

THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT HIGH COURT NO. 9 GUDU, ABUJA

BEFORE HIS LORDSHIP: **HON. JUSTICE A. M. TALBA**

SUIT NO: FCT/HC/CR/55/2008  
ON THE 8<sup>TH</sup> DAY OF FEBRUARY, 2017

**BETWEEN:**

FEDERAL REPUBLIC OF NIGERIA-- --- --- --- ----- COMPLAINANT

**AND**

HERBERT UCHE IKE & ANOR --- --- --- --- ----- ----DEFENDANT

**Judgment**

By a further amended charge dated the 20<sup>th</sup> day of October 2016, the two defendants namely Herbert Uche Ike and Nicholas Amechi Ike are facing a six count charge, while the 2<sup>nd</sup> defendant Nicholas Amechi Ike is facing an additional two count charge. The six count charge reads as follows:

**COUNT 1:**

That you, Herbert Uche Ike and Nicholas Amechi Ike between August 2003 and August 2006 in the Federal Capital Territory, Abuja conspired with each other to commit an offence to wit Obtaining by false pretence and with intent to defraud several sums of money amounting to N8,900,000:00 (Eight Million Nine Hundred and Ten Thousand Naira) property of Dunalin Investment Limited and thereby committed an offence contrary to section 8 and punishable under section 1 (3) of the Advance fee fraud and other related offences Act 2006.

**COUNT 2**

That you Herbert Uche Ike and Nicholas Amechi Ike, between August 2003 and February 2004 in the Federal Capital Territory, Abuja being entrusted with certain property to wit N10,000,000 (Ten Million Naira) property of Dunalin Investment Limited, Committed breach of trust and you thereby committed an offence contrary to section 311 and punishable under section 312 of the penal code Act cap 532 laws of FCT Nigeria 2004.

#### **COUNT 4**

That you Herbert Uche Ike and Nicholas Amechi Ike on or about the 10<sup>th</sup> day of February 2004 in the Federal Capital Territory Abuja being entrusted with certain property to wit N3,900,000:00 (Three Million Nine Hundred Thousand Naira) property of Dunalin Investment Limited committed breach of trust and you thereby committed an offence contrary to section 311 and punishable under section 312 of the penal code Act Cap 532 laws of FCT Nigeria 2004.

#### **COUNT 5**

That you Herbert Uche Ike and Nicholas Amechi Ike between February and May 2004 in the Federal Capital Territory Abuja being entrusted with N9000,000:00 (Nine Million Naira) property of Dunalin Investment Limited, dishonestly Misappropriated or converted to your own use the said sum of money and thereby committed an offence contrary to section 308 and punishable under section 309 of the penal code Act Cap 532 laws of FCT Nigeria 2004.

#### **COUNT 6**

That you Herbert Uche Ike and Nicholas Amechi Ike, between May and December 2004 in the Federal Capital Territory Abuja by false pretence and with intent to defraud obtained from Dubalin Investment Limited the sum of N8,910,000:00 (Eight Million Nine Hundred and Ten Thousand Naira) purporting to employ the money in the execution of a building contract on behalf of the said Dunalin Investment Limited in Modular Housing Estate Abuja and thereby committed an offence contrary to section 1 (1) and punishable under section 1(3) of the advance fee fraud and other related offences Act 2006.

#### **COUNT 7**

That you Nicholas Amechi Ike between August 2004 and August 2006 in the Federal Capital Territory Abuja being a servant in the employment of Dunalin Investment Limited and in such capacity entrusted with some property to wit; the sum of N6,697,800:00 (Six Million Six Hundred and Ninety Seven Thousand Eight Hundred Naira) committed breach of trust in respect of the said property and thereby committed an offence punishable under section 314 of the penal code Act Cap 532 laws of FCT Nigeria 2004.

## **COUNT 8**

That you Nicholas Amechi Ike between August 2004 and August 2006 in the Federal Capital Territory Abuja, by false pretence and with intent to defraud obtained from Dunalin Investment Limited the sum of N6,697,800:00 (Six Million Six Hundred and Ninety Seven Thousand Eight Hundred Naira) purporting to employ the money in the execution of a building contract on behalf of the said Dunalin Investment Limited in Modular Housing Estate Abuja and thereby Committed an offence contrary to section 1 (1) and punishable under section 1 (3) of the Advance fee fraud and other related offences Act 2006.

The two defendants pleaded not guilty to all the eight count charge. And in an effort to establish its case, the prosecution called ten witnesses and tendered several exhibits.

It is settled law that the burden rest on the prosecution to establish its case beyond reasonable doubt. By virtue of section 135 (1) of the Evidence Act, if the Commission of a Crime by a party to any proceedings is directly in issue in any proceedings civil or Criminal it must be proved beyond reasonable doubt see *Olamolu VS state* (2013) 2 NWLR (pt 1339) 580. In discharging the burden of proof cast on the prosecution under the evidence Act, the prosecution is required to produce credible evidence which may be direct or circumstantial but must be of such quality or cogency that a court could safely rely on it in coming to its decision in the case. See *Olamolu Vs State* (Supra). The Commission of a Crime can be proved by any of the following ways thus,

1. By direct evidence of an eye witness.
2. By confessional Statement
3. By circumstantial evidence see *Adeyemo Vs State* (2015) 16 NWLR (pt 1485) 311.

PW1 Mr. Donatus Okeke is the principal witness. He is the Chairman of Dunalin Investment Limited. He said he lives in Lagos and he knows the two defendants. The 2<sup>nd</sup> defendant Mr. Nicholas Ike was employed by Dunalin Investment Limited as his PA in 2003.

He said before his employment, the 2<sup>nd</sup> defendant approached him on a particular day hence he had a close relationship with him. As the 2<sup>nd</sup> defendant claim to be a born again Christian. And three years or more

before his employment he has been a printer for the company. That was how they developed a close relationship, to the extent that the 2<sup>nd</sup> defendant do discuss most of his private affairs with him. When the 2<sup>nd</sup> defendant has a problem in his house he approaches him and he will advance money to him for his rents. PW1 said he paid the school fees for most of his children. After some time he decided to employ him as his personal assistant. And even after the employment he kept on assisting the 2<sup>nd</sup> defendant. Not too long after his employment the 2<sup>nd</sup> defendant told him that he has a junior brother whom he trained in school and who is now resident and working in Abuja. That he invited him to come to Abuja with N40,000 (Forty Thousand Naira). That he got an allocation of a plot of land for him, to pay him for all that he has done for him. PW 1 said he gave him the permission and he gave him N40,000.00 with transport money to Abuja. On his return the 2<sup>rd</sup> defendant came with two allocation papers for two plots of land at Chikuku. 2<sup>nd</sup> defendant said he explained to his brother, his relationship with PW1 and asked whether such an allocation can equally be extended to PW1. And it brought about the 2<sup>nd</sup> paper. And 2<sup>nd</sup> defendant said his brother demanded for N240,000.00 and if he is not interested to accept the allocation, he can return it. PW1 said he gave the 2<sup>rd</sup> defendant money and he sent it to his brother. 2<sup>nd</sup> defendant equally said in the cause of their discussion while in Abuja. If there is way he can assist the company in Abuja. According to the 2<sup>nd</sup> defendant he discussed on how his brother can help the company to get the allocation of quality land which they can sell, if the value appreciates. The 2<sup>nd</sup> defendant said his brother is among those who plotted Abuja as such he can get anything in any office. And that he can equally help the company to get contract directly from Government. Then the 1<sup>st</sup> accused Herbert called Nicholas 2<sup>nd</sup> accused and told him that he has a specious land which they can buy and sell at a later date, when development gets to the land, measuring about 5 hectares. The 1<sup>st</sup> accused said they requested for N10M and PW1 paid the money between August 2003 and February 2004.

Nicholas 2<sup>nd</sup> defendant told PW1 that his brother will assist the company to get the allocation of the said land. PW1 said he discussed with his company Director of finance and he had a discussion with Mr. Nicholas 2<sup>nd</sup> defendant. After the discussion the Director of Finance told him he had seen light at the end of the tunnel. They can venture into the project. PW1 said he gave the Director of Finance approval to raise the money. Mr. Nicholas 2<sup>nd</sup> defendant requested that since he has no bank

account every payment should be made into the bank account of the junior brother Mr. Herbert. Mr. Nicholas 2<sup>nd</sup> defendant gave him an account number which they paid in some money to the tune of ten Million Naira. Mr. Nicholas then requested for money to fence the farm land, he requested for N700,000:00. Pw1 said he approved that the money be paid into the same account and to the best of his knowledge the money was paid.

PW1 said Mr. Nicholas 2<sup>nd</sup> defendant told him that his brother called him and he said instead of waiting for a direct contract from Government, the best way to enter or have dealings with the Government in terms of contract is to buy an awarded contract. And that they have sourced for one, a building project with Modular. That the contract price is N3.9m. Pw1 said he did not doubt Mr. Nicholas looking at their relationship, his age and his claim to be a born again Christian. PW1 said he equally approved the release of the money between February and March 2004. At this stage Mr. Nicholas told him that it all depends on the number of buildings they can erect. And if they can erect up to 100 buildings it is to their own advantage and benefit. PW1 said he gave blanket order to the Director of Finance before Mr. Nicholas Ike that any amount they needed between twenty to twenty five million, he should release same. He told Mr. Nicholas to take about seven buildings to erect first. Before then Mr. Nicholas was shutting between Abuja and Lagos to supervise the project. PW1 said he told Mr. Nicholas to remain permanently in Abuja and stay with his. Junior brother Mr. Herbert. PW1 said to the best of his knowledge his instruction to release the money between 20-25 Million was complied with. After remitting all the money there was no single payment for any project carried out in Abuja. It was about August/September 2006, the Director of finance raised an alarm that they have transferred a huge amount of money to Abuja without a return of a Kobo to the company. PW1 asked him to go to Abuja to see things for himself. On his return he said he cannot see anything tangible. That apart from the farm land which was bought at a very high cost in a remote area, where it is not accessible by car.

In 2004 around August the Director of finance reported to him that Mr. Nicholas Ike said that money should no longer be paid into his brothers account. That he has opened an account where money could be paid into for easy control. PW1 said he then called Mr. Nicholas Ike and he confirmed what the Director told him. Mr. Nicholas stated further that his brother was becoming stubborn PW1 said he approved that money

be paid into Mr. Nicholas account and about Seven to Eight Million Naira was paid into his account.

PW1 said after the report of the Director Finance in 2006, they formed a committee to investigate the movement of money vis- a- vis the contract and the land allocations between 2003/2006.

The committee discovered that they have been duped on record to the tune of N39 Million.

PW1 said after the report he quickly called their legal adviser and Mr. Nicholas and Mr. Herbert to come to Lagos to render account of money given to them. Mr. Herbert refused to show up while Mr. Nicholas went to Lagos. PW1 told Mr. Nicholas to go to the account and give details of all the money given to him. He told him to write a report to him on the whole transaction, and if he did not he will not be happy with him. Mr. Nicholas wrote the report on two of the company letter head, one Kemdo International Limited and Dunalin Investment Limited. He addressed the report to PW1.

The said report is exhibit A herein. PW1 said they also wrote a petition to the police and investigation began. He was asked to make a statement which he did on 21/11/2006. He said the company is in a very bad shape. They need the money back to the company. And those things that were acquired should be handed over to the company. He told the accused person that they should account for what they had acquired and they can calculate and know the value of the property, so that the company can move forward. PW1 appeal to the court to help them recover the money.

During Cross-examination PW1 said he appointed the two defendants as Directors of the company, because the 1<sup>st</sup> defendant Mr. Herbert said they cannot proceed because the people who will give them contract said they can only deal with a Director of the company or a Managing Director. And the only way they can achieve this is to appoint Mr. Herbert as a Director of the company. PW 1 said instead of putting Mr. Herbert name alone that of Mr. Nicholas should also be included. He then handed over the original documents to Mr. Nicholas. The certificate of incorporation, letter head, Articles and Memo, from CO7 etc.

PW2 is ASP Williams Uchedukwu Agbarakwe attached to Anti Fraud Section Force CID. Abuja. He recorded the statement of the nominal complainant Mr. Donatus Okeke (PW1) and Mr. Henry Anyanfu the accountant of the company (PW10). He recorded the statements of the two defendants. The statements of Herbert Ike made on 15/11/2006, 23/11/2006 and 4/12/2006 were admitted as exhibits C1, C2 and C3. The statement of Nicholas Ike was admitted as exhibit D. PW2 said from the statements made by the defendants, Nicholas Ike admitted receiving N7 Million and Herbert Ike admitted receiving N32,119,000.

And between September 2003 and June 2004 Herbert Ike bought three vehicles Mercedes 230, Mercedes 190 and Mazda 626. The photocopies of the purchase receipts were admitted as exhibits E, E2 and E3. The two Mercedes bens were recovered while Herbert Ike said the Mazda 626 was stolen. PW2 and his team visited Kuje where they saw the magnificent building occupied by Herbert Ike, who said the house was built between April 2003 and June 2004.

PW2 and his team saw the plots of land which Herbert Ike acquired at that period. They also saw two luster generators in Mr. Herbert Ike House. Pw2 said they obtained the bank statement of account through which money was remitted to the accused persons.

PW3 is a subpoenaed witness he is Mr. Adebite Olushogun. He is working with UBA and he tendered in evidence the statement of account of the two defendants exhibit F and G.

PW4 is also a subspooned witness he is Yahaya Abdullahi Jaji. He is working with Spring Bank Plc as the resident auditor in the regional office Abuja. He tendered in evidence, the statement of account of the 2<sup>nd</sup> defendant exhibits H1 to H17.

PW 5 is Mr. Sunday Onyekachukwu Aghaulor. He is a police Inspector attached to the office of the DIG in charge of investigation, his Edet house. He told the court that on 2/11/2006 a petition was written by Dunalin Investment Limited, addressed to the IGP. The DIG Investigation through the CP Admin assigned the case to supol Adewale now late to investigate the case with him. On 3/11/2006 PW5 in company of detectives went to Kuje and arrested the 1<sup>st</sup> accused. The 1<sup>st</sup> accused volunteered his statement under word of caution. He mentioned three persons in his statement, who are witnesses to the

whole transaction. They are Ayodeji Yusuf, Amobi Uzogu and Bello Kunle. They were invited and their statements were recorded as witnesses. On 6/11/2006 the 2<sup>nd</sup> accused was brought from Lagos by his boss, Mr. Henry Anyafulu, the director of finance of Dunalin Investment Limited. The statement of the 2<sup>nd</sup> accused was recorded by himself under word of caution PW5 said both accused person admitted that money had passed through their account. The 1<sup>st</sup> accused admitted that the sum of N32,119, 000:00 was paid into his account by Dunalin Investment Limited. The 2<sup>nd</sup> accused admitted that the sum of N7 Million was paid into his account by Dunalin Investment Limited. On 9/11/2006 a search warrant was obtained and executed at the house of the 1<sup>st</sup> accused at Kuje. Some items which were reasonably suspected to have been bought with the proceeds of the Crime were recovered, this include sets of furniture's Mercedes Benz 190, some land documents, letter head papers hearing the name Dunalin Investment Limited. Complimentary card which bears the name of the 1<sup>st</sup> accused as a director in Dunalin Investment Limited. The 1<sup>st</sup> accused drove into the premises of the Force CID with a Mercedes Benz V boot with Registration No. AQ466 book which was impounded. The search warrant was signed by both parties and other police officers who accompanied PW5 to the seine. The recovered items were duly registered with the exhibit keeper for Safe keeping.

PW5 said the sum of N37,700,000:00 was traced to the account of the 1<sup>st</sup> accused Mr. Herbert Ike. While the sum of N7 Million was traced to the 2<sup>nd</sup> accused Mr. Nicholas Ike. The statement of the 1<sup>st</sup> accused was admitted as exhibit I while that of the 2<sup>nd</sup> accused was admitted as exhibit J. The search warrant was also admitted as exhibit K. Two sets of chairs were admitted as exhibits L1 and L2. The two Mercedes Benz, 190 with Registration No. BQ891 RS4 and Mercedes Benz 230 with Registration No. AQ466BWR with the keys were admitted as exhibits M and N respectively. The following exhibits were also admitted and marked as follows:

1. Video tape exhibit O,
2. Complimentary Cards for the 1<sup>st</sup> accused as Director of Dunalin Investment Limited, while the 2<sup>nd</sup> accused is the PA to the chairman Dunalin Limited, exhibit O 2
3. A copy of certificate of incorporation bearing the name of Happy Grace process and property Nigeria Limited L.C. No 506287 dated 15/3/3004 exhibit O3.



4. The issue of failed contract in Port Harcourt, Gombe and Kano, exhibit O4.
  5. Right of occupancy No Ksc/MFCT/LA, land granted by Kuje FCT of the Federal Republic of Nigeria, Plot 99 AA1 Layout, exhibit 05.
- Other documents tendered through PW5 are as follows.
1. TDP plan and survey details of plot No. CD 103 Kudiyako extension 11 layout, exhibit P1
  2. TDP plan in respect of plot 99 AA1 layout exhibit P2
  3. TDP plan in respect of plot No. R733 Chikwuku extension layout exhibit P3.
  4. Application for Customary Right of Occupancy Urban/rural land within Kuje Area council by Mr. Nicholas Ike dated 19/August 2003, exhibit P4.
  5. Application for Customary Right of Occupancy Urban/Rural land within Kuje Area council made by Mr. Herbert Uche Ike dated 19 August 2003, exhibit P5.
  6. Twenty four pieces of Dunalin Investment Limited letter head paper with administrative office at 12 Hapeju Street Apapa and liaison office at 19 Ogunlana Dive Lagos exhibit P6.
  7. Forty four pieces of Kamdo International Nigeria letter head papers with administrative office at 19 Ogunlana dive and has on office at 104 Kirikiri Road Olodi Apapa Lagos, exhibit P7.
  8. Five copies of affidavit of urgency by Herbert Uche Ike in the case of Herbert Uche Ike Vs Nicholas Ike & Three others, exhibit P8
  9. Five copies of motion ex-parte made by the plaintiff, Mr. Herbert Uche Ike supporting his affidavit of urgency in the case of Herbert Uche Ike VS Nicholas Ike & Three others, exhibit P9.
  10. Proposed bill of Quantities for a 6 bedroom bungalow
  11. A written account of Mr. Herbert Uche Ike transaction with Mr. Donatus Okeke through Mr. Nicholas Ike exhibit P11.
  12. Six copies of motion on notice made by Mr. Herbert Uche Ike and affidavit in support of the motion in the case of Herbert Uche Ike Vs Nicholas Ike & Three others exhibit P12
  13. Four copies of power of Attorney given by Alh. Lanto (Donor) to Ike Uche Herbert (Donee) in respect of land known as plot No 170 situate at Kuje District, exhibit P 13.
  14. Three copies of power of Attorney given by Alh. Lanto (Donor) to Ike Uche Herbert (Donee) in respect of land known as plot No 140 situate at phase AA 1 Kuje District exhibit P14.

15. A copy of Power of Attorney given by Mustapha Isa (Donor) to Hillary Nasamu (Donee) in respect of land known as plot no C 28 A situate at Kuje District exhibit P15.

During Cross-examination the statement of PW5 made on 22/2/2007 was admitted in evidence as exhibit Q. PW5 said the 1<sup>st</sup> accused in the course of writing his statement he analysed bit by bit how he spent N37,000,000:00. That was when the issue of modular project came to his knowledge. He said the 2<sup>nd</sup> accused in the course writing his statement he equally gave some analysis of how he spent N7 Million that was traced to his account.

PW6 is Mr. Adekunle Bello, he is a land surveyor. He said the 1<sup>st</sup> accused Mr. Herbert Ike was his client while he knew the 2<sup>nd</sup> accused Nicholas Ike through the 1<sup>st</sup> accused. He said Herbert Ike bought some properties from him. The properties are situated in Kuje Area council, plot 184 phase AA1, Plot 185 phase AA1, plot 140 phase AA1, and plot 170 phase AA1. Each of the plot was sold to him at N200,000:00. He said Herbert Ike told him that the person he is buying the plots for, he do not know them, it was just a mere phone call. He has not sighted any of them. He said Herbert Ike use to mention Dunalin, but when they were drawing the Technical drawing plan (TDP) Herbert Ike said they should put the name of Donatus Okeke PW6 said he did not assist Herbert Ike in acquiring a farm land. But he did a survey, that is property demarcation and fencing of a farm land. The survey was at the cost of N40,000 while the labour for the fencing was N50,000:00 He said he did nothing apart from the survey and fencing of the farm land.

During Cross-examination his statement to the police was admitted as exhibit R. He also said he did not meet any staff of Dunalin before he was invited by the police. He met one Frank and Donatus Okeke at the police station. PW 7 is Mr. Yusuf Hakeem Ayodeji. He is a civil and water resources engineer. He told the court that he met the two accused persons on 10/2/2004 and he is working for Mrs. Biodun Balogun who got a contract from Modular Nigeria Limited to build houses (bungalow) for them. Mrs. Biodun told him that she had sublet some part of her contract to some people and she will bring them to the site and he should handover part of the contract to them. He said it is part of the contract with Modular Nigeria Limited that only an engineer should supervise the whole contract. So Mrs. Biodun told him that he should agree with them to do the

supervision of their own contract. And he can go ahead and agree with them on any supervision fee. The day she brought them to the site along with the modular team, he showed them their part of the contract. Then they started work. PW 7 said he was working for the two accused persons along side with his employee. Their own work was not completed because they started work in February and around April 2004 Mr. Herbert Ike took him to another site at Kuje and so the work at modular stopped. He said modular site is at Dakwo District close to Kabusa.

PW7 stated further that while doing the modular contract the company insisted that they should buy blocks from them due to quality control. Whenever Mr. Nicholas is in town they do go to Modular to buy cement and blocks. But whenever Mr. Nicholas is away Mr. Herbert goes to buy the materials. He said they work for a short time from February to March, so what they did was only block work. He said apart from the blocks they brought. Himself and Mr. Herbert they went to Impressed Bakalori quarry at Kuje to buy chippings for the next stage of work. They bought ten trucks and four was taken to Kuje and six was taken to Modular site, but it was never used. PW 7 said Mr. Herbert Ike told him that the work at Kuje is a personal project. He said they completed the house at Kuje. They built a six bedroom bungalow. Before they completed the work at Kuje the Modular site was revoked for non performance. He said out of the ten units at Modular site, they work on five. Two at lintel level and two at foundation level. And the 5<sup>th</sup> one has a lintel casted on it. He said they did not work on the other five.

During Cross-examination PW7 said he mentioned in his statement to the police that there was no fund available for the work to continue. Mrs. Biodun only told him that she had sublet part of the contract to them and he should handover to them. He said he did not know where the money for the chippings came from, he was only given orders. He also said he can't remember the time frame for the completion of the Modular project.

During Re-examination he said the contract was sublet to Mr. Nicholas Ike and Mr. Herbert Ike. PW8 is Amobi Uzeagu he is a pastor living in Gusau Zamfara State. He said the two accused persons are his uncles. He said in December 2003 his uncle Herbert Ike (1<sup>st</sup> accused) called him that he won a contract in Abuja. And he wanted him to supervise the contract. He then came to Abuja in February 2004. He went to his house at Zone 6 and he met his senior uncle Mr. Nicholas Ike. He also met two women Mrs. Balogun and one other woman whose name he has forgotten. All of them

went to Dakwo District where they saw the site called Modular Nigeria Limited. He met Engr. Ayodeji at the site, and they started the Job. Engr. Ayodeji was working under Mrs. Balogun. He was introduced to them as the project engineer. PW8 said they were not able to complete the work. The work was done as follows. One was done up to lintel level, two to window level and two to DPC level. He said they did not do the concrete work, they only did the block work. There was no money to complete the work at various levels. Mr. Herbert was doing his house at Kuje and he (PW8) joined them later. PW8 said when he left Modular and he went to Kuje there was no one doing the work at Modular. They completed the house at Kuje, it is a bungalow. PW 8 further said he did not return to Modular site on that particular project. He said Mr. Herbert was living at Yaunde Street Zone 6 Wuse. He now lives at Kuje in the house they built for him.

PW8 was not Cross-examined by the defence.

PW9 is Mr. Uzuoma Nwankpe. He is an Estate surveyor with his office at Area 3 Jos Road Garki Abuja. He told the court that he did a job for Dunalin Investment. They were contracted to do a valuation report on a farmland at about 10 KM off Airport Road. He said he hold a Bsc (Hons) from University of Nigeria Nsuka in 1989. He is an Associate member of the Nigeria Institute of Estate survey and values. The valuation report was tendered in evidence and admitted as exhibit S.

During Cross-examination PW9 said the valuation report was signed by his principal partner and he is familiar with the contents of the valuation report, exhibit S. He said they were given photocopies of the title documents for the purpose of the valuation, the photocopy of the Certificate of Occupancy issued by the FCDA. He said the Certificate of Occupancy does not contain the description as contained in the valuation report. There is no correspondence between the valuation report and the Certificate of Occupancy. He said he can't remember whether the size of the land on the valuation report is the same as the one on the Certificate of Occupancy. He said their client Dunalin Investment Limited provided a staff who took them to the land.

PW 10 is Mr. Henry Anyafulu Tochukwu. He is the head of Finance of Dunalin Investment Limited. He told the court that he knew Mr. Nicholas Ike in 2002 when he was employed in the company. Mr. Nicholas Ike use to come to the company and he use to be their printer. He said in 2003 his

Chairman introduced him and that he wants to bring him into the company as his personal assistant. He said he knew Mr. Herbert Ike through Mr. Nicholas Ike who said he is his junior brother, staying in Abuja. He said sometime in 2003 after Mr. Nicholas Ike was employed, his Chairman called him and told him that there is a plot of land in Abuja Herbert Ike wants to give him Nicholas. The Chairman said he told Nicholas that he too he is interested. And Nicholas said he needed N40,000 for the plot. The Chairman said he needed N270,000 for the plots for himself and Nicholas. On 7/8/2003 he gave to Nicholas Ike the sum of N270,000. Nicholas then brought the papers for the land. PW10 said he was not part of the discussion between his Chairman and Mr. Nicholas Ike. But on 18/3/2003 his Chairman told him to raise a draft of N3Million in favour of Mr. Herbert Ike. He asked what was the purpose for the money. The Chairman said it was for payment of a farmland. He then raised the draft. PW10 said after that subsequently he always get instruction from his Chairman to remit money to Herbert Ike's account. Between 18/8/2003 and 24/2/2004 he made a total payment of N10 Million to Mr. Herbert Ike in respect of the farmland. On 8/3/2004 his Chairman told him to make a payment of N500,000:00. He ask him for what and the Chairman said it was for the fencing of the farmland. He said the Chairman asked him to make another payment of N200,000 for the same fencing making a total of N700,000.00 for fencing.

PW10 said he made another payment of N2. 7 Million to Herbert Ike through Bank Draft and N1.2Million totaling N3.9Million. His Chairman told him the payment was to buy a contract from Modular Company. Subsequent payments were made to execute the contract and to buy land at Kuje. He said he can't remember the dates but he tabulated the total payment to be N17.9Million after the N3.9 Million. The tabulation was admitted in evidence and marked as exhibits T1 and T2.

PW10 further told the court that after a while his Chairman called his attention and he said subsequent payments should be made to Nicholas Ike. And between August 2004 and November 2005 he made a total payment of N6.2Million sometime in December 2005 to 2006 he made a total payment of N496,000. In all the total amount paid to Nicholas Ike was about N6.6Million. And there was no other payment made to him.

PW 10 said he is not aware of any money gotten from the contract. He said no document was given to them in respect of the land, apart from the previous one given to them by Mr. Nicholas. PW 10 said sometime in 2006

they had a management meeting with the Chairman. They wanted to know what the money that was paid to Abuja was used for. The chairman told him at the meeting that he is in a better position to come to Abuja to know what the money paid was used for. So he came to Abuja and he met Mr. Nicholas Ike, who took him to the farmland. There was no crop on the land. He could see nothing but bushes. He asked Mr. Nicholas what happened because money was sent for weeding and crops. But Mr. Nicholas could not give any reasonable answer. He also asked Mr. Nicholas what about the fencing because money was sent for fencing but what he saw was six positioned pillars. Mr. Nicholas said the villagers removed the pillars and the barb wire. PW10 said he asked Mr. Nicholas about the other land he bought or he got allocation. Mr. Nicholas took him to plot 140, plot 170, plots 185 and 184 which were the plots they acquired for Mr. Donatus Okeke. (PW1). He asked Mr. Nicholas about the contract with Modular how far they have gone Mr. Nicholas took him to the project site when he got there he was short of words. He asked Mr. Nicholas whether that was all they have done with the money paid to them. And Mr. Nicholas said that was the level they have gotten to. He then called his Chairman and told him about his discovery. He told the Chairman that he was not satisfied with what he saw. The chairman invited Mr. Nicholas Ike to come to Lagos to give an account of money paid to them. And that account is what they are still on up till now. Both the two defendants were invited to Lagos, they could not render the account of how the money was spent.

During Cross-examination PW10 said he gave the sum of N270,000 to Mr. Nicholas, for two plots; for Mr. Nicholas and for the chairman. He said he remitted money to Mr. Nicholas to acquire property. He said he doesn't know if the chairman is using the company money to buy property for himself. He said the company is a limited liability company. Money was remitted from 18/8/2003 to 24/02/2004 for purchase of farm land He said between the time the money was paid to the time he visited the farmland it's a period of about 2 years. He said he is not a privy to the discussion between the chairman and Mr. Nicholas. His own is to take instructions to pay money. He said he will not know if the chairman gave instruction for harvesting of the farmland.

He said in 2006 he made a statement to the police. And when he made the statement he did not have the figures with him. He had to go back to his records to know the figures. He said the difference between the figures he gave to the police in his statement and what he told the court is as a result of the fact that he went through the documents and he came up with the

actual figures. And at the time he made the statement to the police he had submitted all the documents to the police. He said in his statement to the police he said about N7.Million was paid to Nicholas Ike 2<sup>nd</sup> accused. And in his evidence in court he said N6.6 Million was given to him. He did said N270,000 was given to him the first time he came to Abuja. He did not include the first money given to him because the assignment for that amount was executed. If you add N6.6 Million with N270,000 it will come up to N6. 870Million. He said they raise vouchers before they paid money. And the 2<sup>nd</sup> accused Nicholas Ike is an employee of Dunalin Investment. He was the one who introduced the 1<sup>st</sup> accused as his brother and the contact person in Abuja.

PW10 said he went to the farmland and he was shocked there was nothing on the ground. He went to Modular project and the building was at window level. He said to the best of his knowledge no money was realized from Modular project. They had 7 units of houses under Modular project.

At the close of the case for the prosecution the defence opened their case with the 2<sup>nd</sup> defendant Nicholas Ike as DW1. He told the court that he lives at 45 A Anjorin Street Surulere Lagos, Lagos State. He said he knows Dunalin Investment Limited. He is a printer by profession and he use to print for Dunalin Investment (Nigeria) Limited. He said he knows Mr. Donatus Okeke he is the chairman of Dunalin Investment Limited. He said Mr. Donatus Okeke invited him to be his personal assistant. His duties cover many things as the companies are many. They have Meters International Limited, Kemdo International Limited, Nri Kingdom International Limited, Conex Oil Limited and Dunalin Investment Limited. He said his duties covers all the companies, which Mr. Donatus Okeke is the Chairman. He said the transaction that led to this case started with his coming to Abuja to see his brother first accused Herbert Ike, who invited him to Abuja to come and pick land documents which he had paid for. He was asked to come with the balance of some money which he did not have. So he requested for the assistance of Mr. Donatus Okeke (PW1). He was given assistance and permission to come to Abuja. When he came to Abuja his brother Herbert Ike (1<sup>st</sup> accused) gave him the land documents and he went back to Lagos. He presented the documents to Mr. Donatus Okeke who was very happy. Mr. Donatus Okeke asked him if it was possible for his brother to help him to secure a land in Abuja because he tried in vein. He told Mr. Donatus Okeke that it is possible but he has to consult his brother. He then got in touch with his brother who told him that he will do his best to seek one for him. After two weeks his brother called

him and he said he was able to get a plot of land for Mr. Donatus Okeke. His brother told him the cost of the land and Mr. Donatus Okeke provided the money and air ticket to Abuja to come and collect the documents. He came to Abuja and he met his brother who gave him the papers and he travelled back to Lagos. He presented the paper to Mr. Donatus Okeke and he was extremely happy. He told him that two years before he joined his company he spent so much money trying to get a land in Abuja. He said that started many other transactions. He said his brother brought another plot of land and a farm land for Donatus Okeke. He said Mr. Donatus wanted his brother to be part of his company but his brother said no, he is a Civil Servant and he has put in many years in the Civil Service. He said the arrangement was that his brother Herbert Ike will buy land for Mr. Donatus, who will pay through him. And a Power of Attorney will be done.

Mr. Donatus Okeke told his brother that whatsoever business he brings, he will be able to do it. Then his brother called him and told him that he got a building contract, and he should inform Mr. Donatus Okeke. The company that issued the contract is Modular Limited. The contract was for the construction of 7 No blocks of bungalow. Two bedroom and three bedroom at the cost of N45 Million. He said Mr. Donatus Okeke paid N3.9 Million to Modular Limited and he offered him and his brother a position of Directors in his company. Mr. Donatus then sent him to Abuja to supervise the construction work in Abuja. They were able to build five out of seven houses, before modular brought a stop work order. He said they reach upto lintel level in four of the houses, while they were roofing the 5<sup>th</sup> one. He said money was remitted to him through his brother because he had no bank account. He said the key staff responsible for the construction are Mr. Ayo as the building engineer and Mr. Jude as his assistant. Others were labourers. He said except for stones other items were bought from Modular Nigeria Limited. Mr. Ayo informs them when they need to buy materials and they buy from Modular Limited. He said they don't issue them with any receipt, and Mr. Donatus expended between 7 to 8 Million on the construction. They used Dunalin Investment Limited and Kemdo International Limited. He said to the best of his knowledge Dunalin Investment Limited was not paid any money for work done before the stop work order. He said his investigation shows that Dunalin was paid some money by Modular Limited in respect of the contract.

He stated further that Donatus advised him to take some contracts from Modular Limited for his company. He told him he will buy the contract. He got the contract from Modular Nigeria Limited and Mr. Donatus took the



contract. He did not pay him any money. He said he will pay him N4 million if the contract is completed, and paid for. DW1 said the offer was made to him and he transferred the contract to him. DW1 said he sent a letter to Modular Limited for the transfer. And when he made inquires he was told that the contract has been paid by Modular Limited. He said his brother had contract in port Harcourt, in Kano State, in Kaduna State and in Gombe and Abuja. His brother was pursuing the contracts for Mr. Donatus Okeke. He agreed to pay him yearly as a Director in the company. His brother was never paid the N5 Million to his knowledge.

When he was cross-examined he told the court that (DW1) Mr. Donatus Okeke did not request him to help him get a land. He told his brother that Mr. Donatus Okeke had tried to get a land in Abuja but he couldn't. He should therefore help him get a land. He then brought a land in the name of Donatus Okeke. He also said he is a Personal Assistant to Donatus Okeke. He is on a monthly salary and he was given an appointment letter when he was employed. He said he was sent to Abuja to supervise the contract. It includes buying materials and he is assisted by his brother. He said he doesn't know about sharing money or the diversion of building materials meant for the contract, to the building of his brothers house at Kuje. And he can't remember why the contract for Modular was stopped. He said they did not complete any house out of the 7 houses.

DW 2 is a subpoenaed witness, his name is Casmir Igwe. He is a legal practitioner. Through him the following documents were tendered and admitted in evidence before he was cross-examined there are:

1. A letter dated 23/3/2004 exhibit Def 1
2. Agreement for payment MOU exhibit Def 2
3. A letter dated 26/9/2006 exhibit Def 3
4. A letter dated 12/02/2007 exhibit Def 4
5. Copies of Cheques issued to Donalin Investment Limited with respect to Domiciliation of payment on contract awarded to Banbella Limited, Domiciled in favour of Dunalin Investment Limited, exhibit Def 5.
6. Evidence of payment to Dunalin Investment in respect of transfer of contract exhibit Def 6.

During Cross-examination DW2 stated that he is an external solicitor of Modular. And he knows that the company has an external Auditor who are in Abuja. He said he is not part of the contract awarding process of Modular. He is aware that the contract subject matter of this suit was terminated at a point in time. He can't remember the exact time. But the

reason why it was terminated was because the contract was not performed in accordance with the contract terms and conditions. He said he doesn't know the date the contract was awarded. And as per exhibit Def 2 the value of the Job done was N7, 036, 924: 00 which is the money outstanding in favour of Dunalins. And that was what was paid in exhibit Def 6. He said the payment was made after exhibit Def 2 was prepared. And he doesn't know if Dunalin did any additional work between 2004 and 2008. He said ever since exhibit Def 2 was made in 2008 Dunalin had not done any additional work. And his companies do pay based on evaluation report confirmed by the quantity surveyor. He said their standard procedure for payment is upon the production of the certificate of valuation on the stage of work done and confirmed by the quantity surveyor (QS). And so far as there is availability of funds, the company will pay. Otherwise the company will agree with the contractor on whom to pay. He said the stage of work they paid for in exhibit Def 6 was based on the document. He said he did not visit the site and exhibit Def 6 was for payment to Dunalin Investment. He said he knows Chinokai Nigeria Limited, they are quantity surveyors to the company. They are no longer with the company. He said he is not aware of the report by Chinokai Nigeria Limited, that some of the foundation done by the accused persons collapsed. He said all he knows is that the contract was transferred and payment was domiciled to Dunalin Investment Limited. He said he never went to the site on this job. What he told the court is as per the documents presented to him. He said non of the exhibits Def 1 to Def 6 is a valuation report. And exhibit Def 2 is the only document that talks of value of the work done. He said he did not participate in the process of revoking the contract. And he did not make any approval for payment but he advised. He said he did not issue any Cheque but he saw the cheques before they were issued. He became the external solicitor in 2006.

DW3 is Mr. Okonko Jude Samson. He is a banker. He is a subpoenaed witness. He said he was subpoenaed to produce copies of cheques issued by Fidelity Bank in favour of Dunalin Investment Limited.

The following documents were tendered through the witness.

1. Statement account for Dunalin exhibit Def 7
2. The statement of account for city view Modular exhibit Def 8
3. CTC of Cheques issued to Dunalin Investment Limited exhibit Def 9 (a) and Def 9 (b)
4. Fidelity Bank certificate of identification, exhibit Def 10.

There was no cross-examination of this witness. DW4 is Mr. Ike Uche Herbert, the first defendant in this case. He said he works with the Ministry of Defence, budget Division and he lives at Kuje. He told the court that it is not true that he defrauded Mr. Donatus Okeke. He said he did a favour to Mr. Donatus Okeke in the past through his senior brother Mr. Nicholas Ike 2<sup>nd</sup> defendant. He said Mr. Donatus Okeke wanted to return the favour as he offered him full time employment as a director in the company and to be in charge of the Northern Region. He said the favour he did was that he invited his brother to Abuja to take a piece of land. As he came, he gave him the offer letter. His brother told him he has a good friend who sponsored his trip to Abuja and he gave him part of the money he will use to process the offer letter to Certificate of Occupancy. His brother told him that the person is so good to him and his family. His brother asked him if he can give him another offer letter for his friend, who tried to get land in Abuja but in vein. DW4 said he told his friend Mr. Emmanuel Aniywa to make available an offer letter for his brother who is coming. He took his brother to Emmanuel Aniywa office and he collected N40,000 for land processing from his brother and gave it to his friend. It was on their way out his brother called him aside and he made a request for his friend Mr. Donatus Okeke. DW4 said he never knew Mr. Donatus Okeke before. He then collected another offer letter from his friend and gave it to his brother. He told his brother that the second offer letter is for N300,000. And so he will collect back his own offer letter until he brings to him the N300,000, then he will return his own offer letter and start processing of the land. DW4 said the two plots are serial and they are located at Chukuku Village in Kuje Area Council. In a weeks time his brother came back with N270,000 and he explained that he used the balance of N30,000 to settle his family. His brother told him that his friend wants a farm land in Abuja whether he could secure one. He told his brother it is possible to secure one but he has to clear from his friend. He put the request to his friend Mr. Emmanuel Aniywa. And after two days, his friend called him to come for negotiation. He met his friend at the office and he brought out the offer letter for the farm land. The friend told him that on paper the land is 4 hectres but on ground it is 5 hectres. They negotiated and agreed at N5 Million to include processing up to Certificate of Occupancy. His friend said he will introduce him to a lawyer, who will do the legal work at a fee of N1Million DW4 said he met his brother and he added N1 Million as his commission, making it a total of

N7Million. He told his brother to tell his friend if he wants the documents he should bring cash N7Million. His brother called his friend on phone and explained to him. He also spoke with him on phone and he was full of thanks. He said he needs the land but he has no money. And he asked if the people will accept installmental payment. He told him he will make inquires. He inquired from his friend Mr. Anugwa but his friend said it is business and cash and carry. DW4 said he told his brother that he has failed and his brother called his friend and told him. The friend said he wants to start exporting cassava that is why he needs the farm land. As his brother was back to Lagos the following day. He told his brother to tell his friend that it is all about sacrifice. If he is prepared to pay N10 Million he will process the offer letter to Certificate of Occupancy by December. His brother called him from Lagos and told him that his friend had accepted. Then Mr. Donatus Okeke told him that he will start making the installmental payment. He then told Mr. Emmanuel Anugwa to keep the offer letter with him and stay on. He will pay N100,000 into his account and if he is unable to pay after a week or two weeks he can sell the offer letter and return the N100,000.00. When Mr. Donatus accepted the proposal, DW4 said he told Mr. Emmanuel Anugwa that he should tell him the price of the offer letter only. And he will do the processing. They settled at N2.4Million and he paid him off. The lawyer brought the deed of assignment and he sent it through DHL to Mr. Donatus Okeke for his signature. Mr. Donatus Okeke signed the document with the name of the company Dunalin Investment Limited, and returned them. Upon the receipt of the documents he went to Kuje Area council. And Mr. Emmanuel Anugwa called Mr. Kunle Bello, the surveyor. The said Kunle Bello told them that the surveyor will prepare the TDP/site plan, to be used in processing the customary Certificate of Occupancy. They negotiated with Kunle Bello and paid him. After three days Kunle Bello called to say that he is through with his job. They now went to Kuje Area Council. DW4, Mr. Emmanuel Anugwa and the lawyer. They paid the paid ground rent, processing fee, file opening fee and others payment. They followed the movement of the file and by 28 October 2003 the chairman signed the customary certificate of occupancy, with No 418. He made a copy and he gave it to his lawyer. A copy of the Certificate of Occupancy (customary) is kept in Kuje Area Council while he gave the original to his brother to send it to Mr. Donatus Okeke. Mr. Donatus Okeke called him to inform him that he has received it. In 2003, a lawyer met him and they went to

Kuje Area Council for search in respect of the customary Certificate of Occupancy. They paid N1000 for the search. After the search the lawyer was satisfied and he took him to the farm land physically. The lawyer was satisfied and he gave him a cheque of N1 Million. DW 4 said he asked him if that is all and he said the chairman Mr. Donatus Okeke is aware of the balance. The lawyer left for Lagos. DW4 said the cheque of N1 Million was the last money Mr. Donatus Okeke gave to him in respect of the farm land. They agreed that N10 Million was to be paid by installment. The money paid to him was N9.8 Million. DW4 said in January 2004 while he was on vacation at Enugu. His brother called him and asked him how much it will cost to put long beacons on the farmland. After inquiry he told him that he will require N1Million. His brother told him to come to Abuja. When he came to Abuja his brother gave him N700,000 and told him that, that was what the company has given. He should go and negotiate with the people. He took the money and he did the job as a private business man for value.

DW4 said in one of his brothers trips to Abuja he picked him from the Airport. And he took him to the site where he was building his house. His brother saw two plots adjacent to each other. He told his brother that he bought it for his own family use. His brother said he likes the place and his friend will like the area; as there was pressure from his friend he agreed to sell to him at N3.5Million because he had fenced the plot and the size is 1850 square metres on the paper. But it could be extended to the river. Mr. Donatus accepted to pay by installments and within one month he made two installmental payments of N1 Million making two Million (N2Million). He promised to pay the balance which he did not till date. The plot No is AA1 extension plot 184. The papers were equally for recertification.

DW4 said in December 2003 one Mrs P.M Okunubi who lives in the same quarters with him at No 50 Yaunde Street Wuse Zone 6 (defence quarters). She entered his flat and handed to him a building contract award letter. She said the letter is for Mrs. Balogun her friend. The Chief Executive Officer (CEO) of Banbella Nigeria Limited. That she got the contract from Modular Nigeria Limited. The face value of the contract on the letter of award is N46,123,887:50. She said her friend does not have the monay to execute the contract, so she wants to sell part of it. She asked him if he can get anybody to buy it. He collected a copy of the award letter and he asked his friend

Mr. Emmanuel Anugwa if he is interested. And he accepted to look for a buyer. Three days later Mr. Emmanuel Anugwa called him and told him that he got a buyer. They started discussing on phone when payment can be made. Mr. Emmanuel Anugwa said they should meet the bank manager on 24/12/2003 at his office, Adetokumbo Ademola Crescent Wuse II. DW4 said on 24/12/2003, he went to the bank with Mrs. P. M Okunubo, Mrs. Balogun owner of the contract with his family. They waited till 12:00 noon the bank manager could not see them. He then travelled to Enugu with his family. He told the others to reserve his percentage if payment is made.

DW4 said his brother Nicholas Ike who travelled to Lagos on 23/12/2003, called him to inquire if they had received the payment. He replied no that the man did not appear. His brother told him to stop the sale hence his friend Mr. Donatus Okeke indicated his interest to buy the contract. DW4 said he called Mr. Emmanuel Anugwa, Mrs. Okunubo and Mrs. Balogun and he told them to stop looking for a buyer because somebody is strongly interested. His brother called him and told him to be in Abuja on 6/02/2004 for payment for the contract. On that date he came to Abuja and his brother came with a cheque of N3.9 Million. Mrs. Balogun set aside N400,000 stating that they will go with his brother to pay for site plan, and land clearing. The cheque was issued by Dunalin Investment Limited. Mrs. Balogun paid them their percentage for getting a buyer for her. His brother told him that Mr. Donatus Okeke is full of thanks and praise for him for helping him to get the properties. As such he will like to use his Bank Account to be remitting money for the execution of the contract. Mr. Donatus Okeke called him (DW4) to confirm the request. DW4 said after he thought about it he gave his go ahead to remit the money. He gave Mr. Donatus Okeke his current account number. But after two lodgments he noticed that the banks were deducting (COT) commission on turn over. He then called Mr. Donatus Okeke and told him his experience. He now gave Nicholas Ike his savings account number to give to Donatus Okeke. DW4 said the statement of account is before the court.

Then the construction started. His brother Mr. Nicholas Ike was in charge of the contract. And for any job that is to be carried out his brother will inform Mr. Donatus Okeke who will send money, through his account. As money comes in his brother Mr. Nicholas will call him

to bring the money to the site after close of work. The process continued in this manner until the stoppage of the work at the site.

DW4 said the work reached certain level and he went to site and took photographs. He took photographs when the work was stopped.

DW4 said as the work progressed in stages and payments accumulated, and payment was not made by Modular Investment Limited. There was agitation at the site and people were taking Modular Investment Limited to court. Then Modular stopped the work in order to put their house in order.

The photographs and negative were admitted in evidence as exhibits Def E1 to E7 and Def E8 respectively. DW4 said the amount remitted to his account for this project is in total sum of N7,909,000, for the first two three bedroom semi detached. From foundation to roofing level was N2,132,850. He said for the second two three bedroom semi detached from foundation to lintel level, the sum of N1,817,850 was expended.

And the third two three bedroom semi detached from foundation to lintel level the sum of N1,817,850 was expended. For the fourth and fifth buildings, the total sum of N1,881,750 was expended. DW4 said two of his cars were mobilized to the site and used by his brother. The cost of fueling the vehicles, recharge card and public relations amounted to N52,600:00.

DW4 said the sum of N270,000 that was remitted into his account was for the payment of Chukuku land plot No R 733 or 734 at Kuje. He said he made the breakdown of the expenditure titled estimate cost of modular project from 6/2/2004 to 22/12/2004. The said document is admitted in evidence as exhibit Def F.

DW4 said Mr. Donatus Okeke thanked him for helping him to buy the properties and for securing the modular project. He said Donatus Okeke called him on phone and told him that he wants to appoint him a Director in his company to be in charge of Northern Region. He thanks him for the offer and he told him that he has come a long way in the civil service. He wants to finish with the civil service before he goes into any business. When his brother came back from Lagos he showed him three documents for three incorporated companies. He

said the three companies are owned by Donatus Okeke. And that Donatus Okeke said since he rejected the first offer, he cannot reject this one. The companies are.

1. Dunalin Investment Nigeria Limited
2. Kemdo Nigeria Limited
3. Ossi Nigeria Limited.

That Donatus Okeke said they should look for a lawyer to put their names as directors in those companies. DW4 said he asked Donatus Okeke what is the nature of the Job he wants him to do and what are the terms and conditions. Donatus Okeke stated them as follows:

1. That I should source any form of legal contract in any state in Nigeria.
2. The contract must be given in the name of the companies
3. That I am permitted to use proxies since I am still working with Government
4. That he will pay any consultation fee, professional fee, and any other payment/expenses done in the process of securing the contract.
5. That he will give me 3% of the face value of any amount of contract which I secure for the company.
6. That he will pay me N5Million annually as my emolument and out of pocket expenses. DW4 said he checked the conditions and he saw that it did not in any way affect his job. Since he will go to whichever state during weekend to perfect the contracts. He accepted and their names were included as directors.

DW4 said not quite long his brother's name was removed as a director. He called Donatus Okeke and he told him that he doesn't want to bring sentiments or create enmity between him and his brother. And so he is rejecting the offer. For a week Donatus Okeke and his brother kept on pleading with him to take the offer, that there is no problem. Due to their pressure he accepted the offer after two weeks. And went into action to justify his appointment. He said he secured contracts at Abuja, Port Harcourt, Gboko in Benue State. Gombe and Kano. The details of the job are that; In Abuja one Mr. O.C. Okonkwo helped them to secure three separate contracts from parafim positive venture. Two of the contracts were for 90 Million each. While the third one was for N106,421,000.00, the contracts were for building construction. The First two were in the name of Dunalin Investment Limited, and the third one was in the name of



Kamdo Nigeria Limited. O. C. Okonkwo paid N450,000 for each of the contracts and the sum of N360,000 was paid for legal fees. For a total contract of N2,86,421,066:00 the total cost incurred on them was N710,000. Letters of award was given for all the contract. The original letters of award were given to Donatus Okeke while the photocopy is with him. The letter of award was marked as exhibit Defendant G. DW4 said in the contract award letter there is condition attached that is to provide bank performance bond, to be signed by two persons. Donatus Okeke signed the bank performance bond with Standard Trust Bank now UBA Plc and he gave a copy to his brother. The letter was admitted as exhibit Defendant H.

DW4 said every document as per the contract was issued to Mr. Donatus Okeke and he called to acknowledge receipt, and his gratitude for the contracts for River State Port Harcourt three trips was done to secure the Port Harcourt Transnational market construction contract. The sum of N2,940,000 was expended on the first two trips and it was paid by Donatus Okeke. The last trip which was a follow up was paid by him (Dw4) on agreement with Donatus Okeke that he will pay him back from their record the amount is N500,000, which has not been paid by Donatus Okeke till date. DW4 said the total amount of contract was N1.3 Billion and on MOU of N10Million to do the cleaning of the site. The MOU was between Dunalin Investment Nigeria Limited and Milat Group of Companies owned by Mr. Ajike Ukpai the CEO of the company. DW4 said the money was spent in the following way.

Port-Harcourt, first trip was on a weekend undertaken by Engr, Onyema, Engr. Ijeoma and himself (DW4).

1. Engr. Ijeoma (a) consultation fee N200,000:00 (b) Return ticket Hotel accommodation and feeding N50,000:00
2. Engr. Onyema (a) Consultation fee N200,000:00 (b)Hotel accommodation an feeding N50,000:00
3. DW4 Herbert Ike Return ticket Hotel accommodation and feeding N50,000:00
4. Public relations (PR) to milat Architect N100,000:00
5. PR to milat Engineer N100,000:00
6. Advance payment for tractor hire for clearing (site). N100,000:00
7. Payment in draft for contract N1,250,000:00
8. Local transport N20,000:00

Second trip to Port-Harcourt was also a weekend trip undertaken by Engr. Ijeoma, Engr. Onyema, and DW4 Herbert Ike. It was to increase their contract size.

1. Engr. Ijeoma consultation fee N200,000.
2. Engr. Onyema consultation fee N200,000:00
3. Return ticket hotel accommodation and feeding for Engr. Onyema and Engr. Ijeoma N100,000:00
4. DW4 Herbert Ike hotel accommodation and feeding with return ticket N50,000:00
5. Local transport N20,000:00

Sum total N820,000:00. DW4 said all the documents relating to portharcourt job were given to Mr. Dnatus Okeke by himself physically and that was the first time he met Mr. Donatus Okeke. For the contract in Gboko, Benue State, he said their contract man is one Mr. Yander. The journey was undertaken by Architect Titilayo who works with Ministry of Works and Housing, Engr. Ademola, two facilitators and DW4 Herbert Ike. DW4 said he can't remember the names of the two facilitators. He said it was a weekend trip. The contract is for Borehole. The contract was to cover 23 Local Government Areas in Benue State. And in each Local Government they are to sink 23 boreholes in 23 selected areas. The only one that was started was for Gboko Local Government Area in 23 selected areas. The contract amount for Gboko Local Government for the 23 points is N130,434,782:61.

The break down of the cost of securing the contract is as follows.

1. Arch Titilayo consultation fee N250,000 Engr. Ademola consultation fee N200,000.00
2. Hiring of two taxis for three days N200,000.00
3. Payment of PR to six Area council counselors N300,000
4. Payment of professional fees to the two facilitators N100,000:00
5. Hotel accommodation and feeding for five people for three days N200,000:00 total sum N1,250,000.

The break down for expenses for the second trip to Gboko is as follows. The trip was undertaken by Engr. Ademola and one other person detailed by Architect Titilayo. The journey was Area Council enumeration and geophysical data search. The amount spent on the trip is N400,000. Geophysical analysis and soil analysis. The job was done by a student Engineer as against the professional geologist for cost purposes. The student geologist was paid N200,000 as against N1,500,000:00 demanded

by the professional geologist. The report of the finding was sent to Donatus Okeke through his P.A Mr. Nicholas Ike. DW4 said Mr. Donatus Okeke called him to acknowledge receipt.

DW4 said for census job their contact man Mr. Yander was to help them to secure the census job. He was given the sum of N200,000.00. The job is for supply of stationeries during the census period.

In Gombe he said Arch. Titilayo spent three days to see the Governor on contract matters, he was given the sum of N250,000:00 for that purpose. DW4 said for Kano State Engr. Onyema travelled to Kano to see the Governor for contract. He went with two of his staff and he spent one week. He was paid N200,000.00 for his consultation fee and N300,000 for the one week stay with his staff.

DW4 said the total sum of what was spent for all the jobs in the states is N7,450,000.00. And that it is for all this jobs his percentage and some money for land matters, he kept on telling Mr. Donatus Okeke to pay him. And he kept on promising to pay him. In port-Harcourt he owe him N500,000.00. In Gaube farm land he is owing him N200,000. In Kuje residential plot 184 it was fenced. DW4 said it was for N3.5 Million and Mr. Donatus Okeke paid him N2Million living a balance of N1.5 Million outstanding. DW4 said for Modula contract in the sum of N46,123,887:05 the 3% is N1,383,716:62. He said for paraffin Job in Abuja the total sum is N286,421,066:00. The 3% is N8,592,631:98. DW4 said for the Port-Harcourt contract a total sum of N1,310,000,000, the 3% is 39,300,000 which Mr. Donatus Okeke is owing him. And for Gboko contract the contract sum is N130,434,782:61. The 3% Mr. Donatus Okeke is owing him is N3,913,043:48. The sum total of the amount Mr. Donatus Okeke is owing him is N115,392,389:98. DW4 said he continue to ask for his money and it turn out to be threat. He said on 8/9/2006 while he was on his way to the office, his phone rang. Someone introduced himself as the accountant of Dunalin Investment and that he needs to have audience with him. DW4 asked him where he was and he said he was right in his house. DW4 said he went to the office and went back home. He met him at the junction leading to his house. The other two person with Mr. Henry are Mr. Amobi Nzuagu and Mr. Ayodeyi Yusuf. Both of them are working with Modular project. Mr. Henry told him that he is from Mr. Donatus Okeke. And he is on assignment to review their projects in Abuja. Mr. Henry then called Mr. Donatus Okeke who told DW4 that he should handover every document he has for them. They want to review their project. Mr. Donatus Okeke said the N7Million he sent for the farmland development, he did not see anything on the land to justify the amount he sent to him. DW4 told Mr. Donatus Okeke that he will hand over the documents to his agent. So

every contract document he gave it to Mr. Henry Anyafule. Mr. Henry pleaded with him to give him the documents for plot 184 and he told Mr. Henry that they have not completed the payment. Mr. Henry said he know they owe him some money including this one. And that they will pay him all. Mr. Henry told him to release the documents because of recertification. Mr. Henry also told him that they want to have the bank statement of account they are using to transfer money for Modula project. Mr. Henry gave him N700 for that purpose. Since it was Friday he could not do much. Mr. Henry told him he will come back on 13/09/2006 being a Wednesday. On 13/09/2006 Mr. Henry came and he handed over to him the bank statement. DW4 said he reminded him about his money and he said they will pay him and he left. On 20/09/2006 Mr. Henry, Mr. Frank, Mr. Amobi and Mr. Ayodeji Yusuf they all came to DW4 house.

They being at his gate, they all rushed in and they started demanding for documents for about 16 plots of land they listed. DW4 said he was taken aback. They said the money sent for development of the farmland was used to buy plots of land for them.

The remaining part of DW4 evidence has to do with his encounter with the police up to the time he was brought to court. During Cross-examination DW4 said he was made a director of Dunalin Investment Limited but he did not attend any meeting of the board of directors. He said he doesn't know whether the Port-Harcourt contract is ongoing or not. He said the payment made to Dr. Ejike is reflected in his UBA account statement. The N1.5Million was paid to secure the contract and the registration. He said exhibit 1 page 8 is his hand writing. And from Exhibit 1 what Dunalin lodged into his account is N32,119,000:00. He said he knows Engr. Yusuf Ayodeji. He doesn't have quarrel with him. He built his house and he was the Engr. for the Modular contract which was executed on behalf of Dunalin Investment Limited.

He said there was a stop work order, it means the contract was terminated. He said he knows Amobit Uzuagu, he is his cousin. And that Amobi Uzuagu worked both at the construction of his house and at the Modular project. He said they inherited Yusuf Ayodeji with Modular project. He was engaged by Banbela and he engaged Yusuf Ayodeji and Amobi Uzuagu in the construction of his house. DW4 said there are two sets of IPO and he made statements to both of them. And that the two statements represent the truth of what he know. He said he attended a conference in Lagos between June he saw his brother in a pathetic situation. He had to

share his money with him. He was living in a warehouse as he couldn't afford to rent a house. Shortly after he return, he called his brother to come and take a plot of land in Abuja, which he paid for him. He paid for the land before his brother came to Abuja. He paid N200,000 to secure the land. He paid cash around August 2003. He told his brother to come with N40,000 to pay for the Certificate of Occupancy. He said by August 2003 he had two Bank Accounts in Abuja, current and savings account. He said when he gave his brother the land he was not working and he had no money to build on the land. He was a printer, hoping to get money one day to build on the land. DW4 said when his brother came to Abuja he told him that he has a friend who gave him money to travel and he gave him the N40,000:00 for the Certificate of Occupancy. DW4 said he later knew that it was Donatus Okeke who gave him the transport money and the N40,000 His brother met him in His house at No. 50 Yaunde Street Wuse Defence quarters. He said as at 2003 August he had his own plots here in Abuja, about 6 plots, located at Chukunku Kuje. Some of the plots bear his name while some bear other peoples names. And he cannot recall the plot numbers.

When his brother came to Abuja, he told him of his need to secure a property for his friend in Abuja. His brother made the second trip to Abuja and he gave him N270,000. His brother said he was suppose to give him N300,000:00 but he used N30,000 to put his family/house in order. His brother told him that his friend is full of thanks. And that his friend wants him DW4 to help him secure a larger land for cassava plantation. He said the N300,000/N270,000 was meant for Chukunku Land. The plot was sold to Donatus Okeke. And at that time he never knew Donatus Okeke, his brother was acting as an agent of his friend.

He said as at the time he secured the land there was no name on it, it was plane. It was after the farmland transaction, when Donatus Okeke filed the deed of Assignment he wrote Dunalin Investment Limited. And that was how he saw his name. It was indicated on Chukunku plot. He said he did not issue any personal receipt. It is during processing that the Area Council issue receipts. But the area council did not issue any receipt for N300,000. DW4 said he sold the plot for N300,00:00. He said he did not introduce himself to Donatus Okeke as a land speculator but as a civil servant doing petty land business. He said he spoke to Mr. Donatus Okeke after the farm land transaction. It was between August and October 2003. And it was his brother who made a request and he said he will find out. And he acquired the farmland from Emmanuel Anugwa who own the allocation paper. He

paid Emmanuel Anugwa N2.4 Million for the farmland between August and October 2003. And no receipt was issued. DW4 said himself and his brother offered the farmland to Dunalin for N7Million. Dunalin Investment eventually paid N9.8 Million for the farm land. DW4 said out of compassion he gave his brother Nicholas N1.5.Million. He said he made the statement in exhibit I. He said the difference between N2.4 Million and N10Million is N7.6Million. He said he collected N700,000 from Dunalin Investment for fencing of the plot. Out of N700,000 he gave surveyors Bello N300,000 who did the fencing and he DW4 made a profit of N400,000. DW4 said he bought some plots from Bello and surveyor Bello is the master. He brought two plots from the profit he made from the fencing. And he added his money to make up three plots. Each plot is N200,000:00. The plot numbers are 184,185 and 187. He said he bought no other plots from surveyor Bello. He bought two plots numbered 140 and 170 from the profit he got from the sale of Modular contract at N3.9Million. And his profit is N700,000:00 as his percentage. He said from exhibit C1 his brother got N300,000 as his share. DW4 said at the time they made the Modular contract transaction, his brother was already working with Dunalin Investment Limited. He said from the transaction of plot 184 AA1 extension Kuje, he gave his brother N1 Million. The plot was for N3.5Million including fencing. And Donatus Okeke paid him N2Million. It was from the N2million he gave his brother N1Million. He said he sold plot 184 at N3.5Million and Dunalin paid him N2Million in two installments. He said he sold plot R 733 or R734 and a farmland to Dunalin Investment. He said he sold only three plots to Dunalin/Donatus Okeke. The farmland is for N10Million but he paid N9.8Million. He said the Chikukun land is for N270,000.00. He said he started part time land business in 2003 with his savings from his salary and income from petty land business. He was then on either GL.10 or GL 12. He said he was not using any company or business name for his petty land business. But in 2003 or 2004 he registered Havy Grace process and property Nigeria Limited in anticipation of his retirement. It was on 15/3/2004. But he did not use the company for any land business. He said he engage in contract sales and contract procurement. And that he inherited a residential building with a shopping mall and students hostel. In all they are 55 rooms. The property is located at No 45 Mbosi Street Enugu. The house is a cement block house.

DW4 said he is still doing land business. He has plots 185,187,170 and 140 now. For plot 184 they have not finished the payment. The plots are in AA1 extension Kuje. He said after he made the statement in exhibit I he bought and sold the last land in 2013. The land is in Chukunku. He sold it to one

Felix at N1.7Million. The size of the plot is 1200 Sgr. Meters. But he doesn't know the address of Felix who is based in USA. He said the plots he bought from surveyor Bello are about Nine (9). He can remember plot 187, plot 185, plot 184, plot 170 and plot 140. He said the plot numbers are on the offer letters. The plot of land he built his house is plot 187/185. His house is on plot 187 and not 184. He said plot 99 is in custody of surveyor Bello and the people he sold it to. He said he wrote in his statement that N7,908,030.00 was given to the names listed therein exhibit I is the statement made on 8/11/2006.

DW4 said he had three cars at the time he was arrested but one was stolen. Before his arrest. They are Mercedes Benz 230 V boot which he brought at N750,000. Mercedes Benz 190 which he sought at N410,000 and Mazda 626 which he bought for N350,000. He bought the Mercedes Benz 230 on 1<sup>st</sup> September 2003. He bought the mazda 626 on 6<sup>th</sup> September 2003. And the Mercedes 190 he bought it in July 2003. They purchase receipts are with the court as exhibits. And the theft of the mazda 626 was reported at Utako Police Station, but he did not collect the police report. It was stolen between 2003 and 2004.

DW4 said he is not involved in the daytoday execution of the Modular project. But he has daytoday information on the execution of the project. His brother use to give him the information. He donated two of his cars to be used for the project by his brother and team of workers. DW4 said he knows his brother is a printer he had up to six cars. DW4 said when he was with him he used one of the cars. He said when he was a printer he was living with him and he even had two jeeps. The same brother who had six cars he met in Lagos in a pitiable condition living in a warehouse. And that his brother lost a lot of things including the six cars. DW4 said it cost him N3 Million to build his house. And as at today he did not value the house but it must have appreciated. He started the house in 2004 around May. He packed in on September 19<sup>th</sup> 2004 four months after. And they did the house dedication on 19/9/2004.

DW4 said the Modular contract was seven. And five was sold to Donatus Okeke, five buildings. He said the total cost of the contract was N46,123,887:50. This figure is the face value of the contract. And as per exhibit Def 1 the contract sum of N46,123,887:50 is for 10 buildings and not five. He said the first building was at the level wherein block work has finished and the basket work to carry the Zinc roofing was completed. They were waiting for the arrival of the zinc.

The second building of 2 there bedroom semi detached got to lintel level. The rest of the building were also at lintel level. None of the five buildings was completed.

DW4 said he is not aware that the 2<sup>nd</sup> accused his brother got a contract in his own name. It was when he saw the proof of evidence he knew that his brother got a contract in his own name. DW4 said the total figure spent on Modular project is N7,909,000 Minus N270,000:00 He said it is true they stopped putting money for the Modular project in his account. And they transferred the money to his brothers account. He said he made a statement to the police that he is not in talking terms with his brother for two years. And as at 2004 when the stop work order came Dunalin was not paid.

He said when the stop work order came his brother told him that Donatus Okeke said, can they wait all this while for this contract. Can't they source for other contract. It was in the light of that Mr. Donatus Okeke entered into agreement with him to source for other contract. He said he was not a director when he sourced for Modular contract. He became a director after he sourced for Modular contract in 2004. And he was removed as a director after coming to this court between 2007 and 2008. He travelled to Port-Harcourt, Gombe etc to source for contract as a director of Dunalin Investment Limited. So the claims he made was in his capacity as a director of Dunalin Investment. He said he had fulfilled the terms of his engagement made in sourcing the contracts. And the expenditure made in sourcing for contract was not paid. He said when he came out of detention he went to the site and he took photographs. He knew that Dunalin went back to site. He said exhibit E7 is not part of the five houses. Exhibit E7 is roofed and all roofed houses are not part of his job. It is the job his brother did. Exhibit E5 and E6 are not part of the houses he built they are not part of the ten houses. DW4 said some companies he paid in bank draft. The money he paid is not his money it was Donatus Okeke's money. They all gave him a receipt for payment made. He gave the receipts to his brother for onward transmission to Mr. Donatus Okeke. He said he did not keep the copies of the receipts. He said his agreement with Mr. Donatus Okeke is to secure any Legal contract from any part of the country. The connection he got to get the Natl population commission contract, is from Gboko. The brother to the NPC Chairman was in Gboko, that was why he travelled to Gboko to meet Mr. Yander. He gave Mr. Yander N200,000 cash to facilitate the contract Mr. Yander said he knew someone at NPC.



DW4 said he did not know that the port-Harcourt International Market has not been built. And all the time he was a director of Dunalin Investment he was working with Ministry of Defence. He said he did not get contract for Dunalin from Ministry of Defence through he registered the company with the Ministry of Defence. He did not get contract for Dunalin from NPC. And Dunalin Investment is not registered with NPC. DW4 said a total sum of N32, 119,000 passed through his account. The money belongs to Dunalin Investment and Donatus Okeke. He said it is true he completed payment for Mercedes 190 and bought two cars. And he built a house between August 2003 and September 2004. At the close of the case for the defence the two Learned Counsels filed and adopted then final written address. First to begin is the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendant followed by the learned prosecution counsel. The learned defence counsel filed and adopted his reply on point of law I have carefully considered the written submissions for the defendants as well as for the prosecution. I do not think it is necessary to reproduce any of the written submissions in view of the length of evidence before the court. what is important is the evidence hence address of counsels merely assist the court. and more so a brilliant address is no substitute for evidence. Counsels submission no matter how brilliant and alluring cannot take the place of legal proof. See Ucha Vs Elechi (2012) 13 NWLR 330 and Ishola Vs Ajiboye (1998) 1 NWLR (pt 532) 71.

Now all said and done in a Criminal trial the burden rest on the prosecution to establish the guilt of the accused persons beyond reasonable doubt. And where the court entertains even the slightest of doubt, it should be resolved in favour of the accused. See Olowoyo Vs State (2012) 17 NWLR (Pt 1329) 346 and Njoku Vs State (2013) 2 NWLR (pt 1339) 548.

The learned defence counsel in his written submission raised a sole issue for determination thus; whether or not the prosecution has led credible evidence to prove the elements of the offences the defendants are charged with beyond reasonable doubt.

Likewise the learned prosecution counsel raised a sole issue for determination thus whether the prosecution has proved beyond reasonable doubt that the defendants committed the offences for which they are standing trial before this honourable court.

I seek to adopt the issue raised by the learned defence counsel for the determination of this matter. It is however important to note that from the evidence led by the prosecution witnesses and that of the two defendants, it is not in dispute nor in doubt that some money was given to the two defendants by Dunalin Investment Limited and Mr. Donatus Okeke (PW1), the chairman of Dunalin Investment Limited. The question to ask is how was the money put to use? The prosecution led both oral and documentary evidence in an effort to establish their case likewise copious documentary evidence were tendered and admitted in evidence, including statements of the two defendants and statement of accounts. The statements of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Were tendered and admitted in evidence without any objection Exhibit A is the statement made by Nicholas Ike the 2<sup>nd</sup> defendant. The statement was made when PW1 Mr. Donatus Okeke called him to give an account of all the money given to him regarding the whole transactions Exhibit A was admitted in evidence after a ruling on the objection raised by the defence counsel. The objection was over ruled on grounds of relevancy Exhibits C1 C2 & C3 are the statements of the 1<sup>st</sup> defendant Herbert Uche Ike, they were tendered and admitted in evidence without objection. In the same vein exhibit D the statement of the 2<sup>nd</sup> defendant Nicholas Amechi Ike was tendered and admitted in evidence without objection. Exhibits E1, E2 and E2 are photocopies of the purchase receipts for three vehicles that were bought by the 1<sup>st</sup> defendant Herbert Uche Ike. The vehicles are (1) Mercedez Benz 230 (2) Mazda 626 & (3) Mercedez Benz 190. The documents were also tendered and admitted in evidence without objection Exhibit F is the statement of account from UBA Plc for the 1<sup>st</sup> defendant Herbert, Uche Ike while exhibit G is the statement of account from UBA Plc for the 2<sup>nd</sup> defendant Nicholas Amechi Ike, both statements were tendered and admitted in evidence without objection. Exhibit H1 to H17 is also the statement of account from spring Bank Plc for the 2<sup>nd</sup> defendant Nicholas Amechi Ike it was tendered and admitted in evidence without objection. Exhibit I is the statement of the 1<sup>st</sup> defendant Herbert Uche Ike, it was tendered and admitted in evidence without objection. Similarly exhibit J is the statement of the 2<sup>nd</sup> defendant Nicholas Amechi Ike it was also tendered and admitted in evidence without objection. Exhibit K is a search warrant. And exhibits L1 and L2 are set of chairs recovered from the house of the 1<sup>st</sup> defendant Herbert Uche Ike. They are black and white in colore respectively. Exhibit M is a Mercedez Benz 190 with Registration No. BQ 891 RSH, while exhibit N is a Mercedez Benz 230 with Registratin No. AQ 466 BWR. The vehicles were parked within the court premises and the Keys were handed over to the court Registrar. Exhibits O1 to O5 are

1. Video tape
  2. Complimentary card for the 1<sup>st</sup> defendant Herbert Uche Ike as Director of Dunalin Ventures Limited. And the 2<sup>nd</sup> defendant Nicholas Amechi Ike as PA to the chairman Dunalin Limited.
  3. Certificate of Incorporation of "Happy Grace Process and property Nigeria Limited L.C No 506287 dated 15<sup>th</sup> March 2004.
  4. The issue of failed contract in Port-Harcourt Gombe and Kano.
  5. Right of Occupancy (Right of Occupancy) No KSC/MFCT/LA land granted by Kuje FCT of the Federal Republic of Nigeria Plot 99 AA1 layout Exhibits P1 to P15 are;
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1. TDP plan & Survey details of plot No CD 103 Kuchiako extension U Layout.
  2. TDP plan in respect of plot 99 AA1 layout
  3. TDP plan in respect of Plot No. R 733 Chikuku extension layout
  4. Application for Customary Right of Occupancy Urban/Rural land within Kuje Area Council
  5. Application for Customary Right of Occupancy Urban/Rural land within Kuje Area Council Made by Mr. Herbert Uche Ike dated 19 August 2003.
  6. Twenty four pieces of Dunalin Investment Limited letter head paper with Administrative office at 12 Itapeju Street Apapa and liason office at 19 Ogunlana Drive Lagos Surelere.
  7. Forty four (44) pieces of Kemdo International Nigeria letter head paper with Administrative office at 19 Ogunlana Drive Surulere Lagos and liason office at 104 Kirikiri road Olochi Apapa lagos
  8. Five copies of affidavit of urgency deposed by Herbert Uche Ike as plaintiff in the case of Herbert Uche Ike Vs Nicholas Ike & 3 ors.
  9. Five copies of Motion ex-parte made by the plaintiff Herbert Uche Ike filed along with the affidavit of urgency.
  10. Proposed bill of quantities for six bedroom bungalow for Mr. Ike Uche Herbert located at No 45 Mbosi Street Abakpa Nike Enugu State.
  11. A written account of Mr. Herbert Uche Ike, transaction with Mr. Donatus Okeke through Mr. Nicholas Ike.
  12. Six copies of motion on notice made by Mr. Herbert Uche Ike with affidavit in support in the case of Herbert Uche Ike VS Mr. Nicholas Ike & 3 ors.
  13. Four copies of power of Attorney given by Alhaji Lanto (Donor) to Ike Uche Herbert (Donee) in respect of land known as plot No 170 situate at Kuje District.

14. Three copies of Power of Attorney given by Alhaji Lanto (Donor) to Ike Uche Herbert (Donee) in respect of land known as plot No 140 Situate at phase AA1 Kuje District
15. A copy of Power of Attorney given by Mustapha Isa (Donor) to Hillary Nasamu (Donee) in respect of land known as plot No C28 A situate at Kuje District. Exhibit S is a valuation report on the farmland. Exhibits T1 and T2 are tabulated payment sheet.  
The statement made to the police by PW2, PW5 and PW6 were tendered and admitted in evidence as exhibits B, Q and R respectively.

On the other hand the defence tendered the following documents which were admitted and marked as follows. Exhibit defendant 1 is a letter dated 23 March 2004 titled "Re-Domiciliation of payment to Dunalin Investment. Limited" Exhibit Def 2 is a payment/MOU between Modular Limited (Developer) and Dunalin Investment Limited (contractor). Exhibit Def 3 is a letter dated 26<sup>th</sup> September 2006 titled "Transfer of contract from Enterprise Du Chez Limited to Dunalin Investment Limited Exhibit Def 4 is a letter dated 12/02/2007 titled "Re-contract Award" Exhibit Def 5 are copies of cheques with the following details.

1. Intercontinental Bank by Modular to Dunalin Investment Limited in the sum of N475,000:00 (Seventy Five Thousand Naira only)
2. Intercontinental Bank Plc Cheque dated 19/10/2006 issued by Modular to Dunalin Investment Limited.
3. Fidelity Bank Cheque dated 25/05/2011 issued by City View Estate Limited Escrow to Dunalin Investment Limited in the sum of N1,109,279:00 (One Million One Hundred and Nine Thousand Two Hundred and seventy Nine Naira only). Photocopies of ID Cards Exhibit Def 6 are copies of Chques with the following details
  1. Fidelity Bank Cheque dated 15/02/2008 issued by Modular Limited Escrow in favour of Dunalin Investment Limited in the sum of N2,000,000:00 (Two Million Naira)
  2. Intercontinental Bank Plc Cheque issued by Modular Limited in favour of Dunalin Investment Limited in the sum of N2,000,000.00 (Two Million Naira only) The date is not readable
  3. City view Estate Limited payment to contractor invoice No 0112 dated 23/04/2010 in the name of Dunalin Investment Limited, with the description "Part payment of 5 No SD in phase 1,

Fidelity Bank Cheque 019502010000721. The amount is N1,036924.00 (One Million & Thirty Six Thousand Nine Hundred and twenty Four Naira)

4. Fidelity Bank Cheque dated 25/05/2011 issued by City View Estate Limited Escrow in favour of Dunalin Investment Limited in the sum of N2,000,000 (Two Million Naira only).
5. Copies of ID Cards Exhibit Def 7 is a statement of account from Fidelity Bank Plc, for Dunalin Investment Limited. Exhibit Def 8 is a statement of account from Fidelity bank Plc for City View Estate Limited Escrow. Exhibit Def 9 (a) & (b) are copies of cheques with the following details.
  1. Fidelity Bank Plc Cheque dated 25/05/2011 issued by City View Estate Limited Escrow in favour of Dunalin Investment Limited in the sum of N2,000,000.00 (Two Million Naira only).
  2. Fidelity Bank Plc Cheque dated 15/07/2008 issued by Modular Limited Escrow in favour of Dunalin Investment Limited in the sum of N2,000,000:00 (Two Million Naira).
  3. Fidelity Bank Plc Cheque dated 25/05/2011 issued by Modular Limited Escrow in favour of Dunalin Investment Limited in the sum of N1,000,000.00 (One Million Naira only).
  4. Fidelity Bank Plc Cheque dated 25/05/2011 issued by City View Estate Limited escrow in favour of Dunalin Investment Limited in the sum of N2,000,000.00 (Two Million Naira only)
  5. Fidelity Bank Plc Cheque dated 15/07/2008 issued by Modular Limited Escrow in favour of Dunalin Investment Limited in the sum of N2000,000.00 (Two Million Naira only)
  6. Fidelity bank Plc Cheque dated 25/05/2011 issued by City View Estate Limited Escrow in favour of Dunalin Investment Limited in the sum of N1,109,279.00 (One Million One Hundred and Nine Thousand Two Hundred and Seventy Nine Naira only).
  7. Fidelity Bank Plc Cheque date 25/05/2011 issued by City View Estate Limited Escrow in favour of Dunalin Investment Limited in the sum of N1,109,279.00 (One Million One Hundred and Nine Thousand Two Hundred and Seventy Nine Naira) Exhibit 10 is a certificate of identification issued by Fidelity Bank Plc dated 31<sup>st</sup> day of October 2014.

Exhibit E1 to E8 are the photographs and negatives of the building under construction for Modular project. Exhibit F is the Modular project Cost estimate of Various aspects of the job. From February 6<sup>th</sup> 2004 to 22<sup>nd</sup> December 2004. Exhibit G is a letter dated 14/01/2004 titled "letter of Accord addressed to Kendo International Limited. Exhibit H is a letter dated 05/03/2004 titled "Authority to sign Cheques on Behalf of Dunalin Investment Limited addressed to the Branch Manager Standard Trust Bank Adetokumbo Ademola Street Wuse Zone 2 Abuja.

These are the sum total of the oral and documentary evidence adduced by both the prosecution and the defence. I have critically considered the written address of the two learned counsel for the prosecution and the defence in an effort to establish its case against the two defendants. And efforts to disprove the case of the prosecution respectively. In count one and count Six the defendants are charged with the offences of obtaining by false pretence and with intent to defraud contrary to sections 8 and 1 (1) of the Advance fee fraud and other related offences Act 2006 and punishable under section 1 (3) of same.

In order to establish this offence the prosecution must establish the following essential ingredients thus.

1. That there was false pretence made by the accused person.
2. That the accused person obtained property as a result of the false pretence from the said person.
3. That the accused did same with intent to defraud. Section 20 of the Advance Fee Fraud and other related offences Act 2006 defines false pretence to mean a representation whether deliberate or reckless made by word in writing or by conduct of a matter of fact or law either past or present which representation is false in fact or law and which the person making it knows to be false or does not believe to be true.

In cases of false pretence the prosecution has to discharge as a matter of law the burden of showing that the representation made by the accused to his knowledge was false. Failure to supply this evidence is fatal to the case of the prosecution. See Raymond Nwokedi Vs Commissioner of Police (1977) 3 SC 20. Again for the offence of obtaining by false pretence to be committed the prosecution must prove that the accused had an intention to defraud and the thing is capable of being stolen. See Dr. Edwin Udemegbunam Onwudiwe VS FRN (2006) 4SCNJ 350.

From the totality of the evidence adduced by the prosecution it shows that the transactions which led to the alleged offences are:

1. Purchase of land
2. Purchase of farmland
3. Purchase of contract for Modular Housing Estate
4. Sourcing for contracts in Abuja, Kano Gombe, and Port-Harcourt.

There is no evidence to show that there was false pretence to obtain the sum of N8,910,000:00 (Eight Million Nine Hundred and ten thousand naira) from Dunalin Investment Limited with intent to defraud. The totality of the transactions was based on trust. Therefore the issue of false pretence does not arise. The two ingredients must go together for the offence to be established ie false pretence and intention to defraud. There is no evidence before the court to show that there was false pretence in obtaining the sum of N8,910,000.00 with intent to defraud. Count one specifically deals with conspiracy to commit the offence of obtaining by false pretence. Section 8 of the Advance Fee Fraud and other Related Offences Act 2006 provides thus: A person who.

- (a) Conspires with, aids, abets or counsels any other person to commit an offence or
- (b) Attempts to commit or is an accessory to an act or offence or
- (c) Incites, procures or induces any other person by any means whatsoever to commit an offence under this Act commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.

The elements of the offence of conspiracy are as follows.

- (a) An agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal but by illegal means.
- (b) Where the agreement is other than an agreement to commit an offence, that something besides the agreement was done by one or more parties in furtherance of the agreement
- (c) Specifically that each of the accused persons individually participated in the conspiracy. See state VS Salawu (2011) 12 SC (pt IV) 191. The gist of the offence of conspiracy is the meeting of the mind of the conspirators. This is hardly capable of direct proof for the offence of conspiracy is complete by the agreement to do the act or make the omission. The offence can only be proved largely from the inferences drawn from Acts or illegal Omissions Committed by the conspirators in pursuance of common design. In

this instant case the defendants are alleged to have conspired to commit the offence of obtaining by false pretence with intent to defraud the sum of N8,910,000.00 property of Dunalin Investment Limited. The burden rest on the prosecution to prove its case beyond reasonable doubt, at all times. The burden never shift and it is a constitutional requirement. There is no room for suspicion or prescription. There are evidences both oral and documentary to show that various sums of money was paid to the two defendants amounting to N32,510,000.00. But there is no specific evidence either direct or circumstantial to prove that the two defendants conspired to commit the offence of obtaining by false pretence with intent to defraud, the sum of N8,910,000.00 property of Dunalin Investment Limited.

Consequent to the above findings I hold that the prosecution had failed to establish the offence of conspiracy to commit an offence to wit obtaining by false pretence with intent to defraud several sums of money amounting to N8,910,000.00 property of Dunalin Investment Limited. Equally I hold that the prosecution has failed to establish the offence of obtaining the sum of N8,910,000.00 by false pretence with intent to defraud. Accordingly therefore counts one and six are bound to fail. The two defendants are hereby discharged and acquitted on counts one and six.

In count 8 the 2<sup>nd</sup> defendant Nicholas Amechi Ike is charged with the offence of obtaining the sum of N6,697,800.00 (Six Million Six Hundred and Ninety Seven Thousand Eight Hundred Naira) by false pretence and with intent to defraud. Equally in this case there is no evidence before the court to show that there was false pretence in obtaining the said sum of money with intent to defraud. It is not in doubt that money was paid to the 2<sup>nd</sup> defendant to the tune of N6,697,800.00 but what was the false pretence? These must be evidence to show that there was false pretence made by the 2<sup>nd</sup> defendant. And that he obtained the money with intent to defraud Dunalin



Invest Ltd. I therefore hold that the prosecution had failed to establish the offence of obtaining the sum of N6, 697, 800: 00 by false pretence with the intention to defraud Dunalin Investment Ltd. Accordingly court 8 fails and the 2<sup>nd</sup> defendant is discharged and acquitted.

In court two, three and four the two defendants are charged with the offence of breach of trust contrary to section 311 and punishable order section 312 of the Penal Code Act Cap 532 laws of FCT Nigeria 2004.

In court two they were entrusted with N10, 000, 000; 00 (ten million naira). In court three they were entrusted with N700, 000; 00 (seven hundred thousand naira). In court four they were entrusted with N3, 900, 000; 00 (three million nine hundred thousand naira), all property of Dunalin Investment Limited.

In his evidence before the court PW1 Mr. Donatus Okeke who is the Chairman of Dunalin Investment limited he told the court that he employed the 2<sup>nd</sup> defendant Mr. Nicholas Amechi Ike as his PA in 2003.

He said before his employment the 2<sup>nd</sup> defendant approached him on a particular day hence he had a close relationship with him. As the 2<sup>nd</sup> defendant claim to be a born again Christian. And three years or more before this employment he has been a printer for the company. That was how they developed a close relationship to the extent that the 2<sup>nd</sup> defendants do discuss most of his private affairs with him. When the 2<sup>nd</sup> defendant has a problem in his house he approaches him and he will advance money to him for his rents. PW1 said he paid the school fees for most of his children. After some time he decided to employ him as his Personal Assistant. And even after the employment he kept on assisting the 2<sup>nd</sup> defendant. Not too long after his employment the 2<sup>nd</sup> defendant told him that he has a junior brother whom he trained in school and who is now working in Abuja.

That he invited him to come to Abuja with N40, 000 (forty thousand naira). That he got an allocation of a plot of land for him, so as to pay him for all that he has done for him. PW1 said he gave permission to the 2<sup>nd</sup> defendant to go to Abuja and he gave N40, 000, 00 with transport money to Abuja. On his return the 2<sup>nd</sup> defendant came with two allocation papers for the plots of land at chikuku. The 2<sup>nd</sup> defendant said he explained to his brother his relationship with PW1 and asked whether such an allocation

can equally be extended to PW1. And that brought about the second paper. And the 2<sup>nd</sup> defendant said his brother demanded for N240, 000 and if he is not interested to accept the allocation he can return it. PW1 said he gave the 2<sup>nd</sup> defendant money and he sent it to his brother. PW1 said the 2<sup>nd</sup> defendant told him that he discussed with his brother on how he can help the company to get the allocation of quality land which they can sell if the value appreciates. The 1<sup>st</sup> defendant Herbert Uche Ike called the 2<sup>nd</sup> defendant and told him that he has a specious land which they can buy and sell at a later date, when development gets to the land measuring about 5 hectares.

And the 1<sup>st</sup> defendant said they requested for N10million naira. PW1 paid the money between August 2003 and February 2004 PW1 said he gave the Director of Finance approval to raise the money. The 2<sup>nd</sup> defendant requested that since he has no bank account every payment should be made into the bank account of the junior brother Mr. Herbert Ike. Mr. Nicholas gave PW1 an account number which they paid in the money to the tune of N10million naira. Mr. Nicholas 2<sup>nd</sup> defendant then requested for N700, 000; 00 for fencing. PW1 said he approved that the money be paid into the same account and to the best of his knowledge the money was paid. PW 10 Mr. Henry Anyafulu Tochukwu is the head of finance of Dunalin Investment Ltd. He told the court that on 18/03/2003 his chairman told him to raise a draft of N3million naira in favour of Mr. Herbert Ike(1<sup>st</sup> defendant). He asked what was the purpose for the money. The chairman said it was for payment of a farmland. He then raised a draft. PW10 said subsequently he always get instruction from his chairman to remit money to Herbert Ike's account between 18/8/2003 and 24/02/2004 he made a total payment of N10million naira. PW10 said on 18/3/2004 his chairman told him to make a payment of N500, 000.

He asked him for what and the chairman said it was for the fencing of the farmland PW10 said the chairman asked him to make another payment of N200, 000 for the same fencing making a total of N700, 000 for fencing.

DW1 Nicholas Amechi Ike told the court that he was employed by PW1 Donatus Okeke as his PA. He said the transaction that led to this case started with his coming to Abuja to see his brother Herbert Ike (1<sup>st</sup> defendant), who invited him to Abuja to come and pick land document which he had paid for. He was asked to come with the balance of some money which he did not have. So he requested for the assistance of Mr. Donatus Okeke. He was given assistance and permission to come to Abuja. When he came to Abuja his brother Herbert Ike gave him the land documents, and he went back to Lagos. He presented the document Mr.

Donatus Okeke who was very happy. Mr. Donatus Okeke asked him if it was possible for his brother to help him to secure a land in Abuja because he tired in vein. He told Mr. Donatus Okeke that it is possible but he has to consult his brother. He then got in touch with his brother who told him that he will do his best to get one for him. After two weeks his brother called him and he said he was able to get a plot of land for Mr. Donatus Okeke. His brother told him the cost of the land and Mr. Donatus Okeke provided the money and air ticket to Abuja to collect the documents. He came to Abuja and he met his brother who gave him the papers and he travelled back to Lagos. He presented the papers to Mr. Donatus Okeke and he was extremely happy.

DW4 Herbert Amechi Ike told the court that he invited his brother to Abuja to take a piece of land. As he came he gave him the offer letter. His brother told him he has a good friend who sponsored his trip to Abuja. And he gave him part of the money he will process the offer letter to certificate of occupancy, his brother told him that the person is so good to him, and his family. His borther asked him if he can give him another offer letter for his friend who tried to get land in Abuja but in vein. DW4 said he told his friend Mr. Emmanuel Anugwa to make available an offer letter for his brother who is coming. He took his brother to Mr. Emmanuel Anugwa office and he collected N40, 000 for land processing from his brother and gave it to his friend. It was on their way out his brother called him aside and he made a request for his friend Mr. Donatus Okeke. DW4 said he never knew Mr. Donatus Okeke before. He then collected an offer letter from his brother. He told his brother that the second offer letter is for N300, 000; 00. And so he will collect back his own offer letter until he brings to him the N300, 000; 00 then he will return his own offer letter, and start processing of the land. DW4 said the two plots are serial and they are located at Chukuku Village in Kuje Area Council.

In a week's time his brother came back with N270, 000 and he explained that he used the balance of N30, 000 to settle his family. His brother told him that his friend wants a farmland in Abuja. Whether he could secure one. He told his brother it is possible to secure one but he has to clear from his friend. He put the request to his friend Mr. Emmanuel Anugwa. And after two days his friend called him to come for negotiation. He met his friend at the office and he brought out the offer letter for the farm land. The friend told him that on paper the land is 4 hectares but on ground it is 5 hectares. They negotiated and agreed at N5million to include processing up to certificate of occupancy. His friend said he will introduce him to a lawyer who will do the legal work at a fee of N1million naira. DW4 said he

met his brother and he added N1million naira as his commission making a total of N7million naira. DW4 said himself and his brother spoke on phone with Donatus Okeke who said he needs the land but he has no money except installmental payment. DW4 said he told his friend Emmanuel Anguwa who said it is business; cash and carry. Then DW4 said his brother should tell his friend that it is all about sacrifice if the friend is prepared he will process the offer to certificate of occupancy by December. DW4 said when Donatus Okeke accepted the proposal, he told Mr. Emmanuel Anugwa that he should tell him the price of the offer letter only. And he will do the processing. They settled at N2.4million and he paid him off.

During Cross-examination DW4 said he paid Emmanuel Anguwa N2.4million for the farmland between August and October 2003. And no receipt was issued. DW4 himself and his brother offered the farmland to Dunalin for N7million Dunalin Investment eventually paid N9.8 million for the farmland. DW4 said out of compassion he gave N1.5million to his brother Nicholas. DW4 said the different between N2.4million and N10million is N7.6million. DW4 said he collected N700, 000 from Dunalin Investment for fencing of the plot out of N700, 000 he gave surveyor Bello N300, 000 who did the fencing and he made a profit of N400, 000.

This is the sum total of the evidence adduced by the prosecution and the defence in respect of the N10, 000, 000 and N700, 000; 00 for which the defendants are charged with the offence of breach of trust. The essential ingredient of breach of trust is that the person charged dishonestly misappropriates or converts to his own use the property entrusted to him. In breach of trust as distinguished from theft the initial possession of the property is acquired lawfully or with the consent of the owner but is subsequently dishonestly misappropriated or converted to the use of the accused person. Therefore criminal breach of trust is established where there is dishonest misappropriation or conversion or use or disposal by the accused of the property entrusted to him.

The evidence before the court is crystal clear that the sum of N10million was paid to the 1<sup>st</sup> defendant Herbert Uche Ike for purchase of the farmland and the sum of N700, 000 for the fencing of the farmland. But the 1<sup>st</sup> defendant Herbert Uche Ike only used part of the money for the purchase and part of the money for the fencing of the farmland. And the balance of the money was dishonestly misappropriated by him and he called it profit. He said he gave to the 2<sup>nd</sup> defendant Nicholas Ike

N1.5million naira out of the N9.8million which he said he was paid. He said he gave the money to the 2<sup>nd</sup> defendant out of compassion.

There is no evidence to show that he gave N1.5million to the 2<sup>nd</sup> defendant and the 2<sup>nd</sup> defendant in his evidence he never said he was given N1.5million by the 1<sup>st</sup> defendant. In criminal trial the evidence of co accused cannot admitted against a co-accused except if he adopt the evidence in court.

Therefore there is no evidence to show that the two defendants jointly misappropriated the sum of N10million and N700, 000 that was paid to the 1<sup>st</sup> defendant for the purchase of the farmland and the fencing. Rather the prosecution has established beyond reasonable doubt that the 1<sup>st</sup> defendant dishonestly misappropriated part of the money that was paid to him for the purchase of the farmland and the fencing. From his own evidence before the court the 1<sup>st</sup> defendant said he paid Mr. Emmanuel Anugwa N2.4million for the farmland but there was no receipt. He also said the difference between N10million naira and N2.4 million naira is N7.6 million naira. He also said out of the N700, 000 he gave surveyor Bello N300, 000 who did the fencing and he made a profit of N400, 000; 00

In view of the above findings I hold that the prosecution has established the offence of breach of trust as contained in courts two and three against the 1<sup>st</sup> defendant Herbert Uche Ike and I convict him accordingly. In the same view I hold that the prosecution has failed to establish the offence of breach of trust as contained in courts two and three against the 2<sup>nd</sup> defendant Nicholas Amechi Ike. Accordingly the 2<sup>nd</sup> defendant is discharged and acquitted on counts two and three.

In count four, the two defendants are charge with the offence of breach of trust in the sum of N3.9 million property of Dunalin Investment Ltd.

PW1 Mr. Donatus Okeke told the court that Mr. Nicholas (2<sup>nd</sup> defendant) told him that his brother called him and he said instead of waiting for a contract from Government the best way to enter or have dealings with the Government in terms of contract is to buy an awarded contract. And they have sourced for one, a building project with Modula. That the contract price is N3.9million. PW1 said he did not doubt Mr. Nicholas looking at their relationship, his age and his claim to be a born again Christian. PW1 said he equally approved the release of the money between February and March 2004.

PW10 Henry Anyafulu Tochukwu, the head of finance of Dunalin Investment Limited told the court that he made another payment of N2.7million to Herbert Ike through bank draft and N1.2million totaling N3.9million; his chairman told him the payment was to buy a contract from Modular Company.

DW1 Mr. Nicholas Amechi Ike (2<sup>nd</sup> defendant) he told the court that his brother called him and told him that he got a building contract and he should inform Mr. Donatus Okeke. The company that issued the contract is Modular Limited. The contract was for the construction of N7 No Blocks of Bungalow, two bedrooms and three bedrooms at the cost of N45million. DW1 said Mr. Donatus Okeke paid N3.9million to Modula Limited.

On his part DW4 herbert Uche Ike the 1<sup>st</sup> defendant he told the court that his brother Nicholas Ike who travelled to Lagos on 23/12/2003 called him to inquire if they had received the payment for the contract award letter.

He replied no; that the man did not appear. His brother told him to stop the sale, hence his friend Mr. Donatus Okeke indicated his interest to buy the contract. His brother told him to be in Abuja on 6/02/2004 for payment for the contract. On that date he came to Abuja and his brother and came with a cheque of N3.9million. Mrs. Balogun set aside N400, 000 starting that they will go with his brother to pay for site plan and land clearing. The cheque was issued by Dunalin Investment Limited. Mrs. Balogun paid them for getting a buyer for her.

The ingredients for the offence of criminal breach of trust are thus;

- a) That the accused was entrusted with property or with dominion over it.
- b) That he
  - i. Misappropriated or
  - ii. Converted it to his own use
  - iii. Used it or
  - iv. Disposed of it
- c) That he did so in violation of
  - i. Any direction of law prescribing the mode in which such trust was to be discharged or
  - ii. Any legal contract expressed or implied which he had made concerning the trust or
  - iii. That he intentionally allowed some other person to do as above
  - iv. That he acted dishonestly. See *Onuwoha Vs The state* (1988) 7 SC (pt 1) 74 at 93-94

In this instant case there is evidence to show that the two defendants were entrusted with the sum of N3.9million naira for the purchase of Modular contract.

There is also evidence to show that the contract was purchased and the project commenced but it was not completed. There is no evidence to show that the N3.9million that was meant for the purchase of the Modular contract was misappropriated or converted by the defendants to their own use in violation of the agreement. On this not I hold that the prosecution has failed to establish the offence of criminal breach of trust as contained in count four against the defendants. Accordingly therefore the defendants are discharged and acquitted on count four.

In count five the defendants are charge with the offence of criminal misappropriation contrary to section 308 and punishable under section 309 of the penal code Act cap 532 laws of FCT Nigeria 2004.

They were alleged to have been entrusted with the sum of 9, 000, 000 (nine million naira) property of Dunalin Investment Limited and they dishonestly misappropriated or converted to their own use, the said money DW4 Herbert Uche Ike (1<sup>st</sup> defendant) in his evidence before the court he said Mr. Donatus Okeke (PW1) called him to confirm the request that he want to use the 1<sup>st</sup> defendants account to be remitting money for the execution of the contract. After he thought about it he gave his go ahead to remit the money. He gave Donatus Okeke his current account number. But after two lodgments he noticed that the banks were deducting (COT) commission on turn over. He then called Mr. Donatus Okeke and told him, his experience. He now gave Nicholas Ike (2<sup>nd</sup> defendant) his savings account number to give to Donatus Okeke. 1<sup>st</sup> defendant said construction started. His brother Nicholas Ike (2<sup>nd</sup> defendant) was in charge of the contract. And for any job that is to be carried out his brother will inform Mr. Donatus Okeke who will send money through his account. As money comes in his brother Mr. Nicholas will call him to bring money to the site after close of work. The 1<sup>st</sup> defendant said the process continued in this manner until stoppage of the work at the site.

PW8 Amobi Uzeagu who is a pastor now living in Zamfara State told the court that the two defendants are his uncles. He said in December 2003 his uncle Herbert Ike (1<sup>st</sup> defendant) called him that he won a contract in Abuja. And he wanted him to supervise the contract. He then came to Abuja in February 2004. He went to his house at Zone 6 and he met his

senior uncle Mr. Nicholas Ike. He also met two women Mrs. Balogun and one other woman. They all went to Dakwo District where they saw the site called Modula Nigeria Limited. He met Engr. Ayodeji at the site and they started the job.

Engr. Aodeji was working under Mrs. Balogun. He was introduced to them as the project engineer. PW8 said they were not able to complete the work. There was no money to complete the work at various levels Mr. Herbert was doing his house at Kuje and he joined them later. PW8 said when he left Modular and he went to Kuje there was no one doing the work at modular. They completed the house at Kuje a bungalow. And that he did not return to modular project. He said Mr. Herbert was living in Younde Street Zone 6 Wuse. He now lives at Kuje in the house they built for him.

The evidence of PW8 remained unchallenged because he was not cross examined. The above piece of evidence shows that while money was remitted to the 2<sup>nd</sup> defendant Nicholas Ike for the Modular project; the money was converted or used for the building of a house for the 1<sup>st</sup> defendant at Kuje.

PW7 Mr. Yusuf Hakeem Ayodeji corroborated the evidence of PW8. He told the court that he met the two defendants on 10/2/2004 as he is working for Mrs. Biodun Balogun who got a contract from Modular Nigeria Limited to build houses (bungalow). Mrs. Balogun told him that she had sublet some part of her contract to some people and she will bring them to the site, and he should handover part of the contract to them. He said Mrs. Balogun told him to agree with them to supervise their own contract as required by Modular Nigeria Limited that only an Engineer will supervise the contract. He can agree with them on the supervision fee. The day she brought them to the site along with Modular team, he showed them their part of the contract. Then PW7 said he was working for the two defendants along side with his employees. He said their own work was not completed because they started work in February and around April 2004. Mr. Herbert Ike took him to another site at Kuje and so the work at Modular stopped. PW7 said Mr. Herbert Ike told him that the work at Kuje is a personal project. He said they completed the house at Kuje. They built six bedroom bungalow. Before they completed the work at Kuje the Modular site was revoked. The evidence of PW7 further confirms that the two defendants converted the money meant for the Modular project, to the construction of a house for the 1<sup>st</sup> defendant at Kuje.



With this piece of evidence it has been established beyond reasonable doubt that the two defendants committed the offence of criminal misappropriation as contained in count five and I convict the two defendants on count five.

In count seven the 2<sup>nd</sup> defendant Nicholas Amechi Ike is charged with the offence of breach of trust contrary to section 314 of the penal code Act cap 532 laws of FCT Nigeria 2004. The allegation is that between August 2004 and August 2006 in the FCT Abuja being a servant in the employment of Dunalin Investment Limited and such capacity was entrusted with some property to wit, the sum of N 6,696, 800 (six million six hundred and ninety six thousand eight hundred naira) committed breach of trust in respect of the property. The ingredients of this offence which the prosecution must prove are thus;

1. That the accused was a clerk or servant of the person reposing trust in him.
2. That he was in such capacity entrusted with the property in question or with dominion over it.
3. That he committed criminal breach of trust in respect of it.

PW1 Mr. Donatus Okeke told the court that in 2004 around August the Director of Finance reported to him that Mr. Nicholas (2<sup>nd</sup> defendant) said that money should no longer be paid into his brothers account. That he has opened an account where money could be paid into for easy control. PW1 I said he then called Mr. Nicholas Ike and he confirmed what the Director told him. And Mr. Nicholas Ike stated further that his brother was becoming stubborn. PW1 said he approved that money he paid into Mr. Nicholas account and about 7 to 8million naira was paid into his account.

PW10 Mr. Henry Anyafulu Tochukwu the head of Finance of Dunalin Investment Limited he told the court that his Chairman called his attention and said subsequent payments should be made to Nicholas Ike. And between August 2004 and November 2005 he made a total payment of N6.2million. Sometime in December 2005 to 2006 he made a total payment of N496, 000. In all the total amount paid to Nicholas Ike; was N6.6million. And there was no other payment made to him.

In his statement to the police exhibit D herein the 2<sup>nd</sup> defendant stated that the total amount remitted into his account No: 124037852113 was between 6 and 7 million naira by Dunalin Investment limited.

Now from the evidence of PW1 Mr. Donatus Okeke PW10 Mr. Henry Anyafulu Tochukwu and the 2<sup>nd</sup> defendant Nicholas Amachi Ike it has been established that the 2<sup>nd</sup> defendant was employed by Mr. Donatus Okeke the Chairman of Dunalin Investment Limited as his personal Assistant. Similarly from the evidence of PW1 Mr. Donatus Okeke, PW10 Mr. Henry Anyafulu Tochukwu Exhibit D the statement of Nicholas Ike. It has been established that while the 2<sup>nd</sup> defendant Nicholas Ike was in the employment of Dunalin Investment Limited he was entrusted with property to wit the sum of N6, 697, 800; 00.

There is no evidence to show that the said sum of money entrusted to the 2<sup>nd</sup> defendant Nicholas Ike by Dunalin Investment limited, was spent in accordance with the instruction of his employer. The 2<sup>nd</sup> defendant Nicholas has failed to show what happened to the money entrusted to him. The court is therefore entitled to draw inference of dishonest misappropriation.

PW7 Mr. Yusuf Hakeem Ayodeji and PW8 Amobi Uzeagu gave evidence to the effect that the Modular project could not be completed, hence the 1<sup>st</sup> defendant Herbert Uche Ike moved to Kuje where he built his house a six bedroom bungalow. Therefore, the money that was remitted by Dunalin Investment to the 1<sup>st</sup> defendant Herbert Uche Ike and subsequently to the 2<sup>nd</sup> defendant Mr. Nicholas Amechi Ike, for the Modular project was misappropriated which led to the stoppage of work for Modular and subsequent revocation of the contract.

It is therefore my finding which I so hold that the prosecution has established the offence of criminal breach of trust by a servant as contained in count seven. And accordingly I convict the 2<sup>nd</sup> defendant Nicholas Amechi Ike on count seven.

The defendants namely by Herbert Uche Ike and Nicholas Amechi Ike could not proffer any defence rather the evidence of the two defendants before the court and their written statements ie Exhibits A, C1, C2 and C3. Exhibit D, I and K all supports the case of the prosecution. I am therefore satisfied that the prosecution has established its case against the two defendants beyond reasonable doubt as per the following counts.

1. On count one and six the two defendants namely Herbert Uche Ike and Nicholas Amechi Ike are found not guilty. They are discharged and acquitted on count one and six.

2. On count eight the 2<sup>nd</sup> defendant Nicholas Amechi Ike is found not guilty. He is accordingly discharged and acquitted on count eight.
3. On count two and three the prosecution has established its case beyond reasonable doubt against the 1<sup>st</sup> defendant Herbert Uche Ike and accordingly he is found guilty on count two and three. The 1<sup>st</sup> defendant Herbert Uche Ike is convicted on counts two and three.
4. On count two and three the 2<sup>nd</sup> defendant Nicholas Amechi Ike is found not guilty and he is accordingly discharged and acquitted.
5. On count four the two defendants are found not guilty and accordingly they are discharge and acquitted.
6. On count five the prosecution has establish its case beyond reasonable doubt against the two defendants. The two defendants are found guilty as charged in court five. I accordingly convict the two defendants on count five.
7. On count seven the prosecution has establish its case beyond reasonable doubt against the 2<sup>nd</sup> defendant Nicholas Amechi Ike. The 2<sup>nd</sup> defendant is found guilty as charged in court seven and I convict him accordingly.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE  
31/5/2017

Pros: We are grateful to my lord for the industry. We urge the court to rely on section 314 of ACJA 2015. We apply that the properties acquired with the proceeds of the crime be forfeited to the victim.

Def: We thank my lord for the industry in the judgment just delivered. As for the application made by the prosecution we submit that the prosecution has not been able to show that the properties were acquired with the proceeds of the crime.

We are pleading to the court to temper justice with mercy. The 1<sup>st</sup> and 2<sup>nd</sup> convicts were forth right in giving their evidence from the time of their arrest.

They are first time offenders we pray the court to take into consideration. They are the bread winners of their family. We urge the court to consider the age of the 2<sup>nd</sup> convict. We urge the court to give them the option of fine. We urge the court to temper justice with mercy.

Pros: The defendants have not shown any sign of remorse. The 1<sup>st</sup> defendant is even making a spurious claim against the victim I urge the court to take that into consideration.

Court: After conviction what follows next is sentencing. In passing a sentence, I have a duty to consider the provisions of the ACJA 2015, and the sentencing guidelines (practice direction) of this court.

I therefore reserve sentence for tomorrow 1<sup>st</sup> June 2017. The convicts are to be remanded in prison custody until tomorrow.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE  
31/5/2017

**1** - **6** - **2017**  
Tony Ogbulafor for the prosecution  
E.M.D Umokoro for the convicts

Court: Sentence delivered

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE  
1/6/2017

### **SENTENCE**

After conviction what follows is sentencing sections 310,311 and 416 of the ACJA 2015 provides for the procedure to be followed in sentencing. Equally the FCT courts (sentencing guidelines) practice direction 2016 sets out the procedure for sentencing. In this instant case part four of the FCT courts (sentencing guidelines) practice direction 2016 applies. It deals with offences against property.

The first convict was convicted under 311 and 312 of the Penal Code Act and section308 and 309 of same.

The second convict was convicted under sections 308 and 309 of the penal Code Act. And section 314 of same.

The punishment sections provides thus 309 "whoever commits criminal misappropriation shall be punished with imprisonment for a term which may extend to two years or with fine or with both"

312 "whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to seven years or with fine or with both".

314 "whoever being a clerk or servant or employed as a clerk or Servant and being in any manner entrusted in such capacity with property with any dominion over property commits criminal breach of trust in respect of that property shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine"

Section 309 and 312 allows for exercise of sentencing discretion on the offence under consideration. In other words it allows for a sentence of imprisonment or fine or both. But section 314 does not allow for exercise of sentencing discretion. Therefore in considering the sentence under section 309 and 312 of the Penal Code I shall apply the provisions of paragraph 22 to 29 of the practice direction. While in considering the sentence under section 314 of the Penal Code I shall apply the provisions of paragraph 27, 28 and 29 of the practice direction.

In every society in the world trust is a very serious matter. It is the trust in one another that keeps the society in peace and harmony. That breach of trust has a serious physical and psychological effect on victims. The relation between the nominal complainant and PW1 in this case Mr. Donatus Okeke who is the Chairman of the Dunalin Investment Limited, was built on mutual trust and the fear of God. The desire to assist a fellow human being. But unfortunately the 2<sup>nd</sup> convict Nicholas Amechi Ike abused the trust entrusted on him with the active connivance of his younger brother the 1<sup>st</sup> convict Herbert Uche Ike.

The court has a duty to impose a sentence that will serve as correction to the convicts and a deterrence to others.

Consequently I sentence the convicts as follows;

1. On count one I sentence the convict Herbert Uche Ike to (2) two years imprisonment or a fine of N50, 000, 00.
2. On count three I sentence the convict Herbert Uche Ike to two (2) years imprisonment or a fine of N50, 000, 00.

3. On count five I sentence the 1<sup>st</sup> convict Herbert Uche Ike to (20) two years imprisonment and a fine of N50, 000, 00.  
I sentence the 2<sup>nd</sup> convict Nicholas Amechi Ike to two (2) years imprisonment a fine of N50, 000, 00.
4. On count seven I sentence the convict Nicholas Amechi Ike to two (2) years imprisonment and fine of N50, 000, 00.

The sentences are to run concurrently effective from 31<sup>st</sup> May, 2017

Section 314 of the ACJA 2015 provides for the award of compensation to a victim. The victims in this instant case are Mr. Donatus Okeke the Chairman of Dunalin Investment Limited and Dunalin Investment limited. It has been established beyond reasonable doubt that the 1<sup>st</sup> convict Herbert Uche Ike built a six bedroom bungalow in Kuje, Kuje Area Council of the FCT, with the proceeds of the crime. It is also in evidence that the 1<sup>st</sup> convict brought three vehicles with the proceeds of the crime. These are;

1. Mercedes Benz 190.
2. Mercedes Benz V boot 230.
3. Mazda 626.

The two Mercedes Benz cars were recovered and tendered as Exhibits before the court.

Consequently pursuant to section 314 of the ACJA 2015 I order that the six bedroom bungalow situated at Kuje in Kuje Area Council of FCT and the two Mercedes Benz are forfeited to the victims as compensation.

It is against the principle of natural justice equity and good conscience to allow a convict to benefit from the proceeds of the crime. Orders made accordingly. Appeal is allowed to the Court of Appeal

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE  
1/6/2017