdullahi Sharmaki, under cross-examination by Learned Silk representing the 1st Defendant, responding as regards the question of none or late payments to Contractors, stated that under the new Procurement Act, where a Contractor is owed, the Government pays Interest on the sum owed. He had no answer to the question whether it was reasonable for REA to pay a Contractor from an Escrow Account and then later request that the Contractor be fully paid, after issuing a Certificate of Job Completion.

The 4th Defendant, under cross-examination by the Prosecution, stated that he would not have approved the Procedure used had the Projects come up sometime in the Month of March. According to him, the 15% Payment as Mobilization Fee being a part payment was normal and other Payments were to be made as the work progresses. However, he disagreed with the fact that the 85% were paid to the Contractors in 2008.

The 1st Defendant in his Written Statements, **Exhibits 186A-H**, stated that since the Contract Sums were all below N50Million, which is the Approving Limit of the Ministry, they had sought the Approval of the Ministry. Payments to the benefitting Contractors were 15% of the total Project Cost against the provision of an Advance Payment Guarantee, while the Cheques for 85% balance were raised and retained by the Agency pending the completion of the Projects and this was done in compliance with the provisions of **Section 37** of the Public Procurement Act. This was also to ensure payment to the Contractors after completion of the Projects within the 60 and 90days timeframe. According to him, no Contractor was paid 100% of the total Project cost, instead, 15% Advance Payment was made to the Contractors, which was fully secured with an Advance Payment Guarantee from an acceptable Bank to the Agency.

Further, in his Written Statement, **Exhibit 186E**, he stated that there were extensive discussions between REA and the House of Representatives' Power Committee as well as House Committee on Rural Development, sometime in December 2008, about the release of the 85% balance of payment to the Contractors' Bankers against their submission of the Advance Payment Guarantee Certificates, which was to secure the balance and to facilitate final payment to the Contractors on the completion and certification of the Projects.

After these discussions, REA was advised to further deliberate the matter with the Minister of Power, represented by the 2nd Defendant. The consensus was that the 85% balance secured, was Committed Funds. Approvals were sought and obtained from the 2nd Defendant before necessary actions were taken.

He agreed that the Agency retained 85% balance to ensure payment was effected to the Contractors on completion and delivery of the Projects to the Agency. Cheques for the 85% balances were released to the respective Bankers of the Projects' Contractors against the provision of an Advance Payment Guarantees, with a Written Instruction not to disburse any part of the Fund, except (with) the Written Instruction of the Agency's Chief Accounting Officer, which must be based on either the full completion of the Project or an attainment of a Certified Completion Milestone.

He referred to his Letter of Firm Instruction to the Banks, who had collected the Cheques of the 85% balance payment for which Advance Payment Guarantee Certificates were issued to secure, where he had instructed them not to disburse to the Contractors from this balance without a written clearance from the Agency. The disbursement must be based upon due certification of progressive performance as contained in a Payment Certificate submitted by the Contractor to the Agency, which must be duly confirmed by an Accredited Representative of REA. As at the date of this Statement, no authorization had been given to any Bank to release any money from the 85% balance as the submitted Interim Performance/Payment Requests made by Contractors were yet to be fully verified.
He noted that no provision was made in the 2009 Capital Budget for completion of these Projects started in 2008 and it would have been difficult to pay up if the balances were not secured.

The 2nd Defendant, in his Written Statement, **Exhibit 194A**, noted that on the Second Group of Contracts, which is the Grid Extension, Payments using Advance

Payment Guarantees were included. He stated that this Request from REA was illegal because it had been cancelled or removed as provided by the 2007 Bureau of Public Procurement Act 2007. He also stated that he had personally written Letters to all Chief Executive Officers under the Ministry of Energy (Power) dated the 2nd of June 2008, emphasizing in Paragraph 4 that "**NO PAYMENT SHOULD EVER BE MADE FOR ANY JOB NOT DONE**".
According to him, after the Approval of this Second Group of Contracts, the Grid Extension, he **further** emphasized to the 1st Defendant that "**ADVANCE PAYMENT GUARANTEES ARE NO LONGER ALLOWED IN PUBLIC SERVICE**".
He advised the 1st Defendant to ensure that "**NO PAYMENT IS GIVEN TO ANY CONTRACTOR WITHOUT THE JOB BEING DONE**". He had informed the 1st Defendant that what his Ministry did when awarding Contracts, was to release the Letters of Award of Contracts but they did not pay Advance Payments as Contractors will be paid after completing their various jobs. According to him, for the Contracts granted by the Ministry, no 15% Advance Payment was made to any Contractor and he instructed all Contractors to move to their various Sites in order for the Jobs to be completed and inspected before the 25th of December 2008. All the Jobs were completed and were fully paid before the closure of Accounts by the 31st of December 2008. For Jobs not completed, they were not paid any monies and the fund was returned to the Treasury. In his Ministry, they had employed the Selective Tendering Process in view of the time factor for implementation. He further referred to the Financial Regulations, which states that no payments should be made without Job Completion and added that all Chief Executive Officers are accountable and are self-accounting for all their actions and expenditure. Upon noticing that the 1st Defendant had made payments of 85% through Advance Payment Guarantees, he called the 1st Defendant to his Office and requested for further explanation, asking him to explain in writing what happened and what was the position of the Ministry of Finance on the matter.
According to the 2nd Defendant, there were **NO CERTIFICATES OF PAYMENTS** signed by him before the Contractors were paid. He referred once again to his Directive of the 2nd of June 2008 where he had instructed all the Chief Executive Officers that all payments **MUST** have Certificates signed by him and REA did not come to the Ministry for such Payment Certificates. According to the 2nd Defendant, the 1st Defendant "**made all payments on his own, without such Approvals from me**".

The 3rd Defendant, in his Written Statement, **Exhibit 197B**, stated that upon securing the Approval from the 2nd Defendant, he was directed to pay both the 15%

and 85% Payments on the Projects. Both Payments were to be secured by Bank Guarantees. He did not know about the 10% Retention Fee in ordinary Contracts and only relied on instructions to pay. He also stated that he paid as instructed because of the Bank Guarantee securing the 85%. According to him, the Agency did not retain the 10% Retention Payment in its Account as it was included in the 85% covered by Bank Guarantees. All Payments were made in the Names of the Contractors covered by the Bank Guarantees, which were requested by the Agency from the Contractors.

The Procedure for the payment of the 15% Contract Sum is made against Advance Payment Guarantees. For subsequent payment, pay is made against performance and he stated that the 85% Payment was not made to the Contractors but to the Banks against Bank Guarantees covering the full amount. He noted that the payment of 85% is not directly stated in the Procurement Act but attributed the reason for the payment by REA of securing the Committed Funds, was to avoid a situation where Contracts are awarded and completed but there would be no funds to pay Contractors for work done as the Agency could not award Contracts unless there was Appropriation.

The 4th Defendant in his Written Statement, **Exhibit 198A**, stated that he was in the Meeting when the decision to award the Contracts for the Solar Based System and the Grid Extension Projects was taken. He stated further that, it was agreed that 15% Statutory Advance Payment Guarantees be made to Contractors while the 85% balance be released to Banks with Advance Payment Guarantees.

The 5th Defendant in his Written Statement, **Exhibit 196A** stated that he had no knowledge of Payments made in respect of the Contracts nor knew about the Advance Payment Guarantees. The Procurement Planning Committee Members were not informed about the Payments for the Contracts and neither did the Committee endorse the payments of the Contracts. He did not know anything about the 100% payment for the Contracts and not even the 15% after the Meeting of the 10th of December 2008 and added that there was no follow-up to the Meeting since then.

The 6th Defendant in his Written Statement, **Exhibit 185A** echoed the above Statement of the 3rd Defendant except to add that the Agency may be liable to pay Interest on the 85% Contract Sum in the event of Project Completion (and) by Contractor, with the Agency not having money to pay such Contractor. He did not

know whether REA retained 10% Retention Fees and as at the time of writing his Statement, he did not know whether REA complied with this aspect or not.

As regards the question of Threshold Limitations, PW5, Mr. Nasiru Bello had testified under cross-examination by Learned Silk representing the 1st Defendant that as at 2008, N50Million Limit was the Threshold set for REA in the Procurement Process of awarding Contracts, and any Contract above this Threshold Limit was mandatorily to be referred to the Federal Executive Council for Approval before it can be awarded. A Certificate of No Objection from his Bureau must also be initially obtained and he confirmed the existence of Circulars, which set out the Approval Limits for each Ministerial Board.

According to him, each of the Grid Extension Contracts was awarded at an in-house estimate of about N40Million, which was below the Threshold. But from the totality of the 2008 REA's awarded Contracts, it was seen that she had exceeded her Threshold. Therefore, it was imperative that she initially obtained an Approval from the Tenders Board of the Federal Ministry of Power. From the Documented Files for the Grid Extension REA supplied to his Team, that Approval was not sought for.

PW6, Yahaya Abdullahi Sharmaki, when questioned about the threshold for Contracts the Ministerial Tenders Board could award, he replied that the Permanent Secretary being the Accounting Officer of the Ministry had an Approval Limit of One Million Naira (N1, 000, 000) and below. On the other hand, the Ministerial Tenders Board had an approval limit of Fifty Million Naira (N50, 000, 000) and below, while the Federal Executive Council was the Approving Authority for Contracts above Fifty Million Naira (N50, 000, 000). According to him, Agency's Tenders Board are similar to the Ministerial Tenders Board, with the difference being their respective thresholds, when awarding Contracts.

He was asked if knew of a Certificate of No Objection, he answered in the affirmative testifying, as a matter of fact, that one of the functions of the Procurement Planning Committee of Ministries, Departments and Agencies was to issue this form of Certificate to enable the Ministerial Tenders Board consider and approve Contracts. He was asked the benchmark of authority for the issuance of the Certificates and he re-iterated that the threshold for Ministries, Parastatals and Agencies ranged from One Million Naira (N1, 000, 000) to Fifty Million Naira (N50, 000, 000). However, this threshold did not apply to the Bureau of Public Procurement whose threshold was Fifty Million Naira (N50, 000, 000) and above.

PW6, was shown Two Exhibits namely, Exhibit 161- a **Certificate of No Objection** in the sum of Three Billion, Five Hundred Million Naira (N3, 500, 000, 000) and Exhibit 162- a Certificate of No Objection awarded for Solar based Rural Electrification Projects in the sum of One Billion, Six Hundred Million Naira (N1, 600, 000, 000). In view of the threshold he had earlier alluded to, he testified that the figures as seen from the Two Exhibits, were within the threshold of the Bureau of Public Procurement, who had the power to issue the Certificate of No Objection when awarding Contracts. However, the issuance of the Certificate of No Objection in the sum of Three Billion, Five Hundred Million Naira (N3, 500, 000, 000) as well as One Billion, Six Hundred Million Naira (N1, 600, 000, 000) were beyond the approval limit or mandate of REA. Further, REA had no authority to issue these Exhibits, as the appropriate authority to issue them was the Federal Executive Council.

Under cross-examination by Learned Silk to the 1st Defendant, he was referred to Exhibits 161 and 162, that is, the Certificates of No Objection, and stated that had REA written the Certificates of No- Objection differently; there would not have been a problem. He added that the only problem was a mistake of lumping up the sums together.

Under cross-examination by Learned Counsel to the 4th Defendant, he was referred to his testimony of the 22nd of February 2012, where he had earlier testified that the Federal Executive Council issued the Certificate of No Objection. He replied that the Federal Executive Council does not issue Certificate of No Objection. Rather, the Certificate emanates from the Bureau and then the Federal Executive Council approves the Contract. Based on the Procurement Act, he was asked if it was the Procurement Planning Committee of the Ministry and REA that issued the Certificate of No Objection. According to him, both the Ministry and REA had their own separate independent Procurement Planning Committee and each Committee issues Certificates of No Objection for Contracts within their Thresholds.

He was again referred to his testimony-in-chief where he had stated that One Billion, Six Hundred Million Naira (N1, 600, 000, 000) and Three Billion, Five Hundred Million Naira (N3, 500, 000, 000) were beyond the threshold of the Bureau to issue Certificates of No Objection. He clarified that what he had earlier testified was in regard to the fact that these sums, were beyond the mandate or authority of REA's Procurement Planning Committee to issue the Certificates of No Objection.

On the application of Learned Counsel the Record of this Court was read over to him specifically where he had earlier mentioned that the Bureau issued the Certificate of

No Objection. Then again he was asked, if it was only the Bureau that could issue the Certificate of No Objection and he replied that the Bureau could issue the Certificates for these two sums of money.

Under Cross-Examination by Learned Counsel to the 6th Defendant, he could not say whether the Certificates of No-Objection in Exhibits 161 and 162 were a summary breakdown of different projects to be executed by the different Contractors. He identified the annexure to Exhibits 161 and 162 as the List of the Contracts, which gave a breakdown of the Contracts and the amounts involved that were not above Fifty Million Naira (N50, 000, 000).

Now, Learned Silk Erokoro SAN, had submitted that since the National Council on Public Procurement established by Law to set thresholds was nonexistent, all Thresholds not set up by that Body, were illegal, null and void.
Had the National Council on Public Procurement been a party to this Criminal Action, they would have had the burden of establishing or proving their existence as likened to a challenge of a Company's Incorporation. However, they are not a party and therefore, it is a classic case of "he, who alleges, must prove".

The 1st Defendant's challenge ought to be statement of fact backed up by facts only. The existence or non-existence of the Council is provable by facts, and since he states that it does not exists, the burden is clearly laid on him, to prove before this Court, proof of that fact. Perhaps, a golden opportunity to establish the non-existence of this Council was lost when the 1st Defendant refused further participation in the Court Proceedings and did not enter the Witness Box to testifyadducing positive evidence on the Council's nonexistence. In the absence of positive proof of the non-existence of the Council, the Court will have no choice but to rely on the evidence of the Defendants themselves, both Orally and in their Documentary Evidence, where they recognized and acknowledged the Limit of their Agency to be N50Million and below. Their recognition and acknowledgement is good enough for the Court and the Court will hold that the Threshold set for each Ministry are valid and extant.

As regards, the issuance of Advance Payment Guarantees, PW7, had tendered into evidence **Forty-One (41) Advance Payment Guarantees** as **Exhibits 190(1-41)**and also Learned Silk representing the 1st Defendant, Paul Erokoro SAN subsequently tendered his own Copies of **Fifteen (15) Batches of Advanced Payment Guarantees (APGs)** and a Copy of a Letter written by UBA Plc. to REA

dated the 30th of January 2009, as **Exhibits 254 to 271 Series,** to evidence the moves made by the 1st Defendant to secure the funds and relied especially on his Letter to the UBA, which had been strongly disputed by the Prosecution.

The 6th Defendant described an Advance Payment Guarantee (APG) to be a Guarantee from a Bank to an Employer, who usually is the person who gives the Contract to a Contractor, and in this instance, REA was the Employer. In the event a Contractor fails to perform or execute the Contract, the Bank is liable to payback the Contract Sum to the Employer. Therefore, an APG act as a form of security to protect the financial interest of REA with regard to the Contracts awarded to Contractors.

It is noteworthy to recall that PW7 disputed the 1st Defendant's contention that Advance Payment Guarantees (APGs) were given by the Banks before REA released the Cheques. This is because PW7 stated that during their investigation, they had actually discovered that while the Cheques were released in 2008, some of the APGs were given in 2009. He had read the APGs but could not recall unless refreshed, whether or not the various Banks had undertaken to reimburse REA, in the instance where a Contractor failed to either complete the job or where the Contract Money was declared missing.
In reaction to **Exhibits 255(1-32),** the 1st Defendant's Letter to various Banks instructing them not to release the 85% of the Contract Sum unless and until the job was completed, PW7 stated that these Letters prompted his Team to confront the Banks, where they were informed that the Letters were not received by the Banks and the 1st Defendant, when asked, could not furnish the Acknowledgement Copies.

PW7 was unaware of the freezing by the EFCC of the Accounts belonging to all the Contractors who received 85% of the Contract Sum in the Month of August 2009. The investigators wrote to the various Banks requesting for Statements of Account as well as issued them instructions to halt all outgoing transactions from those Accounts. When asked, he could not recollect tendering the EFCC's Letters to the Banks but added that he and his Team were in custody of the Letters.

Now, to fully understand the implication of employing Advance Payment Guarantees it is expedient to define what they are.
A Bank is the Third Party in a Contractual Agreement between the Contractor and REA, the Employer, and by the security of the Advance Payment Guarantees, the Bank is guaranteeing REA, that the monies secured by these Guarantees would be paid to REA in the event the Contractors do not perform the Contract Work. The

Bank further guarantees that the Contractor would do the work according to the Terms and Conditions they jointly agreed upon. The Contract Agreement is what is given to the Banks in order for them to issue out Advance Payment Guarantees. The Banks will carefully peruse this Agreement together with the Award Letter. For Jobs contracted in phases, the satisfaction of each phase of work, which is evident in Interim Job Certificates, would discharge the Banks from liability for payments due on that phase of work. REA would have paid the money on behalf of the Contractors to their nominated Banks who would hold the funds. When the Contractors fulfills each phase of their contractual bargain, REA would then give the Contractors Interim Job Certificates for payment by the Banks. It is noted that **Exhibit 179**, the Contract Agreement before the Court, did not even expressly provide for Interim Certificate as Statutorily required by **Section 35(2) of the Public Procurement Act.** Due to the fact that the funds are committed to a transaction, the Contractor cannot access the funds even if the Advance Payment Guarantee Account is in his name. It is only the amount discharged upon completion of a milestone event that becomes the Contractors' Money.

In this particular case, the aforesaid procedure was not followed, because the money to be secured had already been received by the Banks, as seen by the Timeline, when the Cheques were issued out and paid into the Accounts, without the security of the Advance Payment Guarantees. The Advance Payment Guarantees ought to have been based on the Award and Contract Letters and also, ought to have been based on the Documents received from the Contractor. These are major conditions to be fulfilled before the Banks would issue Advance Payment Guarantees to REA, who in turn, is obligated to confirm from the Banks, the Status of the Guarantees. It is only after the confirmation that REA would send the monies into the Contractors Nominated Bank Accounts. Until the Banks receives the monies, the Advance Payment Guarantees do not kick off.

So, if the Banks have received the monies before the issuance of the Advance Payment Guarantees, how then did they know, which Funds entering the Contractor's Account to secure?
There is something wrong about the procedure adopted in this case. Since the money had already been received into the Contractor's Account prior to the issuance of the Advance Payment Guarantees, there was a possibility that the Contractor may have already started using the funds, in the Account, so what then would be secured? The Banks usually would not go around checking the sources of everyfundplaced into the Account or investigate the Contracts tied to the monies in

the Account. One of the Defendants, especially the 1st Defendant, or the 3rd or the 6th Defendant could have better explained how they expected the Banks to distinguish the particular funds coming from REA, or to call one of the Bankers as their witness, in the absence of any Express Letter from REA.

According to the 6thDefendant, the funds secured through the Advance Payment Guarantees were moved by the Banks into a Special or Escrow Account but the question still remains, what happened to funds already placed into the Contractor's normal or regular Account before the Contractor obtained the Advance Payment Guarantee? The money in the Regular Account cannot be assumed to be part of the money expected to be secured by the Advance Payment Guarantee and there is no way the Bank would know it was in relation to the monies secured by Advance Payment Guarantees.

There could even be a possibility, albeit remote, that there is a recall of the money by REA and the Banks would be in a fix. There is also another possibility that since the money was already received into the Contractor's Account without their input, the Banks may refuse to issue the Advance Payment Guarantees, as they are not committed and would rather not incur liability and responsibility under the Contract when it need not commit!

The Advance Payment Guarantees, before the Court, expressly stated that it takes effect after the Banks received the money, so if there was any money in the Contractor's Account before the Advance Payment Guarantee was issued, it cannot be automatically assumed to be part of the Guaranteed Funds. This is because, these Monies the Advance Payment Guarantees were meant to secure, had already been received through the Cheques issued before the Advance Payment Guarantees were submitted to REA. Advance Payment Guarantees are not at large, as it has to be for a specific use.

As to the 1st Defendant's contention that the various Banks had given REA Written Undertakings that they would issue out Advance Payment Guarantees and that was why he authorized the exit of the funds into the Contractors' Account. There should have been positive evidence of this Written Undertaking from the Banks. It is difficult to imagine having a financial discussion in the magnitude of these Contracts without anything in writing. If there are no Documents to back up his assertion, then, it is just a Statement. It is mere ipsi dixit. All that is before the Court by way of commitment to issue out the Advance Payment Guarantees were a Written Quibble

on the back of the Payment Vouchers by certain members of the Banks, who in acknowledging receipt of the collection of the Cheques, indicated a promise to provide the APGs on or before a certain date.

The Court has had a very careful look at this and finds that the ID Cards do not indicate what positions they occupy in the Bank sufficient and worthy to commit and bind the Banks to issue the Advance Payment Guarantees and they did not indicate whether they were permanent or temporary Staff of the Bank. These surely cannot possibly be what Samuel Ibi Gekpe was referring to as a Written Undertaking.
The Banks could have given Firm Offers to the Contractors that in the event the Contractors are able to secure the Contracts, they would be given Advance Payment Guarantees on certain conditions. This Letter will evidence commitment and would ensure the Banks are bound, should they fail to issue the Advance Payment Guarantees on the receipt of the monies. In any event, no Formal Letter of Undertaking from each Bank is before the Court.
It is noted that some of the Advance Payment Guarantees before the Court were vaguely drafted to accommodate receiving the monies before the Advance Payment Guarantees is perfected.

The 2nd Defendant's Consent was granted on the 11th and 17th of December 2008. The Contract was executed on the 19th of January 2009.
In the instance of Solar Projects, the Banks, by the Contract Agreement, where supposed to have issued Advance Payment Guarantees for only 15% and so, when they went on to issue Advance Payment Guarantees for the balance of 85%, they had to have been acting on the premise of another Contract Agreement not before the Court. By the Payment Terms of the Contract, typified in Exhibit 179, the Employer was to pay an amount representing 15% of the Total Contract Sum as down payment/mobilization on the presentation of an Advance Payment Guarantee by the Contractor from a Reputable Bank.
The Second Payment was in respect of the 75% of Contract Sum Payment, which was to be paid at the completion, that is, the installation of the equipment, poles, earthing and pre-commission tests, and the Third Payment was the 10% Retention Fee due to be paid to the Contractor Six Months after completion.

If the Banks made it a condition to the granting of Advance Payment Guarantees, that the Contract Agreement and Letter of Award be furnished to them, then they

ought to have known that the Advance Payment Guarantees covered **ONLY** the initial 15% Payment and not the whole. That is just one!

The second is that, even if the Banks acted on the Minister's Approval for the issuance of Advance Payment Guarantees covering 100% of the Contract Sum, there was no reasonable justification for them to issue a 100% Advance Payment Guarantees in regard to the Solar Projects, because the Approval granted was expressly stated as 15% and not 100%.

Another curious aspect is that by **Exhibit 179**, the only Contract Agreement before the Court in respect of the Solar Project in Niger State, it appears that the Letter of Award as per **Exhibit 174** was dated the 12th of December 2008. The Acceptance Letter was dated the 19th of December 2008. The Contract Agreement, on its own part, was executed on the 30th of December 2008. **Exhibits 150 and 174** are the Central Bank Cheques for the Sum of N5, 790, 467. 14 dated the 24th day of December 2008 and the Payment Voucher in its regard. Then, also before the Court is **Exhibit 177**, the Payment Voucher in respect of 85% balance on the same Project in the Sum of N32, 812, 647. 14. The processing shows that the Cheque was issued on the 24th of December 2008 and acknowledged as received by Dan Jubril on the 7th of January 2009.
The Advance Payment Guarantee in respect of this transaction was obtained from the UBA Bank Plc. dated the 18th of December 2008.

Therefore, it is very curious how the Advance Payment Guarantee was received before the Contract Agreement of the 30th of December 2008 and a day before Dan Jubril accepted the Letter of Award, albeit the Letter of Award was dated the 12th of December 2008. This all goes to show that the Payment for this Contract was made way before the Parties signed the Contract Agreement. It also shows that the Payments aligned with the Approval of the 2nd Defendant and it is very curious indeed! Further, the Cheques went for clearing before the Advance Payment Guarantees, were issued.

However, the Court agrees with Paul Erokoro SAN and Learned Counsel representing the 6th Defendant on their contention that no Contractor got the physical benefit of the funds the Monies, which were in fact secured by the Advance Payment Guarantees. The Federal High Court Orders Defreezing the Contractors' Accounts, the Documents of Job Completion Certificates issued out by the Ministry of Power and the Letters from the Banks, all evidence this fact.

But what is in issue, is that the 1st Defendant's Letters of Firm Instructions to the Contractors Banks was written **after** the Monies had exited REA's Account and control with the Central Bank of Nigeria. It was expected that the Letters of Firm Instructions, would be contemporaneous with the exit. It was tantamount to shutting the stable door, after the horse had bolted!
Further, the 85% Process of the Advance Payment Guarantees in regard to the Solar Projects was unauthorized and beyond the Approval Mandate and wrong.

Aside of this fact, the Cumulative Sum of Monies were beyond REA's Threshold.

From a close look at the Approvals granted particularly for the Grid Projects, it can be argued that the Approval, "Approved as Appropriate", could mean either of these Two Things: (1) I have had a look at your request, and I approve it as being appropriate; or (2) I have had a look at your request, and I approve what is appropriate. This particular Approval, is vague and nebulous at best, but it is enough to cast doubt on whether Dr. Abdullahi Aliyu, actually authorized the 1st Defendant to go-ahead in the manner he did.

There is also the fact of Dr. Abdullahi Aliyu's earlier Directive warning against the use of Advance Payment Guarantees, other than that Statutorily provided for. His Statements before the Court, also shows that in his own Ministry of Power, REA's Procedure was not followed and also was the fact that he issued out a Query against the 1st Defendant on the propriety of the mode adopted.

Therefore, in conclusion, the Court finds that the 1st Defendant violated the Provisions of the Law and the 3rd to 6th Defendants to the extent of only signing the Certificates of No- Objection and agreeing to its irregularity are found to have disposed off the Contract Sums in violation of the Laws, Rules and Regulations. The 2nd Defendant had no portion in these activities and is found not liable.

The Final Element to be established is, whether they did so dishonestly. So, it is a full circle back to the **DISHONEST INTENT**, the Mens Rea.

Dishonesty 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 (Tangible or Intangible).

Section 16 of the **Penal Code** 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. 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 also **WIGMORE ON EVIDENCE VOLUME 2 PAGE 42 PARTICULARLY AT PARAGRAPH 242**

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., intended 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 COMISSIONER 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 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 Appealin 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:

- "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 Courtdecides that the actions were dishonest, the further question is: -
- "Did the Person concerned believe that what he did was dishonest at the time?"

But this Decision was criticized, 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 25TH OCTOBER 2017,** where the Supreme Court concluded that the correct approach is to:

- 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;
- Decide whether the Defendant's conduct is dishonest by the Standards of ordinary, reasonable and honest people;
- 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.

Coming back home, here in Nigeria, the actions of the notorious Lawrence Anini can be compared to Robin Hood, when he was brazenly robbing people in Benin City and was throwing money around to small children and widows. When convicted, such benevolent behaviour constituted no defence to the Charges of Robbery and Stealing.

The new trend in English Law is for only the actions to be tested OBJECTIVELY and not to apply any test as to the Subjective state of mind of the Defendant.

All the Defendants had stated that they employed the Mode adopted because of the urgency of the situation and their drive to ensure that the Late Umaru Yar'adua's Seven (7) Point Agenda, succeeds. They had also stated that the Money was used for the intended purpose and that it was not lost but was secured by Advance Payment Guarantees. Further, they contended that they had obtained permission for their actions before proceeding to secure the Advance Payment Guarantees from the Contractors' Bankers.

That is all noble **BUT** they needed to execute this Agenda in accordance with the Stipulated Law on Procurement and not on their own wisdom, whims and caprices. The Court will therefore, examine the evidence led by the Prosecution and Defence in regard to the question of dishonesty.

PW5, Mr. Nasiru Bello, Assistant Chief Procurement Officer of the Bureau of Public Procurement, stated that as at 2008, the Federal Executive Council was the Approving Authority for Procurement above Fifty Million Naira (N50, 000, 000.00) and it is, his Bureau who issues the Certificate of No-Objection for such amount. REA exceeded her Threshold of Fifty Million Naira and therefore she needed Approval from the Tenders Board of the Federal Ministry of Power. From REA's Audited Files, this Approval was never sought.
According to him, under normal circumstances, ALL Heads of Department were expected to be part of the Tenders Board. For any Procurement other than the National Competitive Bidding, his Bureau's Objection must be obtained before Bidding commences. In this instance, REA did not carry out National Competitive Bidding or Bid Evaluation and usually, it is the Bidding Companies who fix the Unit Prices for works to be procured.
According to him, the Procurement of the Forty-Five (45) Solar Based Contracts and the One Hundred and Thirteen (113) Grid Extension Projects were not advertised nor were all the names of the Contractors contained in the Pre-Qualification List.
For the Procurement of Grid Extension, 100% Payment in Two Installments were

made on the same day contrary to the Payment Structure in **Section 35 of the Public Procurement Act**. According to him, the initial payment of 15% of the Contract Sum was in order but not the 85%.

Further, his Team noticed that one Miss Israel Uduak Akpan had signed the Contracts and collected Cheques on behalf of the Nine (9) Companies, which incidentally had the same Office addresses in Asaba and bore the same telephone number.

PW7, concerning the Grid Contracts, testified that his Team could not determine the Addresses of those Contractors responsible for this Contract, because the Letters generated by REA for the Grid Extension had no Addresses on them, whereas for the Solar Contracts, the Letters had Addresses on them. The 1st Defendant had explained that the Ministry of Power's List for Grid Extension Contractors forwarded to him had no Addresses. This prompted his Team to write the Corporate Affairs Commission, requesting for the details on Incorporation, Registration Number, Directors and Addresses of those Companies that secured the Grid Extension Contracts. They tried to trace the Contractors but most of the Addresses furnished to them were non-existent.

Learned Silk representing the 1st Defendant had submitted on a number of realities confronting the Defendants, some of which were the National Assembly's Warning Letter to the 1st Defendant on the non-implementation of the Amended Appropriation Act 2008, Section 118(1)(b) of the Financial Regulations, Sections 16(1); 17(a)(i); 37; 42(1)(b) of the Public Procurement Act, amongst other Legislations, to say that any flagrant disregard of these Laws would have attendant consequences and would incur punitive interest on delayed payments. According to him, there was no proof of dishonesty or a fraudulent intent on the part of the 1st Defendant and he cited the case of **GEORGE VS FRN (SUPRA).** There was also no proof that he acted with intent to cause wrongful gain or loss or deceit to himself or another, or the Monies belonging to REA. He was not shown to have benefitted from the Contracts and even the Prosecution, submitted that the fact of benefit was irrelevant to the Charge. He argued that no Monies belonging to REA were reported to have been misappropriated, stolen or lost nor was there any allegation that the Contract Sums were inflated, or that he knew any of the Contractors before the Award. The initial suspicion that the Contracts were fraudulently awarded to Legislators was abandoned by the Prosecution without any explanation.

He argued that the Public Procurement Act did not regulate how monies were to be allocated, and how the controls and approvals for expenditure, preparation of Payment Vouchers, deduction of Charges and other Taxes were to be provided.

Learned Silk representing the 2nd Defendant, submitted that the 2nd Defendant acted in the absence of the Minister, arguing that no inference of fraud could be legitimately drawn that he did not honestly believe he possessed that authority to act. Unless the Prosecution can prove bad faith, even if it is proved that he acted under a mistake of fact, he committed no offence and relied on Section 168(2) of the 2011 Evidence Act.
Learned Silk defined Fraudulent Conduct through the Case Law Authority of **DR. EDWIN UDEMEGBUNAM ONWUDIWE VS FEDERAL REPUBLIC OF NIGERIA (2006) 10 NWLR PART 988, PAGE 383 AT PAGES 429- 430 PER NIKI TOBI JSC (OF BLESSED MEMORY),** where it was held that, fraudulent action or conduct conveys an element of deceit to obtain some advantage to the owner of the fraudulent action, or conduct, or another person, or to cause loss to any person. By this fraudulent action or conduct, the Defendant deceives his victim by pretending to have abilities or skills he does not have. In other words, he is an imposter. He referred further to **Sections 15 and 16 of the Penal Code,** submitting that the Definition of "Dishonestly", imports the infringement of some Rights, which causes wrongful gain to himself or another, or where he infringes on the Rights of a person deprived, causing wrongful loss. According to him, the Prosecution has not led any evidence to show that the 2nd Defendant acquired or retained any part of the funds from the Account of REA in the Central Bank of Nigeria and failed to also show that the 2nd Defendant did anything that deprived or kept anyone out of the said funds.

Learned Counsel representing the 3rd Defendant said nothing on dishonesty.

Learned Counsel representing the 4th Defendant, submitted inter alia, that if the List of Contractors to execute the Projects were not tabled at the Procurement Planning Committee Meeting, the 4th Defendant cannot be said to have agreed with others to do an unlawful act. According to him, the 4th Defendant did not sign any of the Contract Documents, did not know of the Payments and did not benefit financial from the Award. Further, the signing of the Certificates of No-Objection was in an Official Capacity and therefore was not an Offence. The 4th Defendant under cross-examination admitted that **Exhibits 161 and 162-**Certificates of No-Objection were not signed at the Committee Meeting but were brought to his Office for his signature.

Learned Counsel representing the 5th Defendant, submitted inter alia, that there was no prior Written Notice/ Agenda for the Meeting of the 10th of December 2008. He only responded to the telephone call by the 1st Defendant to attend a Meeting in furtherance of his Official Duties and had only known the essence of the Meeting, when he got there. According to him, no Contract or List of Contractors were discussed at that Meeting. Although **Exhibits 159 and 160,** the Summaries of the Meeting were apparently the same, they were fairly different in Content and Authors and the Intention they were meant to serve, contrary to the innocent belief and understanding of the 5th Defendant. The 6th Defendant was absent and Barrister Onwusoh, who actually covered the Meeting, had obviously not properly reflected the correct Proceedings. The 5th Defendant, under cross-examination, had stated that the Meeting he attended, was not the same Meeting where the Issues were discussed and he signed the Minutes and Certificates of No-Objection, long after the Meeting of the 10th of December 2008, on the Stairs of the Building, without reading them because he was not given the opportunity by the Chief Executive, who was soliciting for the signatures, going from office to office eliciting signatures from Directors that were present at the Meeting. The issues pertaining to the Certificates of No-Objection were not discussed at the Procurement Planning Meeting and maintained the fact that he did not attend any other Meeting. On hindsight, he would not have signed them and had only done so because the 1st Defendant insisted on his signature due to the urgency of the matter and had linked the 2008 Projects of the Agency. So he did so because the 1st Defendant was his superior.

When asked why he did not mention this fact of protest in his EFCC Statement- **Exhibits 196A and B**, he stated that he had attempted to write a Complaint to the Office of the Head of Service setting out his predicament and had in fact written a Draft. However, he was advised by his Lawyer to abandon writing. According to him, **Exhibits 161 and 162** were not made in furtherance of the award of the Contracts. During the meeting of the 10th of December, he was not disturbed with the absence of the Director Procurement at the Meeting, who he learnt was sick. The Director Procurement had two Senior Managers under his supervision, who also were not in the meeting of 10th December 2008.

DW6, Under Cross-Examination by Learned Counsel for the 5th Defendant, he stated that he prepared **Exhibits 160, 161 and 162**, which were reflections of the Summary of Meeting in **Exhibits 159 or 160**. When questioned whether there was anywhere in **Exhibits 161 and 162** that the Total Consideration Sum for the entire

Contracts were discussed, he replied that the amounts written **Exhibits 161 and 162** as well as the duration of the Contracts were not stated. The numbers of Projects to be executed were also not reflected in **Exhibits 159 and 160.**

He stated that there were subsequent Management Meetings that discussed matters relating to the Projects but did expatiate on them.

Under Cross-Examination by the Prosecution, he reiterated not being at the Meeting of the 10th of December 2008 and his EFCC Statement- **Exhibit 185B** was made in error. He had drafted the Contract Agreements, which were subsequently vetted and approved and had signed the Contracts on behalf of REA in his capacity as the Senior Manager, Legal of REA. When shown the Contract Agreement in **Exhibit 179**, he stated that both he and the 1st Defendant executed the Contracts worth less than N50Million, which is REA's Threshold on behalf of REA.

Now, from the Minutes of Meeting held on the 10th of December 2008, which informs **Exhibit 159,** in **Paragraph 5**, it is clear that reference was also made to the 2008 Budget and not only the Amended 2008 Budget because it referred to ongoing projects. More importantly, the Resolution in **Paragraph 9** recognized that all New Projects required certain formalities associated with regular Due Process Procedures, such as Advertisement, Expression of Interest, No-Objection, etc. So, the Procurement Planning Committee, headed by the 1st Defendant were <u>well aware</u> of the Law and Procedure guiding Procurement for New Projects.

The Court has had a very close look at **Exhibits 191**, the Directive dated the 2nd of June 2008 and issued by the 2nd Defendant on the implementation of the 2008 Appropriation in view of the 2007 Public Procurement Act. The 2nd Defendant had ordered that it was only the relevant Director of Procurement Department that shall issue Letters of Award of Contracts duly approved by the Federal Executive Council and the Certificates for Payment shall be issued by the Minister for Power and the Permanent Secretary. The Chief Executive Officers were to ensure that Payments were made on agreed milestone and that full payments for Contracts can only be made after full completion of Projects. The Chief Executive Officers were to be held responsible for all Procurements and Poor Implementations.

There is also **Exhibit 192,** the Letter of Query, where the 1st Defendant was queried by the 2nd Defendant and asked to justify the issuance of the Cheques of the 85% balance.

In **Exhibit 194A,** the 2nd Defendant's EFCC Statement, he stated that Advance Payment Guarantees had been cancelled or removed as provided by the 2007 Public Procurement Act and had after the Approval of the Grid Projects, emphasized to the Managing Director of REA that Advance Payment Guarantees are no longer allowed in Public Service. He further advised the 1st Defendant to ensure that No Payments is given to any Contractor without the Job being done and this was the same Procedure he employed in his Ministry.

The Directive/Letter from the 2nd Defendant to all Heads of Department could only have been seen, read and acted on by the 1st Defendant ONLY. If it could have been seen and acted on by another Person or Office, it was then for the 1st Defendant to have entered the Witness Box to testify as to that Other Person. In the absence of any other explanation, the Court finds that the 3rd to 6th Defendants were not privy to this Directive/ Letter and no evidence has been led to show they knew of this Directive stating that the use of Advance Payment Guarantees were discontinued.

Therefore, the 1st Defendant ignored the Directives and Warnings of the 2nd Defendant and his disobedience is apparent in the manner the Contracts were awarded and the way the Contractors were selected. The 1st Defendant repeatedly referred to his obtaining the List of Companies/Contractors from the already prepared Pre-Qualification List provided by the Ministry of Power. This was a contradiction to the evidence of PW7, who had stated that from his Comparative Analysis of the Pre-Qualification List from the Ministry of Power and the Companies awarded the Two Sets of Contracts, only Twenty-Four (24) Companies in the Pre-Qualification List were awarded the Grid Extension Contracts and only One (1) Company from that Pre-Qualification List was awarded a Solar Based Contract from a Total of Twenty-Two (22) Companies, who benefitted from the Solar Based Contracts. In other words, of the 100 or so Companies only 25 were from any form of Pre-Qualified List. The Question that must be asked is, where or from what List did the 1st Defendant get the outstanding 75 Companies?

In the absence of any evidence whatsoever as to any other Meeting of the Procurement Planning Committee with the Procurement Director in attendance, it appears that the selection of the Companies/Contractors that were awarded the Contracts for both the Solar and the Grid Electrification Projects were done unilaterally by the Chief Executive of REA, the 1st Defendant and aided by the 6th Defendant, in full consultation with Members of the National Assembly, who had injected their Constituency Projects into the 2008 Amended Budget. This conclusion is reinforced by the active and positive dissociation of all Participants at the Meeting

of the 10th of December 2008, who steadfastly maintained that the Contract Awards and the Contractors were not discussed.

It was therefore imperative for the 1st Defendant to have testified on how he carried out due diligence in his selection and why he awarded those Contracts unilaterally without the input of the Director of Procurement, who stated what ought to have happened. REA would also have advertised in Two National Dailies for Expressions of Interest and thereafter, a Committee appointed by the Managing Director of REA would have analyzed the Submissions made by all the Contractors, and then qualify those who meet the minimum requirements. The qualified Contractors would have been asked to submit a Tender for the Procurement and the Committee would have sat to process the Tenders and recommend to the Procurement Planning Committee, the List of Competitive Bidders. The Procurement Planning Committee would have then sat to analyze and issue a Certificate of No-Objection to the Ministerial Tenders Board of the Ministry of Power.

Moreover, the Director of Procurement stated that he was not aware of the Contracts of this magnitude and did not attend the Procurement Planning Committee Meeting, where the decision was taken for the award of the Contracts. The process for the award did not pass through the Procurement Department and no Staff from this Department attended the Meeting. Their absence from the Meeting is suspicious as it indicates a deliberate intention to bypass or exclude the Procurement Department, whose Director, was mandated to be the Secretary of the Procurement Planning Committee of REA.

There was also a very important fact that the issuance of Cheques to the Contractors for the 85% balance, ahead of any performance and without retaining the 10% Retention Fee, was a very clear manifestation of dishonesty.
The questions to be asked as per the Documentation are, (1) Did the Advance Payment Guaranteessecure the Government, since the payment for the Contracts were made before their issuance, and what were the safeguards put in place for specific identification of the particular Monies involved and secured by the Advance Payment Guarantees. There is likelihood that as a viable trading entity, several monies, which may coincide with the exact Money sought to be guaranteed may enter into the Contractor's Account. So, identification may be an issue. They could also have been asked why they guaranteed the money after the fact; and (2) Even though the Advance Payment Guarantees were in place, there was nothing to show

that 10% Retention Fee was set aside, because even after the full completion of the Contract works, a Six (6) Month Timeframe needed to have been complied with in accordance with their Contract Agreement.

From the Minutes of Meeting in **Exhibits 159 and 160**, there was no Membership of the Procurement Planning Committee that actively contributed to the **Award** of the Contracts and so, the question must be asked, what was the purpose of the Meeting, since no Terms and Conditions were discussed there and no Contract was awarded? The sum of it all is that, the Members of the Procurement Planning Committee, excluding the 1st Defendant, did not know the why, when and how the Projects originated and how they were proposed. What they were told was that the Executive and Legislature were interested in the Projects. All they were informed was the necessity for the mode to be employed in view of paucity of time. The Members only knew about the Contracts when Approval for the Contracts was circulated so that they could sign the Certificates of No-Objection. They were supposed to sign the Certificates of No- Objection "as if" it was that Meeting of the 10th of December that awarded the Contracts. This was the dishonest part of it. The Locations of the signing of the Certificates of No-Objection were worrying and enough for the other non-principal actors to question or protest the signing of what was not discussed at the Meeting, they participated in. Obeying Superior Orders blindly, during the Nuremberg Trials for the Nazi German Officers, was held not to avail them. By signing, they undermined the integrity of the process of the Public Procurement Act, as they were aware that the Stages/Processes for Procurement were not complied with and therefore, invariably, undermined the authority of the Nigerian State.

Another element of dishonesty is that there was no Agenda and no Notice of the Procurement Meeting, as Mr. Matthew Onwusoh who stood in for the 6th Defendant, did not prepare the Agenda and could not develop properly the Minutes of Meeting. It was the 6th Defendant who upon his arrival that later developed the Minutes of the Meeting.

The question then is, where exactly were the awarded Contracts discussed?

The only conclusion to be reached, is that the Contractswere discussed in Camera, and it was done way before the Procurement Planning Committee Meeting of the 10th of December and it was those earlier discussions on the Contract, that were later inserted into the body of the Minutes "**as if**" it was discussed by the

Procurement Planning Committee. This explains the secrecy to which the Contracts were awarded, as there was no advertisement. The argument canvassed that REA used the List of Pre-Qualified Contractors, obtained from the Ministry of Power was not persuasive because if it were so, all the Contractors ought to have emanated from that List. REA was also expected to have its own Pre-Qualified List, most especially as it is evident from **Exhibit 159** that REA had ongoing Projects.

Another sign of dishonesty is the absence of any Set of Criteria, Scores and Qualification of the Contractors engaged for the Projects. The 1st Defendant's Statements, where he laboriously set out the Criteria and Scores he used, does not carry much weight because this fact in his Statement was not cross-examined to test the accuracy. In **Exhibit 182,** the Report of the Audit Team from the Bureau of Public Procurement, at **Clauses 4.1.2 and 4.2.2,** it was stated that the Federal Ministry of Energy (Power)/REA failed to provide the Criteria and Scores of the Pre-Qualification Exercise. PW7 had also confronted the 1st Defendant asking him to produce the Criteria and Scores and he yet again failed to deliver.
From the Minutes of the Meeting, the Statements of all the Defendants, and the Exhibits before the Court, it is clear that the 1st Defendant succumbed to biddings and pressure of some of the Relevant Committee Members of the National Assembly having Legislative Oversight on the activities of REA.
As a result of the absence of this Criteria and Scores, dishonest intent can be inferred.

As regards the Signing of the Contract Documents and the Collection of Cheques on behalf of Nine (9) Benefitting Companies, **Miss Uduak Israel Akpan**, was said to have perfected the Contract Document and collected the Cheques.
The Court must question, what the odds would be for one person to collect the Cheques for Nine (9) Companies for Twenty-One (21) Projects? The Bureau of Public Procurement Audit Report at **Paragraph 4.2.5**, had stated that the total amount awarded to these Nine (9) Companies is the sum of N842, 272, 200.00 out of N1, 624, 164, 660.00 for the Solar Based Projects. For these Projects, there was already a provision of N1, 681, 584, 886.00 in the 2008 Appropriation Act. Somebody with authority surely needed to get into the Witness Box and testify on this very important fact. Instead, there was a loud silence.

The Public Procurement Act is a Written Law, being an Act of the National Assembly. The Act does not provide exceptions or any justifiable reasons for violation or infringement of its written provisions.

It appears that the Contract Awards were well crafted to boycott the Procurement Process. As far as REA was concerned, the Documents were for the Files. The issues of who will win the Contracts was known, how much each Contractor will collect was known, and Pre-Approvals were evident from their conduct, as Cheques were raised prior to the execution of Contract Agreements as well as the timeliness of their actions. These all show that REA was not mindful of the dates on those Documents and the implications thereof. REA had concluded what it wanted to do, and only came back to tidy up the requirements. The Procurement Process and the Documentations thereto were supposed to be sequential but this was not so. They did not even carefully peruse their Standard Contact Agreement to ensure the Terms and Conditions were in order or done in compliance with the Terms of the Approval granted. The Contract Agreement appears to be an afterthought. They wanted to make sure that every documentation happened in the year 2008.

They were running around trying to square a circle!The Paper Trail, in the circumstances, is just too damning in proof of the fact that the proper procedure was ignored.

The Central Bank of Nigeria could possibly not hold on to REA's money because the Payments were dated for 2008, collected by the Contractor's Agents in 2008, but to be expended in 2009. These actions defeated **Section 16 of the Finance (Control and Management) Act**, which mandated unspent funds to be returned into the Federal Treasury.
So, the Advance Payment Guarantees even though they ended up guaranteeing the funds, actually circumvented the known Laws, Directives and Financial Regulations of the Land. Despite positive, written and clear warnings, the invocation of their use by the Defendants could only be sinister!!!

By the wrongful application of the funds albeit for a legal cause, contrary to the requirements of the Law, the 1st, 3rd, 4th, 5th and 6th Defendants facilitated the misappropriation of REA's funds to various Contractors without due process and without regard to their obligations and duties under the Law and therefore undermined the integrity and authority of the Public Procurement Act.

So therefore, what then is the extent of each of the Five Defendants liability?

Through the voluminous evidence, this Court has evaluated each of the Defendants involvement to determine the extent of their liabilities and the findings are as follows:

The 1st Defendant is the protagonist in the whole drama. The ingredient of the Offence is that apart from being a Public Officer, he must be in a Policy Position to make and execute Policies of the Establishment and he decided wantonly to ignore the Rules of Procedure.
The 2nd Defendant who persistently warned the 1st Defendant of the inappropriateness of the procedure being adopted tried to cover his own tracks by saying, "approved as appropriate".

As for the 3rd Defendant being the Accountant who signed the Cheques, one can say he is a Principal Person but in the context of Civil Service Structure and Establishment Structure, the Permanent Secretary and the Administrative Officers always initiate Policies and it is only left for the Accountant to release money. However, it is also the duty of an Accountant to ensure that the Directives given to him is flowing down the proper channel and following the proper process. He ought not to have obeyed and irregular and inappropriate order and could have easily withheld his signature.
The 4th Defendant as a Director of Projects and he was obeying a Directive he knew was contrary to the Public Procurement Act. He cannot dissociate himself from the importance of his signature on the Certificates of No-Objection. Monetary benefit or gain is not a factor to the deliberate act of committing himself to the irregular process occurring before his eyes. The question is, had they all not signed the Certificates of No-Objection, would the funds have left REA's Account with the Central Bank of Nigeria? I believe the answer is a resounding NO!!
The 5th Defendant who was not a Member of the Tenders Board nor was he a Member of the Procurement Planning Committee, he signed the Certificates of No-Objection. The Court commends him on Record for his candour, and honesty. He was very truthful and was only in the wrong place at the wrong time.

The 6th Defendant, who was fortunate to have missed the Meeting of the 10th of December 2008, only came back to drag the rope towards himself. He initially announced participation at the Meeting, realized his mistake, andwithdrew his announcement. He obeyed Directives from his Boss, the 1st Defendant and he and the 1st Defendant, supervised and organised the Contract Award Process. He, as Head of the Legal Unit, ought to have better understood the implications of his

signatures on those Certificates of No-Objection, the implications of the breach of the Provisions of the Public Procurement Act and ought to have appropriately advised his Boss on the lapses that occurred.

What was the implication of the signing of the Certificate of No- Objection? In this context, what part has the signing done to aid the unlawful act that occurred?
Even though the Court is satisfied that the 3rd, 4th, 5th and even the 6th Defendants had minor roles to play and only obeyed Orders of the 1st Defendant, who in turn, purportedly obeyed the Orders of the National Assembly, a Message must be sent to the Larger Society, especially those workers who are intimidated by Superior Authorities, that they must learn to conform to the Tenets of the Law and obey ONLY lawful Orders. Had they withheld their Signatures, they could not have been fired for that and they would have saved themselves a lot of inconvenience.
By the signing of these Certificates of No- Objection, and by the breaches of the prescribed Mode enshrined in both the Law and the Contract Agreement, the 1st Defendant, together with the 3rd, 4th, 5th and 6th Defendants are found to have misappropriated REA's funds domiciled with the Central Bank of Nigeria knowing fully well the Proper Procedures to employ and failed to do so.

As regards Second Issue of Conspiracy, Count One of the Charge Sheet relates to the Question of Criminal Conspiracy under **Section 97 (1) and (2) of the Penal Code Act**, and all Submissions of Learned Counsel across the divide are on Record and there is no need to restate them here in the body of the Judgment.

The definition of Criminal Conspiracy is found in **Section 96 of the Penal Code Act**, where is defined thus: -
96. (1) When two or more persons agree to do or cause to be done: -
a) An Illegal Act; or
b) An Act, which is not illegal, by illegal means, such an Agreement is called a Criminal Conspiracy.
(2) Notwithstanding the provisions of Subsection (1) of this Section, Agreement, except an Agreement to commit an offence, shall amount to a Criminal Conspiracy, unless one or more Parties do some Act besides the Agreement to that Agreement in pursuance thereof.
It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 97, the Punishment Section provides thus: (1) Whoever is a Party to a Criminal Conspiracy to commit an Offence punishable with death or with imprisonment shall, where no express provision is made in this Penal Code for the punishment of such a Conspiracy, be punished in the same manner as if he had abetted that Offence.
(2) Whoever is a Party to a Criminal Conspiracy other than a Criminal Conspiracy to commit an Offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding Six Months or with fine or with both.

The following are Attendant Ingredients: -

A. There must be two or more Persons, even though there may be one Person who is the hub around whom the others resolve, like the centre of a circle and the circumference. It could also occur when a Person may communicate with A and A with B, who in turn communicates with another and so on. This is what is called the Chain of Conspiracy. They do not have to know each other so long as they know of the existence and the intention or purpose of the Conspiracy. The Court must be satisfied with evidence of complicity of the Defendants in the Offence.See the cases of**His Lordship Ejiwunmi JSC** in the case of **DR. SEGUN ODUNEYE VS THE STATE 5 NSCQR PAGE 1 AT PAGE 25, 26 AND GREGORY GODWIN DABOH & ANOR VS THE STATE (1977) 5 S.C. PAGE 197 AT PAGES 222, 223 (SC); STATE VS SALAWU VOL. 48 NSCQLR PAGE 290.**

B. Who agree or cause to do or to be done;

I. An illegal act; or
II. An act which is not illegal by illegal means; and

C. No overt act in pursuance of the Conspiracy is necessary. Where the Agreement is other than an Agreement to commit an Offence, that some act beside the Agreement,was done by one or more of the Parties in furtherance of the Agreement; See the cases of **NNAMDI OSUAGWU VS THE STATE (2013) LPELR-19823 (SC), BODE RHODES-VIVOUR JSC referred to COKER JSC in the case of OYEDIRAN VS REPUBLIC 1967 NMLR PAGE 122,**whoexplained that the Conspirators may all directly communicate with each other at a particular place and time and enter into an Agreement with a common design;

D. The Prosecution must establish that each of the Defendants individually participated in the Conspiracy.

In **Peter W. Low, J.C. Jeffries (Jr.) and R.J. Bonnie in Criminal Law: Cases and Materials, New York, 1982, PAGES 445, 460, 461,** Conspiracy was described as an

inchoate offence, punishing an Agreement in advance of Action. The objective need not be achieved for the offence to be made out. It is the Agreement itself, which is the essence of Conspiracy. At Common Law, no additional conduct was needed. Many Statutes, however, also require that there be an overt act in furtherance of the Conspiracy. ***Under the prevailing view, an act done by any one of the Conspirators suffices for all.***
In YARO VS STATE (1972) LPELR-3515 (SC) OGUNTADE J.S.C., held that once the Prosecution succeeds in proving the existence of Conspiracy, evidence admissible against one Conspirator is also admissible against the other. See also the cases of **ERIN VS THE STATE (1994) 6 SCNJ 104, 106; AND MUMUNI VS THE STATE (1975) 6 S.C. 79; AND INENAHORO VS QUEEN (1965) LPELR-25238 (SC) PER IDIGBE, J.S.C.,** it was held that once there was reasonable grounds for believing in the existence of a Conspiracy, evidence of acts done by the Conspirators would be used against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.Further, in**JIMOH VS STATE (2014) 12 NWLR,** it was held that the Confessional Statement of a Co-Defendant could be used against the other Defendant, once Conspiracy is established.

Further, the necessity of proving Agreement raises questions, both evidentiary and substantive. On the evidentiary side, it is clear that the direct proof of Criminal Agreement is rarely to be had. As is often noted, **"a Conspiracy is seldom born of 'Open Covenants openly arrived at'".** Instead, the fact of Agreement usually must be inferred from circumstantial evidence. Moreover, as the substantive matter of the Agreement never has been made express, a tacit, mutual understanding is enough. The upshot is that Conspiracy requires Agreement, but the Agreement may be highly informal and its existence may be inferred without direct proof.
Archbold 2008 Edition at Paragraph 34-4 of Page 2956 also agreed that the essence of Conspiracy is the Agreement. In **R VS WARBURTON (1870) L.R. 1 C.C.R. PAGE 274; R VS TIBBITS & WINDUST (1902) 1 K.B. PAGE 77 AT PAGE 89,** it was held that, "when two or more agree to carry their criminal scheme into effect, the very plot is the criminal act itself." Further, "Nothing need be done in pursuit of the Agreement as held in the case of **O'CONNELL VS R (1844) 5 ST. TR. (N.S) PAGE 1.**

LORD BRIDGE in the case of **R VS ANDERSON (1986) A.C. PAGE 27 AT PAGE 39E, HL,** heldthat, "But, beyond the mere fact of Agreement, the necessary Mens Rea of the crime is, in my opinion, established if, and only if, it is shown that the accused, when he entered into the Agreement, intended to play some part in the agreed

course of conduct in furtherance of the criminal purpose, which the agreed course of conduct was intended to achieve. Nothing less will suffice, nothing more is required."
It is clear that the Crime of Conspiracy is complete so soon as the Parties agree, and it is quite immaterial that they never begin to put their Agreement into effect.

In **R VS MEYRICK & RIBUFF (1929) 21 C.A.R. PAGE 94,** it was held that the Conspirators need not all have started the Conspiracy at the same time, for a Conspiracy started by some persons may be joined at a later stage or later stages by others. Further, the cases of **PATRICK NJOVENS & ORS VS THE STATE (1973) 5 SC PAGE 17; OR AT (1973) NNLR PAGE 76 AT PAGE 96, 97,** the **Supreme Court, CORAM: COKER JSC; IBEKWE AG JSC AND AG JSC IRIKEFE,** held inter alia that**,** it is not necessary to prove that the Conspirators like those who murdered Julius Caesar were seen together coming out of the same place at the same time and indeed the Conspirators need not know each other. See also the cases of **R VS GRIFFITHS (1965)49 CR. APP. PAGE 270; R VS MURPHY (1837) 173 E.R. PAGE 505,** where it was held that any one of the Conspirators may not know the other parties but only that there are other parties, and any one may not know the full extent of the scheme to which he attaches himself.

His Lordship, NGWUTA JSCin **JOHN VS STATE (2016) LPELR-40103 (SC)** further held that People who agree among themselves to embark on an illegal venture or to achieve a legitimate end by an illegal means do not invite a witness or witnesses to attest to their agreement. Usually the facts surrounding the execution of the intention expressed in the agreement will determine whether those charged with the commission of crime acted individually or in pursuance of a prior agreement to effect an unlawful purpose or to effect a lawful purpose by unlawful means, bare agreement to commit an offence suffices. While the actual commission of the offence is not a necessary ingredient of the offence of conspiracy, the actual commission of the offence may show common intention formed before it. See also the cases of **PATRICK IKEMSON & ORS VS THE STATE (1989) 3 NWLR (PT.110) PAGE 455 AT PAGE 477; OKAFOR VS THE STATE (2016) LPELR-26064 (SC), Per His Lordship, KEKERE-EKUN, JSC; BUSARI VS STATE (2015) LPELR-24279 (SC) Per MUNTAKA-COOMASSIE, J.S.C. (PAGE 24-25, PARAS F-A). His Lordship KALGO JSC in OBIAKOR VS STATE (2002) LPELR-2168 (SC)**further held that the quality of the circumstantial evidence necessary to ground a conviction must be such as to leave no reasonable grounds for speculation. It must be consistent, cogent and must irresistibly lead to one and only one conclusion i.e. the guilt of the Defendants.

In the peculiar circumstances of this case and the Charge, which is Criminal Breach of Trust, it is only when the ingredients of the Offences have actually be proved against the Defendants that the issue whether they conspired or were concerted in committing the offence will be determined.

Now, to establish Conspiracy, the Prosecution must show that the Defendants concerned agreed to do an Illegal Act or to do a Legal Act by Illegal Means/Manner. In this instant case, there is evidence, which the Court accepts that the Defendants agreed to Award these Two Contracts knowing fully well the Processes of the Public Procurement Act had not been complied with and to that extent, it can be said that they had in effect agreed to do a Legal Act, that is, the Awarding of the Contracts in an Illegal Manner, that is, by going contrary to the Provisions of the Public Procurement Act.

The 1st, 3rd, 4th, 5th and 6thDefendants as Senior Officers of REA must be presumed to know the Threshold Limit of REA, and by their signing of the Certificates of No-Objection in a Cumulative Sum, they knew that REA's Threshold had been superseded and was illegal going by the provisions of the Public Procurement Act.

The Final Issue is, Whether under Section 323 of the Administration of Criminal Justice Act, Compensation should be paid to the 1st Defendant for his arrest and Prosecution under frivolous Charges.

Learned Silk representing the 1st Defendant submitted that the Court has the power under Section 323 of the Administration of Criminal Justice Act to Order for Compensation to be paid to a Defendant if it finds that the accusation against the 1st Defendant is false, vexatious or frivolous. According to Learned Silk, this Case qualifies for the exercise of the Court's Discretion in favour of the 1st Defendant as the facts of the Case overwhelming establish that the 1st Defendant and his Co-Defendants were mere pawns in some Political Intrigues and they did not remotely commit Criminal Breach of Trust. They have been out of Office since March 2009 without Salaries and have to defend these Charges.

He urged the Court to Order REA and/or EFCC to pay the Defendants their Arrears of Salaries, Allowances and other Entitlements.

On the possibility that their Positions have already been occupied, he urged the Court to Order their absorption in other capacities in the Federal Government or in the alternative, be paid lump sums of Severance Packages and the EFCC should pay the Defendants Compensation for their wrongful arrest and prosecution if the Court finds that the Proceedings were frivolous.

Section 323 of the **Administration of Criminal Justice Act 2015** particularly Subsection 1, the relevant Subsection in consideration of this Issue, provides: -
"**Where a Person causes the arrest, or arrest and Charge of a Defendant or Defendants and it appears to the Court that there was no sufficient ground for causing the arrest, or the accusation is false, vexatious or frivolous, it may for reason recorded, order the person to pay reasonable compensation to the Defendant or Defendants arrested and charged."**

From the evidence adduced throughout this Trial, the Court is satisfied that there were sufficient grounds to apprehend the 1st Defendant and finds no evidence of frivolity in his arrest. Therefore, this Issue is without merit and is dismissed.

In conclusion, the Court finds as follows: -

As regards Counts 2 to 20, on Criminal Breach of Trust in respect of the Solar Based Projects, the Court finds as follows: -
1st Defendant……..GUILTY AS CHARGED
3rd Defendant……..GUILTY AS CHARGED
4th Defendant……..GUILTY AS CHARGED
5th Defendant……..GUILTY AS CHARGED
6th Defendant……..GUILTY AS CHARGED

As regards Counts 21 to 65, on Criminal Breach of Trust in respect of the Grid Electrification Extension Projects, the Court finds as follows: -
1st Defendant…….. GUILTY AS CHARGED
3rd Defendant……..GUILTY AS CHARGED
4th Defendant……..GUILTY AS CHARGED
5th Defendant……..GUILTY AS CHARGED
6th Defendant……..GUILTY AS CHARGED

FINDINGS

COUNTS OF OFFENCES	1ST DEFENDANT	3RD DEFENDANT	4TH DEFENDANT	5TH DEFENDANT	6TH DEFENDANT
COUNT 1	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 2	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 3	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 4	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 5	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 6	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 7	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 8	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 9	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 10	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 11	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 12	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 13	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 14	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 15	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 16	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 17	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 18	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 19	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 20	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 21	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY
COUNT 22	GUILTY	GUILTY	GUILTY	GUILTY	GUILTY

COUNT 23	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 24	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 25	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 26	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 27	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 28	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 29	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 30	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 31	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 32	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 33	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 34	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 35	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 36	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 37	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 38	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 39	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 40	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 41	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 42	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 43	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 44	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 45	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 46	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**

COUNT 47	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 48	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 49	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 50	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 51	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 52	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 53	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 54	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 55	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 56	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 57	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 58	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 59	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 60	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 61	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 62	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 63	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 64	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**
COUNT 65	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**	**GUILTY**

ALLOCUTUS

Learned Silk representing the 1st Defendant, Paul Erokoro SAN, foremost expressed deeply his appreciation of the erudite and scholarly Judgment this Court and submitted that the Administration of Criminal Justice Act 2015 has codified many issues the Court should take into account when Sentencing.

The 1st Defendant's intention was good and he never intended to do any harm and so, it was with the Other Defendants. The Politicians initially charged with these Defendants have been discharged and acquitted and also the Permanent Secretary, who gave the Approvals, was also discharged and acquitted. The Court is now left with these Defendants who have been out of work for over 10 years and whose lives are now ruined as none of them would ever work in any reasonable Establishment.

Further, Learned Silk submitted that he has been prosecuting the case of the 1st Defendant Pro Bono and personally knew how the 1st Defendant struggles to feed his family and where he borrows money to send his children to school.

Learned Silk therefore pleaded with the Court to consider the fact that, this is not one of those Cases where the Defendants should be sent to jail but a Case, where the Court should consider Sections 401 and 416 of the Administration of Criminal Justice Act 2015, which makes provision for Non-Custodial Punishment. There is need for Proportionality in the Sentencing in view of the Judgment, which pronounced the Defendants guilty on the basis of their failure to obey the Rules.

Finally, Paul Erokoro SAN stated that where the Defendants are sent to jail, some of them would probably not survive the Jail Terms and since the Law prescribes Fine, even though the Defendants would not find it easy paying the Fine, the Court should be mindful that the Federal Government of Nigeria did not lose any money.

Learned Counsel representing the 3rd Defendant aligned himself with the Submission of Learned Silk and pleaded with the Court to tamper Justice with Mercy and moreso, in view of the fact that the 3rd Defendant's Case had been prosecuted Pro Bono. Further, sending the 3rd Defendant to jail would occasion hardship not only to him but also to his family.

Learned Counsel representing the 4th Defendant, equally aligned himself with the Submission made by Learned Silk adding that the Defendants, including the 4th Defendant, was a victim of circumstances and pleaded with the Court to tamper Justice with Mercy by considering a Lighter Sentence.

Learned Counsel representing the 5th Defendant, in like manner aligned himself with the Submission of Learned Silk and stated that the Court should take into cognisance the age of the 5th Defendant, who had retired during the course of his Trial. Learned Counsel submitted that Pro Bono Services was rendered to the 5th Defendant and further reminded the Court of the fact that his own Personal Landed Property, was used to surety the release of the 5th Defendant from custody in Kuje Prison. Therefore, Learned Counsel pleaded with the Court to exercise its Prerogative of Mercy by granting a minimal sentence.

Learned Counsel representing the 6th Defendant similarly aligned himself with the Submissions made by Learned Silk adding that the 6th Defendant, is a Legal Practitioner who had never been tainted until now. Further, it was in evidence during the Trial that the 6th Defendant had had a baby and he is the breadwinner of his family, striving hard to feed his family. Therefore, the Court should tamper Justice with Mercy by giving a Lighter Sentence.

Learned Counsel representing the Prosecution in response submitted that he was not averse with the Defendants being granted Fine or Prescription of a Higher Sentence. However, he strongly opposed the granting of Non-Custodial Sentence guided by Section 401(2)(d) of the Administration of Criminal Justice Act 2015, whose Objective is to deter others from committing the Offence by making an example of the Convict.

PREVIOUS CONVICTIONS---NONE SHOWN

COURT: After listening to all the submissions of Learned Silk/Counsel in regard to the Allocutus Plea, the Court is satisfied that there is remorse shown by the Defendants for the Offences they committed. The Court, will also take into cognisance the fact that NO Monies belonging to the Federal Government of Nigeria was lost or stolen by the Defendantsand is satisfied that none of the Defendants corruptly enriched themselves but is satisfied of their dishonesty in subverting the Due Process of Procurement.

There is also a strong point that the Jobs under the Two Projects were actually performed, as seen from the Job Completion Certificates issued by the Federal Ministry of Energy (Power).

Learned Silk for the 1st Defendant had submitted that at the time of the commission of these offences, the Public Procurement Act was a New Legislation that came into force and its applicability was not fully understood by the Defendants. I am persuaded by this submission as indeed the Public Procurement Act came into force

barely a year before the issues in this case. Indeed the Public Procurement Act, was a New Legislation and had the Defendants, appreciated the provisions therein, they are likely not have acted in the manner they did.

The 3rd, 4th, 5th and 6th Defendants obeyed the Superior Orders of the 1st Defendant, who in turn, obeyed the Orders and Persuasive Influence of the Committee Members of the National Assembly. The Message is sent out that only Lawful Orders from Superior Authorities are to be obeyed by every Public Servant, who is bound to honour the Tenets of the Law and their Civil Service Rules and Regulations. The era of blindly following Unlawful Orders/Directives is long over and any Person, who henceforth disregards the Law, will be severely dealt with. This Judgment is aimed at sending a Message to the Larger Society, Public Servants, Procuring Entities as well as to the entire Country, it is no more business as usual.

Therefore, the Court will Sentence as follows: -

SENTENCING

1st Defendant…. THREE (3) YEARS IMPRISONMENT OR FIVE MILLION NAIRA (N5, 000, 000.00) FINE ON EACH OF THE SIXTY-FIVE COUNTS

3rd Defendant…ONE-YEAR (1)IMPRISONMENT OR FIVE HUNDRED THOUSAND NAIRA (N500, 000.00) FINE ON EACH OF THE SIXTY-FIVE COUNTS

4th Defendant…ONE-YEAR (1)IMPRISONMENT OR FIVE HUNDRED THOUSAND NAIRA (N500, 000.00) FINE ON EACH OF THE SIXTY-FIVE COUNTS

5th Defendant…ONE-YEAR (1)IMPRISONMENT OR FIVE HUNDRED THOUSAND NAIRA (N500, 000.00) FINE ON EACH OF THE SIXTY-FIVE COUNTS

6th Defendant…ONE-YEAR (1)IMPRISONMENT OR FIVE HUNDRED THOUSAND NAIRA (N500, 000.00) FINE ON EACH OF THE SIXTY-FIVE COUNTS

ALL SENTENCING ON EACH COUNT TO RUN CONCURRENTLY.

HON. JUSTICE A.A.I. BANJOKO

JUDGE, FEDERAL CAPITAL TERRITORY HIGH COURT, ABUJA.