IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY THE 27TH DAY OF MAY, 2019
BEFORE HIS LORDSHIP, HON. JUSTICE DR. NNAMDI O. DIMGBA
JUDGE

SUIT NO: FHC/ABJ/CR/113/2016

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA — **COMPLAINANT**

AND

1. AZIBAOLA ROBERT
2. ONE PLUS HOLDINGS NIGERIA LIMITED } **DEFENDANTS**

JUDGMENT

This is a judgment following trial on an Amended charge against the Defendants dated the 19th day of April, 2017 and filed on the 20th day of April 2017 wherein it was alleged as follows:

> ***COUNT 2:*** *That you, Azibaola Robert (M), being the Managing Director/Chief Executive Officer (MD/CEO) and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG LTD and ONE PLUS HOLDINGS NIG. LTD on or about the 8th September, 2014 in Abuja within the jurisdiction of this Honorable Court directly took possession or control of the sum of US$39, 999, 958. 00*

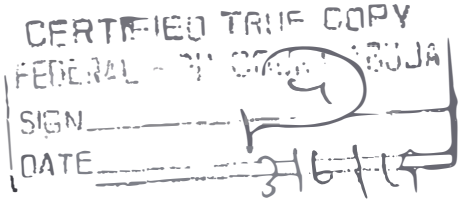
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((Thirty Nine Million, Nine Hundred and Ninety Nine Thousand USD and Nine Hundred and Fifty Eight Cents) only out of the total sum of US$40, 000, 000.00 (Forty Million United States Dollars) transferred to the domiciliary account of ONE PLUS HOLDINGS NIG. LTD with Zenith Bank Plc, Account No. 5070365750 from the account of the Office of the National Security Adviser with the Central Bank of Nigeria upon a transfer mandate Ref. No. 128/S.5LX/139 purporting to be for the supply of Tactical Communication Kits for Special Forces when you knew or reasonably ought to have known that the said fund formed part of the proceeds of an unlawful activity of ***Col. Mohammed Sambo Dasuki (Rtd)*** *the then National Security Adviser (To wit: criminal breach of trust and corruption) and thereby committed an offence contrary to Section 15(2), (d) of the Money Laundering (Prohibition) Act, 2011 as amended in 2012 and punishable under Section 15(3) and (4) of the same Act.*

COUNT 3: *That you, Azibaola Robert (M), being the Managing Director/Chief Executive Officer (MD/CEO) and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG LTD and ONE PLUS HOLDINGS NIG. LTD*

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on or about the 8th September 2014 in Abuja within the jurisdiction of this Honorable Court directly converted the sum of US$39, 999, 958. 00 ((Thirty Nine Million, Nine Hundred and Ninety Nine Thousand USD and Nine Hundred and Fifty Eight Cents)) only out of the total sum of US$40, 000, 000.00 Forty Million United States Dollars) transferred to the domiciliary account of ONE PLUS HOLDINGS NIG. LTD with Zenith Bank Plc, Account No. 5070365750 from the account of the Office of the National Security Adviser with the Central Bank of Nigeria upon a transfer mandate Ref. No. 128/S.5LX/139 purporting to be for the supply of Tactical Communication Kits for Special Forces when you knew or reasonably ought to have known that the said funds formed part of the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (Rtd) the then National Security Adviser (To Wit: criminal breach of trust and corruption) and you thereby committed an offence contrary to Section 15(2) (b) of the Money Laundering (Prohibition) Act, 2011 as amended in 2012 and punishable under Section 15(3) and (4) of the same Act.:



It is important to note that the Defendants with another Stella Roberts (as 2nd Defendant) had originally been arraigned on 7th June, 2016 on a 7 count charge dated 19/05/16 but filed on 23/05/16 and had all pleaded not guilty to the said charge. This charge was later amended to 9 (Nine) counts from 7 (Seven) counts. The Amended charge was formerly read to the Defendants on the 27th day of April, 2017 to which they pleaded not guilty to all the counts against them respectively. The bail earlier granted to the Defendants on 08/6/16 was affirmed by the Court. But on 29/3/18 the Court sustained a No Case Submission of the Defendants on counts 1, 4, 5, 6, 7, 8 and 9 of this amended charge and discharged and acquitted the Defendants of those counts, leaving only Counts 2 and 3 which has only the present Defendants as parties. The Court invited the Defendants to open their defence to these remaining 2 counts, but discharged and acquitted the then 2nd Defendant, Stella Roberts, from the proceedings as the counts in which she had featured did not survive following the Court's decision on the no case submission of the Defendants.

Hearing commenced on the 28/06/16. The Prosecution called Ten (10) witnesses, PW1 to PW10, and closed their case while the Defence called two (2) witnesses, DW1 and DW2, and closed their Defence. Parties filed and exchanged their Written Addresses. The

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Defendant's final Written Address filed by learned counsel, **Chief Chris Uche SAN,** was dated 11/3/2019 and filed same day, while the Prosecution's final Address by learned counsel, **Sylvanus Tahir Esq.,** was dated 22/3/2019 and filed 25/03/2019. In response to the Prosecution's final address, learned counsel to the Defendants, **Chief Chris Uche SAN,** filed an additional written address by way of reply on points of law dated 27/03/2019 and filed same day.

On 28/03/19 when the matter came up for final hearing, learned counsel to the Defendants, **Chief Chris Uche SAN,** and for the Prosecution, **Sylvanus Tahir Esq.,** adopted their filed Written Addresses and adumbrated on same, with **Chief Uche** urging the Court to discharge and acquit the Defendants, while **Mr. Tahir** urged the Court to convict them as charged and impose sentences as prescribed by law.

I believe the basic issue that calls for determination is:

> ***Whether the Prosecution have established their case by the standard required by law to warrant the conviction of the Defendants by this Honourable Court.***

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The Prosecution's case in a nutshell is that sometimes in February 2016, the Economic and Financial Crimes Commission (EFCC) received a complaint through the interim report **(Exhibit ASO16)** from the Presidential Committee On Arms Deals attaching some payment mandates/vouchers from the Office of the National Security Adviser (ONSA) from the period in which **Col. Sambo Dasuki (Rtd)** presided over ONSA as the National Security Adviser (NSA), alleging that those payments had no contractual documents of any sort backing them. The said report showed that a Messrs Tunji Adeniyi & Co, a firm of Estate Surveyors and Valuers, received the sum of N650, 000, 000.00 (Six Hundred and Fifty Million Naira) from ONSA purporting to be a payment for a safe house project. It was stated that upon further investigations, Messrs Tunji Adeniyi & Co. revealed that the said payment from ONSA was for a house Messrs Tunji Adeniyi & Co's client sold to a company known as OnePlus Holdings Nig. Ltd, the 2nd Defendant in the present charge. It appears that the said house paid for by ONSA was meant to act as a safe house for a former top political leader of the country. The 1st Defendant appears to be a relative of the said top political leader. The 1st Defendant is the owner and alter ego of the 2nd Defendant. For reasons which might not be unconnected with security convenience, the documentation for the safe house was to be done not in the name of the top political leader but in the name

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of his relative, the 1st Defendant's company, being the 2nd Defendant. What is important to note here is that following the EFCC's intervention, the deal had to fall through and the N650M was returned to the Government by Messrs Tunji Adeniyi & Co.

Although this was not part of nor contained in the list of transactions or payments which the petition of the presidential committee **(Exhibit ASO16)** requested the EFCC to investigate, the EFCC on investigating the OnePlus Holdings Ltd involvement in the N650M safe house project with Messrs Tunji Adeniyi & Co., saw from the company's bank statement a payment of USD40M (Forty Million United States Dollars) from the account of the ONSA with the Central Bank of Nigeria (CBN). This aroused the suspicion of the EFCC, prompting it to expand its investigation to cover this payment that was not part of its mandate in the petition from the presidential committee. Pursuant to this, the EFCC requested from the ONSA, and was furnished, with a copy of the payment mandate for this payment of USD40M (**Exhibit ASO2**). It saw that the narrative on the face of the payment mandate for this payment was for the "*supply of tactical communication kits for Special Forces*". The EFCC's further investigation showed that no such "*tactical communication kits for Special Forces*" was supplied by the 2nd Defendant, but that the funds in the said account were

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instead disbursed through 39 transfers to Bureau De Change (BDC) operators, sister companies of the 2nd Defendant, and to some other persons offshore. The EFCC then invited the signatories and Directors of the 2nd Defendant, being the 1stDefendant and his wife, who was the 2nd Defendant in the Amended charge though released by the Court following the decision on the no Case Submission handed down by this Court on 29/03/18. The EFCC detained them in its custody for a period of time, before filing the initial criminal charge dated 19/05/16 and whose subsequent amendments as earlier traced birthed the present Amended charge.

To establish these offences, the Prosecution called 10 (ten) witnesses, viz: **(1) Ibrahim Mahe (PW1),** who was the Permanent Secretary Special Services Office in the Office of the Secretary to the Government of the Federation; **(2) Olabode Farinuola (PW2),** a Compliance Officer with Zenith Bank Plc where the Defendants maintained accounts**; (3) Kabiru Yaro (PW3),** a Consultant and Chairman of a company called Colby Resources Limited**; (4) Samuel Babatunji Adeniyi (PW4),** a Real Estate Surveyor and Valuer; **(5) Mrs. Folashade Ibrahim (PW5),** a Branch Manager with Wema Bank Plc; **(6) Mohammed Bello Abdulrazaq (PW6),** a Bureau De Change Operator**; (7)**

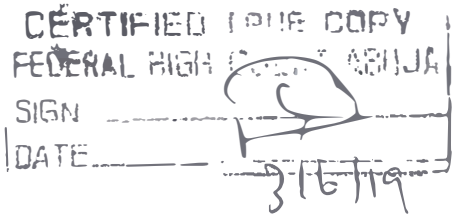
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Onabu Confidence Ibhade (PW7), a marketer at BDC Capital Field Investment Ltd**; (8) Remigius Ugwu (PW8),** a Compliance Officer with Zenith Bank; **(9) Emmanuel Effiong Ekuwem (PW9)** the Managing Director (MD) of Teledom Intl Ltd; **(10) David Nkpe (PW10),** Investigative Officer with the EFCC. The Defendants called 2 (two) witnesses, namely: **(1) Azibaola Roberts (DW1),** the 1st Defendant himself**;** and **(2) Iyerifama Jaja (DW2),** a businessman engaged in contracts with Monia Construction Company Limited (MCC) and the Niger Delta Development Commission (NDDC). At the conclusion of trial, a total of thirty-six (36) documents were tendered. They are:

1. ***Exhibit ASO1****- Memo dated 20/08/14 from Directorate of Finance and Administration (DFA) in the ONSA to NSA.*
2. ***Exhibit ASO2*** *– Letter dated 20/08/14 from Special Services Office in the Office of the Secretary to the Government of the Federation (OSGF) to the Governor of the CBN.*
3. ***Exhibit ASO3*** *– Letter dated 29/01/16 from Zenith Bank to EFCC forwarding the account opening package /mandate and bank statements of One Plus Holdings Ltd.*

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4. ***Exhibit ASO4*** *- Zenith Bank documents dated 09/01/16 comprising account opening package of One Plus Holdings Ltd.*
5. ***Exhibit ASO5 –*** *Zenith Bank Statement of Account of One Plus Holdings Ltd.*
6. ***Exhibit ASO 6 –****Certificate of identification dated 05/02/16 from Zenith Bank in respect of the 2nd Defendant's statement of account.*
7. ***Exhibit ASO7 –*** *Letter of handing over of property at plot N02245 Cadastral Zone AO6 Maitama Abuja from Tunji Adeniyi & Co. to OnePlus Holdings Ltd.*
8. ***Exhibit A08-*** *Extra judicial statement of the PW4 Tunji Adeniyi to the EFCC dated 18/01/16*
9. ***Exhibit AO9 (1-19)*** *- Letter dated 10/12/15 from Wema Bank comprising certificate of identification, account opening package and account statement of Messrs Tunji Adeniyi & Co.*
10. ***Exhibit ASO10 (1-3) –*** *Extra judicial statements of Mohammed Bello to the EFCC dated 23/2/16 and 15/04/16.*
11. ***Exhibit ASO11 (1-39) –*** *Letter dated 21/04/16 from Zenith Bank to the EFCC forwarding account opening*



and bank statements of Karahyna Nig Ltd and the covering Certificate of Identification.

12. ***Exhibit ASO12 (1-39)*** *- Letter dated 04/04/16 from Zenith Bank to the EFCC forwarding account opening and bank statements of Reya Telecommunication and the covering Certificate of Identification.*
13. ***Exhibit ASO13 (1-80)*** *– Letter dated 29/04/16 from Zenith Bank to the EFCC forwarding account opening and bank statements of Capital Field Investment Ltd and their covering Certificate of Identification.*
14. ***Exhibit ASO14 (1-19)*** *– Letter dated 06/04/16 from Zenith Bank to the EFCC forwarding account opening and bank statements of Teledom International Limited and their covering Certificate of Identification.*
15. ***Exhibit ASO15 (1-39)*** *- Letter dated 20/04/16 from Zenith Bank to the EFCC forwarding account opening and bank statements of Dahiru Kamaludin and their covering Certificate of Identification.*
16. ***Exhibit ASO16 (1-3) –*** *Letter Petition from ONSA to EFCC dated 28/11/15 titled "Payment to Companies With No Contract Awards Nor Approvals".*
17. ***Exhibit ASO 17-*** *Search Warrant dated 23/3/16 from the Magistrate Court of the FCT, Abuja.*

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18. ***Exhibit ASO 18(A & B 1-19) -*** *Power of Attorney from Nu'uman Barau Danbatta to OnePlus Holdings Ltd.*

19. ***Exhibit ASO19 (A - C) –*** *Deeds of Assignment from Nu'uman Barau Danbatta to OnePlus Holdings Ltd.*

20. ***Exhibit ASO 20 (1-39)*** *– Letter dated 22/10/14 from OnePlus Holdings Ltd to Zenith Bank mandating a Foreign exchange transfer.*

21. ***Exhibit ASO21 (A & B) –*** *Extrajudicial statements of Azibaola Roberts, the 1st Defendant to the EFCC dated 23/3/16 and 24/3/16, respectively*

22. ***Exhibit ASO 22-*** *Extrajudicial statement of Tunji Adeniyi to the EFCC made on 27/7/16.*

23. ***Exhibit ASO23-*** *Letter dated 21/6/16 from Tunji Adeniyi & Co to the EFCC.*

24. ***Exhibit ASO24-*** *Search Note of the EFCC on Dakonu Atukpa, Azibaola Roberts and Dr. Faith Robert dated 24/3/16.*

25. ***Exhibit ASO 25 –*** *Letter dated 12/5/14 from OnePlus Holdings Ltd to the NSA titled Re: Intervention on critical National security threats including the Delta Region."*

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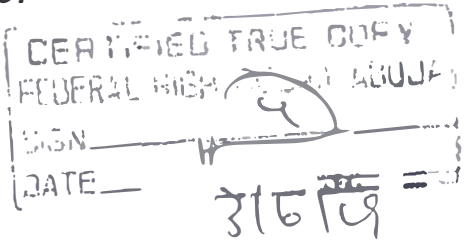
26. ***Exhibit ASO26 (1-****13) – A document titled "National Security Assignment, Implementation of Civil Response Of Threat To National Economic Security, Preliminary Report Submitted to the National Security Adviser (NSA), dated February 2015 by OnePlus Holdings Nig. Ltd.*

27. ***Exhibit ASO 27 (1-4) –*** *Extrajudicial Statement of Stella Robert to the EFCC dated 23/03/16.*

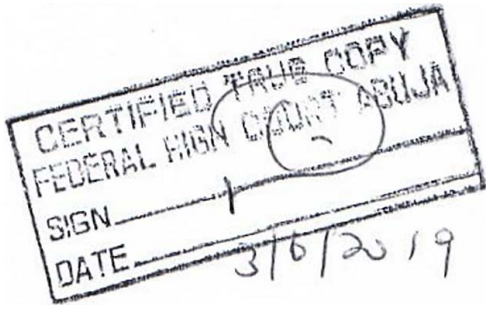
28. ***Exhibit ASO28 –*** *Zenith Bank Plc Account Statements of Kakatar Ce Limited.*

29. ***Exhibit ASO29 –*** *Letter dated 04/07/18 from Zenith Bank to the MD/CEO of Kakatar CE Ltd titled* ***"Confirmation of Account Details"*** *with several attachments.*

30. ***Exhibit ASO30-*** *Letter dated 12/12/14 from FCT to Messrs Mangrovetech Construction & Engineering Ltd (Kakatar CE Ltd) indicating award of contract for Provision of Engineering Infrastructure to Kyami District Zone C, Abuja with other samples of contracts awards to Kakatar CE allegedly showing the capacity of Kakatar/One Plus Group.*



31. ***Exhibit ASO 31-*** *Samples of equipment procurement memos of Kakatar allegedly showing procurement of forex from other parties and OnePlus Holdings Nig. Ltd.*
32. ***Exhibit ASO 32-*** *Documents allegedly showing evidence of previous engagement of the Defendants in similar services to the alleged assignment by the NSA forming subject of the present criminal proceedings.*
33. ***Exhibit 33 (A-G)*** *- Pipeline Project Cash Disbursement Forms allegedly showing how the USD40M was expended on the security assignment.*
34. ***Exhibit ASO34-*** *Document titled "Report of the Technical Committee on the Niger Delta, November, 2008.*
35. ***Exhibit ASO35 (1-4) –*** *Copy of letter to the Hon. Minister of Petroleum Resources and the NSA dated 31/3/14 by the SSA to the President (Admin) titled "Re: Request For Intervention For Urgent National Security Projects, and indicating Presidential Approval to the Release of the sum of USD1B (One Billion Dollars) to tackle security challenges in the oil and gas sector in the Niger Delta.*
36. ***Exhibit ASO36*** *Specimen signature of DW2, Iyerifama Jaja.*



On the basis of the totality of the above pieces of evidence, learned counsel for the Defendants, **Chief Chris Uche SAN**, submitted that the Prosecution have failed woefully to prove their case against the Defendants beyond reasonable doubt as required by law. Counsel contended that the Prosecution failed to cross examine the Defendant (DW1) on very material aspects of this case which included the origin of the funds and the use to which they were put, and to discredit the fact that the funds in question passed through the requisite official channel and approval before same was paid to the Defendants. Counsel further contends that the essential elements of the offence of money laundering, consisting of the joint presence of the physical act (*actus reus)* and the mental element (*mens rea)* have not been established. Counsel further contends that the Prosecution failed to call vital witnesses, particularly from the ONSA which awarded the assignment to the Defendants and paid the USD40M. These witnesses, according to counsel, would have helped resolve the issue of whether the ONSA received the value that was agreed by the contracting parties for the money paid to the Defendants. Counsel contends that the Prosecution failed to interview **Col. Sambo Dasuki (Rtd)** who by the Prosecution's own admission is central to this case, much less call him as a witness.

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Learned defence counsel further contends that the State did not conduct a thorough investigation before filing the charge; that the investigation made by the Prosecution was very shallow. And indeed, that had the matter been competently investigated, including by interviewing relevant people who knew about the transaction, that the Prosecution would not have filed the charge. Counsel urged the Court to discharge and acquit the Defendants in the light of the weakness of the Prosecution's case. Reliance was placed on the following cases: **Woolmington V DPP 1935 AC 462, FRN V Ibori & Ors (2014) pt 1432 168, Egbarevba V Oruonghae (2001) pt 724 318, Wema Bank Plc V Osilaru (2008) 10 NWLR pt 1094 150, Agaba V FRN (2018) LPELR 44575 CA, Tegwonor V State 2008 1 NWLR 1069 630, State V Nnolim 1994 LPELR 3222 SC, Saidu V State 2016 LPELR 41172 CA, Nwosu V State 1998 8 NWLR pt 562 433, FRN V Dr. Fortune Fiberesima Charge N0 FCT/HC/CR/57/2017 decided on 13th February 2018 by Justice Peter Affen.**

On his part, learned counsel for the Prosecution, **Sylvanus Tahir Esq.**, argued that the Prosecution discharged the burden to prove the commission of the offences beyond reasonable doubt. Counsel further contends that the USD40M in issue was transferred to the

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Defendants in gross violation of financial regulations; moreso, that there was no bidding by the Defendants with other qualified providers before the claimed assignment was given to the Defendants and USD40M paid to them. Counsel contended that the evidence showed that the said sum of USD40M was received by the Defendants in their account, but that there was no evidence of the performance of the stated purpose for the payment, being the *supply of the tactical communication kits for Special forces*. Counsel argued that instead, there was evidence of transfers of the money to 39 recipients, including BDC operators, other companies offshore, and to sister companies of the 2nd Defendant.

In respect of the claim of the Defendants that the main purpose for the payment from the ONSA was disguised in the payment mandate, and that the payment was for some special security assignment given to the Defendants by the former NSA, Col. Dasuki to pacify the Niger Delta Region and end oil bunkerings and illegal refineries, and which funds were used to settle the relevant groups in the Niger Delta as represented by the **Exhibit ASO 33 (A-G)**, learned Prosecution counsel urged the Court to attach no weight to **Exhibit ASO33(A-G)** as the document contained signatures and identifies of persons who were not called by the Defence to testify. Counsel contends that in any event, that Exhibit ASO33 (A-

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G) was not demonstrated fully demonstrated to the Court. On the Defence's contention that the case of the Prosecution must fail for failure to call relevant material witnesses, counsel contended that the Prosecution has no obligation to call any number of, or particular witnesses, as the Prosecution is at liberty to call any witness to prove its case as it deems fit.

Learned prosecution counsel also argued that if the Prosecution failed to call **Col. Sambo Dasuki (Rtd)** as a witness, the Defendants themselves also had a duty to call **Col. Dasuki** to testify on their behalf and confirm that indeed the assignment was awarded for the real purpose that the Defendants represent it was awarded for, and that it was duly performed. On the contention that the Prosecution did a very shoddy and shallow investigation before filing the charge, and deliberately ignored things they ought to have checked carefully before deciding if matters were worth progressing to the filing of charges, counsel contends that the investigators did carry out a meticulous investigation to the extent possible except for the limitation foisted on the Prosecution by the Defendants refusing to disclose to the investigators the identities of the Niger Delta militants who were paid monies pursuant to the alleged real assignment disguised as *"supply of tactical communication kits for Special forces"* in the payment mandate.

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For all the above, reliance was placed on the following authorities by the Prosecution: **Ibeziakor V COP (196) 1 NLR 61, Bakare V State (1987) 1 NWLR pt 52 578 SC, Afolalu V State (2010) 16 NWLR pt 1220 SC 584, Adeyemo V State (2015) 16 NWLR pt 1485 SC 311@ 329, Maigari V State (2010) 16 NWLR pt 1220 CA 49@ 467, Emeka V State (2011) 14 NWLR pt 734 666, Baden Deluaux and Lecuit V Societe Generale Pour Favoriser Le Development Du Commerce et De L' Industrie en France S.A (1986) 2 All ER 353, R V Anwor (2008) LLYODS Rep F.C 554 (2008) Ecwa Crim 154 (2009) 1 WLR 980, Ucha V Elechi (2012) 13 NWLR pt 317 SC 30 pg 367- 368, Okanlawon V State (2015) 17 NWLR pt 1459 SC 445 @ 481, Eromoseie N FRN (2017) 1 NWLR pt 1545 CA 55 pg 107, Egharevba V State (2016) 8 NWLR pt 1515 448 paras C-E, Miller V Minister of Pension (1974) 1 All ER 372 @ 373, Alake V State 1991 1 NWLR pt 205 567, State V Azeez (2008) 14 NWLR pt 1108 SC 439 @ 478 para E.**

The above represents a summary of the case of the parties.

I have carefully reviewed the arguments of counsel, as well as considered all the evidence placed before me, in oral and documentary forms. Count 2 was brought under Section 15 (2) (d)

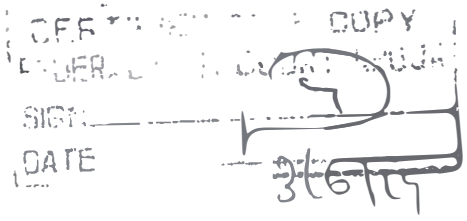
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of the Money Laundering Prohibition Act 2011 as amended while count 3 was brought under Section 15(2) (b) of the same Act. As can be seen, the difference between the two counts is that while in count 2 the Defendants were charged with **directly taking possession or control** of the sum of USD39,999,958.00, in count 3 they were charged with directly **converting** the said sum of USD39,999,958.00. Section 15(2)(b) and (d) provide thus:

(2) *Any person or body corporate in or outside Nigeria, who directly or indirectly;*

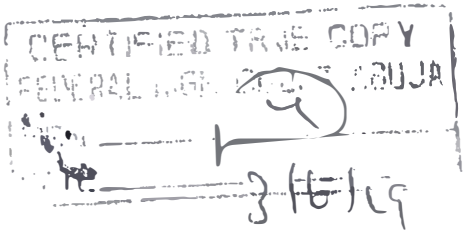
(b) Converts or transfers any fund or property, knowingly or reasonably ought to have known that such fund or property is or forms part of the proceeds of an unlawful act commits an offence of Money Laundering under this Act

(d) acquires, uses, retains or takes possession or control of; any fund or property knowingly or reasonably ought to have known that such fund or property is or forms part of the proceeds of an unlawful act; commits an offence of Money Laundering under this Act.



The ingredients of the offence in count 2 by S.15 (2)(d) above are: (a) that the Defendants took possession of some funds; (b) that they did so when they reasonably ought to have known that such funds form part of the proceeds of an unlawful act. See **F.R.N V Adamu (2018) LPELR 46024 (CA)**. The ingredients of the offence in for count 3 by Section 15(2) (b) above are: (a) that the Defendants converted some funds; (b) that they did so when they reasonably ought to have known that such funds form part of the proceeds of an unlawful act.

Therefore, to succeed in securing a conviction, the Prosecution must establish firstly that the Defendants either directly or indirectly took possession or control of the funds forming the subject of count 2 of the charge, and secondly that they did so when they knew or ought reasonably to have known that the said funds form part of proceeds of an unlawful act, and in this instance the unlawful act should be criminal breach of trust and corruption of the former NSA, **Col. Sambo Dasuki (Rtd).** The Prosecution in securing a conviction on count 3 of the charge must also establish firstly that the Defendants converted the funds forming the subject of count 3 of the charge, and secondly that they did so knowingly or ought reasonably to have known that the said funds form part of proceeds of an unlawful act, and in this instance also

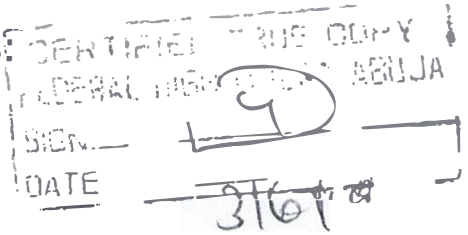


the unlawful act should be criminal breach of trust and corruption of the former NSA **Col. Sambo Dasuki (Rtd).**

It is pertinent to note at this point that the evidence directly relevant to these remaining two counts of the charge are the testimonies of PW1, PW2 and PW10 and those of DW1 and DW2. In terms of these ingredients, but particularly the first ingredient of the offence in count 2 which is taking possession or control, the evidence of PW1, PW2 and DW1 are vital and relevant. In his evidence, PW1 testified as follows in pertinent part:

> *"On 20/8/14 the then NSA endorsed a memo to me which originated from the office of the director finance and administration of ONSA detailing the bank details of a Company called One Plus and the purposes for which the Company was to be paid the sum of USD 40M. After I got the Memo, I prepared the payment mandate which I sent to the NSA which he signed and sent back to me. I countersigned the payment mandate and sent to CBN for payment."*

PW2, a compliance officer from Zenith Bank where the account of the 2nd Defendant that is the subject of the counts is maintained, testified in pertinent part thus:



"On 10/9/14 there was an FX received from the office of the NSA of 39,999,985 United States Dollars"

Now from the above testimonies of PW1 and PW2, these two witnesses testified that the funds in question which is 39,999,985 United State dollars was credited into the account of the 2nd Defendant. This was established through **Exhibit ASO5** which is the account statement of the 2nd Defendant. **Exhibit ASO1 and ASO2**, the documents from the ONSA and in which the account details of the said 2nd Defendant and the USD40M were referred to all collectively bear the fact that the funds was credited into the account of the 2nd Defendant.

The Defence, relying on the Black's Law Dictionary, 6th Edition's definition of *Possession* and *Control,* have argued that the Prosecution was not able to satisfy the first ingredient of the offence; that is, showing that the Defendants were in possession and control of the funds in the bank account of the 2ndDefendant, which the 1st Defendant as signatory and alter ego manages. In advancing this argument, further reliance was placed by the Defence on the authorities of **Purification Tech Nig. Ltd V A.G Lagos State & 31 Ors (2004) 9 NWLR (Pt 879) 665** and **Wema Bank Plc V Osilaru 2008 10 NWLR pt 1094 150 @**

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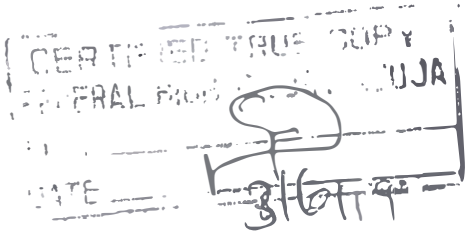
170 which establishes under banking law that a customer is neither in custody nor control of monies standing in his credit in an account with the bank, and that what a customer has is a contractual right to demand repayment of such monies, while such monies remain the property of the bank and the bank exercises control over same. On the basis of the above therefore, the Defence contends that the Defendants are neither in custody nor in control of the money standing in their credit with Zenith Bank Plc *Account No. 5070365750* and they cannot be said to be in possession nor control of the sum within the meaning of the Money Laundering Prohibition Act. The Defence thus argue that the Prosecution have failed to prove this essential element of the offence charged.

With the greatest respect to the Defence, I totally disagree with their contention, and have no hesitation whatsoever in dismissing it. I must state very boldly, that expositions such as are enunciated in the cases cited by the Defence, which deal with pure forensic principles of banking law defining the legal character of the relationship between a bank and its customers, are totally irrelevant in settling issues of criminal liability. **Exhibit ASO4** shows the 1st Defendant as one of the signatories to the account of the 2nd Defendant company with Zenith Bank where the funds subject of the present Amended charge was received. Exhibit

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ASO5 shows that the said funds were received into the account of the 2nd Defendant subject of the present charge. Even in **Exhibit ASO21,** the 1st Defendant's extrajudicial statement to the EFCC, the receipt of this payment into the 2nd Defendant's account with Zenith Bank was acknowledged, and not denied. An examination of **Exhibit ASO5** will also reveal the about 39 disbursements made of the USD40M from the affected account of the 2nd Defendant in Zenith bank.

A bank under banking law may be the holder of title to the funds in a customer's account, with the customer being only a creditor limited to making demands which the bank has to honour, but then the disbursements made of the USD40M from **Exhibit ASO5** were not disbursements made at the instance of and by the bank as the holder of *"title or property"* by banking law definition. If the bank, Zenith bank, had done those disbursements at its own instance, Zenith bank would have exposed itself to legal risks and lawsuits from the Defendants. They were disbursements made at the instance and following instructions issued by the 1st Defendant and his co-signatory to the 2nd Defendant's account to Zenith bank. This is obvious from **Exhibit ASO20**. Therefore, the contention that it is Zenith bank that is in possession and control of the funds, and not the Defendants, is a legal fallacy which I flatly reject in the



context of this criminal proceedings. In any event, the Black's Law Dictionary to which both the Prosecution and the Defence placed reliance, also defined "Control" as ***"Power or authority to manage, direct, superintend, restrict, regulate, govern, administer or oversea"***. By this definition, on the evidence shown by **Exhibit ASO20** that the instructions for the disbursements made by Zenith bank from the 2nd Defendant's account of the USD40M, were payment instructions received from the authorized signatories which are the 1st Defendant and his co-signatory to the said account, and that Zenith bank did not act on its own volition, I am of the view that the Defendants have the *"power or authority"* to *"direct"* on what was to be done to the USD40M within the legal definition of *"Control"* in the Money Laundering Prohibition Act and indeed did exercise same.

Taking all the evidence together, I am satisfied that the Prosecution was successful in establishing the first ingredient of the offence contained under Section 15(2)(d) of the Money Laundering Prohibition Act 2011 (As amended) beyond reasonable doubt.

It is in relation to the second element or ingredient of the offence, that is, *knowingly or ought reasonably to have known that such funds formed proceeds of an unlawful activity, to wit corruption*, that the greater problem or complexity lies in respect of these

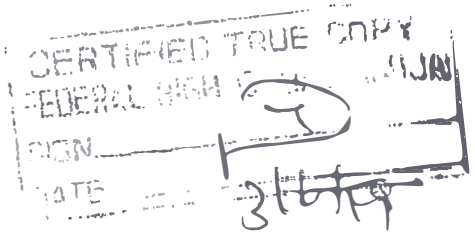
proceedings. The Defence have argued that as this is a charge of money laundering, that there was a need to establish a predicate offence as a condition precedent to establishing the money laundering offence. Indeed, reference was made to the testimony of PW1 which confirmed that the USD40M paid into the account of the Defendants was from a legitimate source, and that due process and necessary approvals were followed before the said funds were paid into the account. Reference was also made to **Exhibit ASO2**, the payment mandate from Office of the Secretary to the Government of the Federation Special Services Office from where PW1 came, which showed about 9 endorsements and minutes on **Exhibit ASO2** to show that all the required approvals were obtained and due process followed before the money was released to the Defendants. Reference was also made to the testimonies of both PW1 and PW10 which showed that the USD40M paid to the Defendants was not from the Federation account but was rather part of the about USD1.2B (One Billion and Two Hundred Million Dollars) released by the Nigerian National Petroleum Corporate (NNPC) with the approval of the then President and Commander-In-Chief towards tackling urgent security challenges in the oil and gas sector amid the wider security challenges in the Niger Delta Region. On the basis of all the above, the Defence asserted that there was thorough compliance with due process, and such there

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was no illicit origin for the funds, and which illicit or illegitimate origin even if present must be proved to have been known to the Defendants. Rather, that the evidence shows the money to be from very clean and legitimate source, enjoying highest governmental approval from the President and Commander-In-Chief. In summary, that there was no evidence or proof of any predicate offence, and therefore that it was legally impossible to establish the secondary offence of money laundering. Needless, the Prosecution argue otherwise.

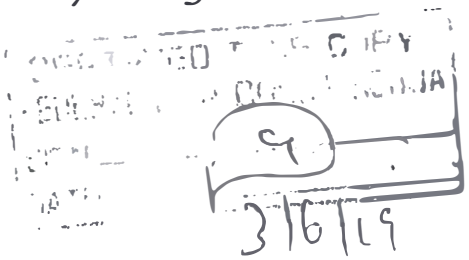
Having fully appraised this issue, it appears to me that the Defence have in the context of their Final Address reopened an issue over which this Court has already reflected on and taken a position. The issue of the necessity of establishing a predicate offence by the Prosecution, and the legitimacy of the source of the funds barring the Prosecution from proceeding with the money laundering offences in this Amended charge, in my view are *res judicata* and I do not believe that the Defence are entitled to raise it again.

In considering the evidence adduced in relation to the present counts 2 and 3 and holding that indeed there was basis for proceeding; that is, requiring the Defendants to open their defence



to these counts, I held as follows in my ruling on the no case submission delivered on 29/03/18:

> *Having reviewed the evidence, I am of the view that there is a ground for proceeding with a defence in relation to counts 2 and 3. I am not unmindful of the arguments of the learned Defendants' senior counsel,* ***Chief Uche, SAN****, on the need to establish any predicate offences given that the counts all relate to money laundering, and which predicate offences counsel believes were not established since the funds in issue come from a legitimate source, and were paid following due process. However, it appears to me that the learned Defendants senior counsel misunderstands the theory of the Prosecution's case. By* ***Exhibit ASO1****, the sum of USD40M in issue was paid over to the 3rd Defendant purportedly and explicitly for the supply of Tactical Communication Kits for special forces with the instruction of the former NSA* ***Col. Dasuki (Rtd).*** *But there was no evidence that any such kits were supplied, even though there were suggestions and indications as soon could be seen from* ***Exhibits ASO25*** *and ASO26 that the sum was actually for some other security assignment but then*



disguised as a contract or payment for the supply of tactical communication equipment. Therefore, if ***Col. Dasuki*** *with the full knowledge of the Defendants gifted out the sum of USD40M to the Defendants knowing full well that it was neither for the supply of any tactical equipment nor indeed for the performance of any task at all that would benefit the state,* ***Col. Dasuki*** *would with the complicity of the Defendants have handed out a valuable national asset to the Defendants for no consideration at all. This would be clearly in abuse of his office and in breach of the public trust reposed on him in his office, and is also certainly a corrupt activity. In that sort of situation, both the predicate offence and the money laundering offence would have been intertwined, and there will be no need to require, as the learned Defendants' counsel has argued that a predicate offence need to be first established before moving on to the money laundering offence. In the absence of any evidence of the supply of the tactical communication kits, the consideration furnished by the Defendants for the USD40M needs to be established, and this is only something that can only be positively asserted in the context of a defence. I do not therefore believe that the*

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no case submission should succeed in relation to these counts.

As I made clear from the above ruling, the issue is not whether the funds had a legitimate source or were paid to the Defendants following due process and necessary approvals. As far as this Court is concerned, those approvals as shown in the testimony of PW1 and even PW10, and the endorsements on **Exhibit ASO2** do not go anywhere towards absolving the Defendants of liability just by themselves. Calling a spade its English name, and being conscious of the common cause of natural events, human conduct, and public and private business which the Court is enjoined to presume by virtue of Section 167 of the Evidence Act, if the former President had given approvals for the release of any funds to the former NSA to tackle security challenges, and out of this large pool of funds the former NSA himself had approved, as was evident from **Exhibits ASO1** and **ASO2**, the payment of USD40M to the Defendants, it is inconceivable that any official of the government below the former NSA and the President and Commander in Chief, would query or block the payment of the said funds to the Defendants, particularly when their connection to the former political leader was a matter of some knowledge. I therefore believe that the endorsements

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made on the **Exhibit ASO2** were just matters of routine, and do not really settle issues of criminal liability of the Defendants.

What is really the critical question was the one which I had identified in my no case submission ruling above, and which is this:

> *By **Exhibit ASO1**, the sum of USD40M in issue was paid over to the 3rd Defendant purportedly and explicitly for the supply of Tactical Communication Kits for special forces with the instruction of the former NSA **Col. Dasuki (Rtd).** But there was no evidence that any such kits were supplied, even though there were suggestions and indications as soon could be seen from Exhibits ASO25 and ASO26 that the sum was actually for some other security assignment but then disguised as a contract or payment for the supply of tactical communication equipment. Therefore, if **Col. Dasuki** with the full knowledge of the Defendants gifted out the sum of USD40M to the Defendants knowing full well that it was neither for the supply of any tactical equipment nor indeed for the performance of any task at all that would benefit the state, **Col. Dasuki** would with the complicity of the Defendants have handed out a valuable national asset to the Defendants for no consideration at all. This*

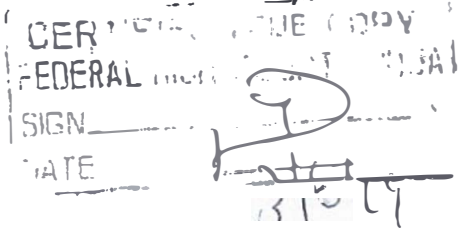
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would be clearly in abuse of his office and in breach of the public trust reposed on him in his office, and is also certainly a corrupt activity.

The Defendants having taken possession and control of the sum of USD40M from the ONSA on the instruction and approval of **Col. Dasuki** for the explicit purpose of supplying *tactical communication kits for special forces*, and there being no evidence that any such equipment was indeed supplied, raises significant red flags, and it is justifiable that the Prosecution represented by the EFCC should inquire. The vital question then is, what is the defence put up by the Defence? That is, what explanations were offered for the receipt of these funds for which no *"tactical communication kits for special forces"* as described in the payment mandate, **Exhibit ASO2**, was supplied.

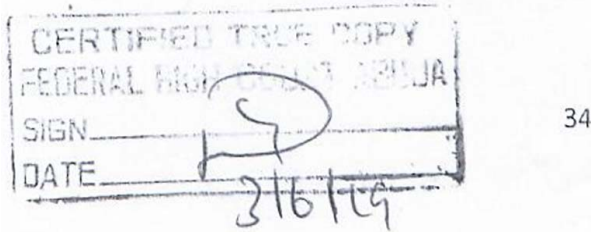
The evidence of DW1 is very important. In his evidence, he testified in pertinent part as follows:

"It was not until about May or June (I do not know the exact date, when the NNPC by the approval of the President of Nigeria released one billion dollars for the purpose and the memo is here. The one billion to my knowledge is that it was to provide a



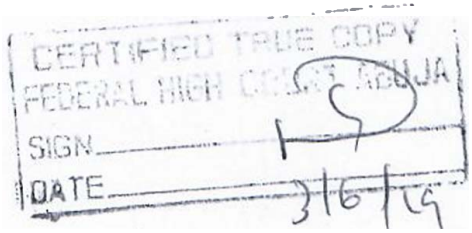
scientific way of checking oil theft in the Niger Delta and the two main contracts were awarded for that purpose to the best of my knowledge.

The letter written by Dasuki where the President approved one billion dollars. The two contracts were awarded for this purpose. One was given to one Rony Duet and the other was given to Yudul Levi, two of them Israelis. They git these contracts as part of this one billion released by NNPC and they were to build a command and control centre. Rony Duet and his company are to build the command and control centre in Abuja and as I am talking to you now my Lord that command and control centre is been built at the Naval Base. The security implications I know very well but it will not be in the interest of Nigeria to say it here. Yudul Levi's contract covers the inland areas while Rony Duet's contract covers the international and water ways. In other words, from Abuja, Nigeria was building an infrastructure that covers the entire Niger Delta and this is being built as I am talking.



Nigeria was losing three hundred barrel minimum per day in the interim, there was need for urgent intervention. Dasuki asked that I should intervene in the interim to ensure that if possible we should reduce the quantity of crude oil that was being stolen. My Lord, the work I was given was not a contract, it was an assignment. Somebody asked me to go and do things which in the true sense of it are not legal, you do it for the sake of your national interest, your country is involved. Dasuki called and asked me to take these resources, 40 million dollars, go to the Niger Delta and in security parlance, water the ground, meaning to bring about peace.

When Dasuki approached me, he said I should write him a letter of commitment that I was going to do the job and we did write a letter to Dasuki. In the letter, my lord, we said yes, we are taking it but if possible, that he would give us 10 percent of the total cost of the project and I have a copy of that letter I wrote prior before the assignment commenced.



My Lord, we did the assignment diligently and in all honesty at least, Nigeria saved 300 thousand barrels of crude oil per day.

We have various payment vouchers that we paid to various people from the 40 million dollars to desist from their oil bunkering activity. The money that was given to us was used diligently to give to whom I was asked to give the money, i.e. the militants in the Niger Delta and the people who were doing the "kpo fire" to desist."

I keenly watched the countenance of DW1 during his testimony and must state that as fantastic and as incredulous as the claims might sound, I had a sense that he was speaking truthfully and I had no real reasons to disbelieve him. To prove execution, the Defence gave evidence of performance of the assignment, tendering **Exhibit ASO 33 (A-G)** being cash disbursement vouchers to the alleged recipients in the Niger Delta. The Defence further tendered the bank account statements and lists of accounts of companies affiliated to the 3rd Defendant's group, namely Kakatar CE Limited and Oneplus Holdings Nigeria Limited as **Exhibit ASO 28** and **Exhibit ASO29** to prove the financial



capacity and capability of the said companies to undertake and implement such assignments. The DW1 further gave evidence of the circumstances of the special assignment, tendering the memorandum to the National Security Adviser by the 2nd Defendant as **Exhibit ASO 25** as well as the 2nd Defendant's assignment report to the National Security Adviser as **Exhibit ASO26**. Again, it is instructive to note that these two exhibits, **Exhibit ASO 25** and **Exhibit ASO 26** were part of the documents recovered by virtue of **Exhibit ASO 24**, being the Search Note of the prosecution from the Defendants, and were not generated after the investigation began as an afterthought to blunt it. The Defence also gave evidence to prove experience and capacity in the execution of such assignments, and tendered **Exhibits ASO 30**, **ASO 31**, **ASO 32** and **ASO 34.** All these were necessary in order to show that the assignment allegedly given to the Defendants by the former NSA was not just a flash in the pan.

Given the mystery which surrounds the claim made by the Defence regarding why such an assignment was given to the Defendants, and not just to any other person, and as I hinted in my ruling whether in fact the USD40M was not gifted to the Defendants by the former NSA as a result of the 1st Defendant's filial connections to the former President and Commander in Chief, the 1st Defendant

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also gave extensive evidence of his background as to why he qualified for such assignment to be entrusted to him. He testified that he is an indigene of the Niger Delta, a Lawyer, a Political, Human Rights, and Environmental Activist, an expert on Conflict Resolution, and gave evidence of his background and qualifications that qualified him as an expert on the Niger Delta conflict for his company to be awarded the $40m security assignment relating to pipeline security in the Niger Delta. As the Defence said in their written submissions, which is true, the 1st Defendant gave evidence that at various material times he was the following:

(1) *A Vice President of NANS.*

(2) *A pro-democracy activist.*

(3) *An anchorman of the June 12 activism in Rivers State.*

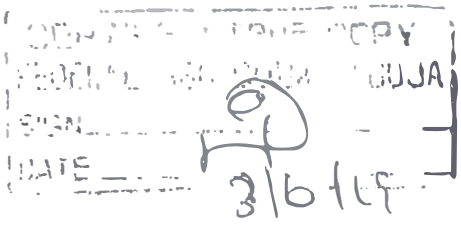
(4) *A disciple of the Late Gani Fawehinmi.*

(5) *Disciple of Late Ken Saro Wiwa.*

(6) *Founder of ND HERO (Niger Delta Human and Environmental Rescue Organization).*

(7) *Founder, Niger Delta Civil Society Coalition*

(8) *Founder, Mangrove Tech Nigeria Limited – a Consultancy Firm dealing on environmental issues in the Niger Delta.*



(9) Member of the Campaign for Democracy.

(10) Member of the Amnesty International

(11) Member of Great Peace

(12) Member of Friends of the Earth International

(13) Member of the Civil Liberties Organization

(14) A Lawyer to the famed Ogoni 19.

(15) Assisted the MOSOP to advance the cause of the Ogoni people in the Niger Delta.

(16) Worked to mop up arms in the Niger Delta, at the height of kidnapping in the Region.

(17) Arrested and detained severally by the State Security Service.

(18) In the course of his work as an Environmental Activist he related with several embassies in the world, helping them out in claims for asylum and human rights abuses.

(19) Worked with and got funding from International Donor Organizations, like the Westminster Foundation, the Danish Embassy

(20) Consultancy with Oil firms to avert restiveness and conflicts between the Oil prospecting firms and the militants in the Niger Delta.



(21) Rendered assistance to the then NSA General Azazi with respect to oil pipeline vandalisation and illegal refining of petroleum products (kpo fire) in the Niger Delta, and took risks and went to the creeks to help Nigeria with oil spills and pipeline vandalisation.

(22) Known to famous Niger Delta militants like, Tompolo and Asari Dokubo.

I will like to say that the Prosecution did not really inflict any dent to the above testimonies nor was any successful or real attempt made to discredit them. Instead, at the beginning of the testimony, the learned Prosecution counsel, **Sylvanus Tahir Esq.**, had objected to the relevance of the extensive personal background which the DW1 was giving, on the basis that same was irrelevant and remote to the charges before the Court. However, in a ruling delivered by this Court on 16/10/18 in the course of the testimony of the DW1, this Court held as follows:-

"Having reflected on the objection raised by the learned Prosecution Counsel, I am of the view that the objection lacks merit, and that the testimony of

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DW 1 is not too remote or irrelevant as contended by the Prosecuting Counsel. As the Court notes, following the Court's ruling on the no-case submission delivered on 29/03/18, the Court struck out most of the counts, but retained counts 2 and 3, which relate to the issue of taking possession and control of and of converting the sum of 40 million dollars from the office of the National Security Adviser on the basis, that while the said sum of 40 million dollars was given ostensibly for the supply of tactical equipment, no such equipment was supplied. However, during cross-examination of the Prosecution witness, PW 10 to be precise, it was brought in to evidence that the sum of 40 million was in fact not for the supply of the tactical equipment but was in reality for the execution of a sensitive national security assignment towards the protection of pipelines and the pacification of the restive bandits in the Niger Delta allegedly responsible for the pipeline vandalisation. It was in this context that Exhibits ASO 25 and ASO 26 were admitted, being documents showing the real nature of the contract for which the sum of 40 million was paid, subject of

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counts 2 and 3…In view of the counts, and as recognised in the no case submission ruling of 29/03/18, the genuineness of the alleged security contract is material and in issue, and the testimony of the DW 1 regarding his background and sojourn in life, is key towards the court establishing whether the security contract is real or if it was in fact a fabrication. What elements of background qualified the Defendant to be awarded the national security contract?":

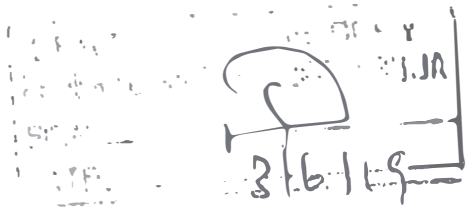
As the Court mused above, indeed the elements of the background of the DW1 which qualified him to be given the special assignment which he alleged was given to him and the USD40M paid are contained in his testimony which I have set out above. I do believe this testimony and note that this was not challenged nor contradicted during cross-examination.

In addition to the testimony of DW1 and the documents tendered through him, particularly the cash disbursement vouchers which is **Exhibit ASO33(A-G),** the Defence called **DW2, Mr. Iyerifama Jaja,** who gave evidence as one of those previously involved in "kpo fire" business, who benefited from the intervention assignment by the 2nd Defendant. He testified that he was a leader

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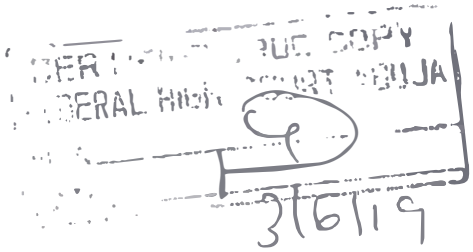
of a group, and was aware there were several other groups and units that were paid off to leave the illicit trade of crude oil bunkering and illicit refinery. He confirmed receipt of the sum of N5,000,000 (Five Million Naira), and signed to acknowledge receipt, and even confirmed that other groups were equally paid and left the illicit activities. Under cross-examination, the Prosecution extracted a sample signature of the **DW2** which was tendered as **Exhibit ASO36** and demanded that he should physically identify out of the myriad of documents in **Exhibit ASO33 (A-G)** which particular document was his own acknowledgement of receipt where he signed to acknowledge receipt of the N5M from the Defendants. **Exhibit ASO33(A-G)** being voluminous, the Court had to stand-down the proceedings for several hours for the identification to be done by DW2, and which was done openly in Court. It was a turning point in the proceedings when the **DW2** successfully identified his name and signature within the large bundle of documents in **Exhibit ASO33 (C)**, confirming the authenticity of the disbursements.

The testimony of **DW2** corroborated the claims made by the **DW1.** As the Defence rightly noted, **DW2** had stated that he is an indigene of the Niger Delta from Opobo. He confirmed receipt of the money from the 2nd Defendant, and the need to settle the other



individuals in the creeks engaged in the illicit oil bunkering and refinery business. As shown above, his signature **Exhibit ASO36** confirmed by **Exhibit ASO33(C)** corroborated the fact that he received money from the Defendants, and his evidence confirmed the fact that the money shared to the recipients was in Naira, and not in US Dollars. His evidence also confirmed that recipients signed for the money paid to them, as represented by **Exhibit ASO33 (A-G),** confirming the genuineness of the document and that it was not a document made for the purposes of this case. He showed great knowledge of the Niger Delta, and the attempt by the Prosecution to discredit him as already noted above was not successful, as shown by **Exhibit ASO36.**

The Defence further gave evidence to establish that there was no conversion of the said sum of US$39, 999, 958. 00 and that the "converting" of the dollar currency to Naira currency was not conversion as contemplated by count 3 but merely cash swaps to facilitate deployment of the resources to the beneficiaries who were to receive funds in Naira and not in dollars. In his testimony in pertinent part on this aspect confirming that the recipients in the Niger Delta were paid in Naira, the 1st Defendant as DW1 testified as follows:



"In Naira. Honestly we would have preferred if NSA had given us Naira because the challenge in changing dollar to Naira was something that you wouldn't want to get involved. Dollar is not the legal tender in Nigeria. It is of no standard value for the people in the Creeks. It is Naira that they need. In fact we had challenges dealing with the dollar that came into our accounts in terms of converting it and it is on record, part of the records is there. The exchange rate varies as the project continues and then we were also charged with cash withdrawal amount, the bank charges were enormous on our part, all the records are there, my lord... Now as relates to Kakatar swapping with One Plus which I have explained somehow, the Naira equivalent of those transactions are also there in our bank statements.

DW1 further explained as follows in cross-examination:

"My Lord, if I may go back to how Kakatar was said to have used part of the money. As a grade A company buying equipments every other day, we buy forex (dollars) from third parties all the time

and there is what is called in foreign exchange "cash deposit and intro". If you buy dollar from the black market and deposit that money in your domiciliary account, you cannot export more than 10 thousand dollars of that money at any given time in a week. So big construction companies that need millions of dollars every day are restrained. So every construction company buys dollars that are inflows. Inflow means that this money has already been verified as genuine money and it can be transferred anywhere, you can transfer ten million dollars if you want. So we buy inflows from third parties. In fact one of the persons who came here to testify, Capital Field Investment Ltd, before they bought dollars from us, we bought several dollars from them....."

Exhibit ASO29 that was Kakatar CE accounts showed where withdrawals were made in Naira representing the equivalent of the USD sums said to have been transferred to Kakatar CE, a sister company of the 2nd Defendant, from the 2nd Defendant's bank account that is the subject of this charge, and allegedly applied to the assignment. The Defence argues that these various huge

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withdrawals in Naira from the Kakatar CE account running through the period of September 2014 through early 2015 coincides with the duration of the assignment. The Defence also tendered **Exhibit ASO31**, being sample equipment procurement memoranda to confirm the claim that the Defendants in their Group regularly buy heavy duty equipment from abroad and for that reason regularly buy foreign currency (forex) from Bureau De Change (BDC) operators.

To fully demonstrate the transfer of funds between the two companies, the **DW1** further explained as follows:-

> *"OnePlus and Kakatar are sister companies. In fact One Plus is the mother company of Kakatar. If OnePlus has foreign exchange which could not be used by way of giving out dollars and Kakatar needs to buy foreign exchange, to buy equipment abroad, the logical thing to do is to exchange with your sister company; that is what is called swap, rather than taking from a third party. That is why it is more expensive to buy forex; if you want to buy from the foreign exchange market, it is about two, three, four dollars difference. Within this period, Kakatar wanted to buy equipment abroad and*

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we have to use money that was domiciled in Kakatar to swap with money that One Plus wanted to dispose for the assignment."

On the issue that the inflow of US 40 million was the only inflow into the 2nd Defendant's said account, the Defence provided evidence to show that it is the practice for the company and its affiliates to set designated bank accounts for specific projects, and that was the reason the 2nd Defendant's account in question handled essentially the inflow of this special assignment funds, and its outflows. The testimony of DW1 on this is relevant, and in pertinent part is as follows:

"Now that 40 million was the only other substantive money that went into that account. It is called OnePlus Reserve Account. That account was opened for the purpose of that assignment; the purpose of the money coming in was delayed but the account was there for that purpose. And if you look at the account, the only opening balance of that account before the 40 million came in was about 50 thousand dollars, if I am not mistaken... That is why Kakatar as a company alone has over 40 accounts and the account numbers are here, my

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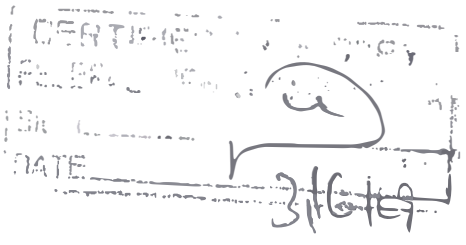
Lord. OnePlus has about 15 to 20 accounts, with Zenith Bank, with GTB, Skye Bank, First Bank. If you add all the accounts that OnePlus and Kakatar have, they will probably be about 60 accounts. My Lord, we have an account called Maitama Infrastructure District Project Account, Apo Road Project Account, Kyami District Project Account. Even fir the taxes we paid in the office, we have a tax account. We have salaries account, administrative account; so for every sub-head, Kakatar or OnePlus has an account we operate for that purpose...So when Dasuki called that we should engage in this assignment, we had no option than to create account that will absorb that money and utilise it for the purpose. It is in the course of this execution of the assignment that we incurred all the expenses which are accounted for and some of the documents are here."

The fact, as claimed in the above testimony that Kakatar CE and the 2nd Defendant had accounts with various banks is confirmed by **Exhibit ASO29** or **ASO28** which shows that the Kakatar



CE/OnePlus Group has accounts with various banks numbering about 86 accounts.

The truth of the matter, as I had said earlier, is that I had fully observed the demeanour and the countenance of the Defence witnesses and also evaluated the various documentary evidence provided to support or substantiate the defence which have been made over the transaction that is the subject of the charge. I do not believe that the Prosecution successfully or effectively discredited these claims. It is trite going by Section 135 and 138 of the Evidence Act that the burden of proof in a criminal trial rests on the Prosecution, and this burden needs to be discharged beyond reasonable doubt. And because our law by Section 36 of the Constitution presumes a criminal Defendant innocent until his guilt is established by the Prosecution up to the threshold of "*beyond reasonable doubt*", any doubt therefore raised in the case, must be resolved in favour of the Defence. As is the creed under universal criminal law, it serves the society better that a single innocent person is not mistakenly convicted and punished, since the society cannot itself sufficiently offer restitution when an innocent blood is spilled, perhaps on the basis of expediency. It is for this reason that we have the saying in law that "*It is better that 99 guilty persons escape than that 1 innocent person suffers*". For, while



the guilty may escape today, he might not escape tomorrow, the society has a chance in future to settle scores with him. But, when an innocent person suffers, or perhaps his blood is spilled out of mistake in the execution of criminal justice, there is no real chance of reversing what has been done, or as said earlier, of effectively offering restitution. The soil weeps everyday over the blood of the innocent that had been spilled on it.

This total abhorrence for condemnation of the innocent is a feature of all religions and in my view reflects even natural law. And I believe it is from here that the legal aphorism that it is better that 99 guilty persons escape than that 1 innocent man suffers, derives its root. Indeed, in the Christian Religion's Biblical Book of Proverbs, Chapter 17:15, it was decreed as follows: "*He who justifies the wicked and he who condemns the innocent, both of them alike are an abomination to the Lord*". This is further repeated in verses such as Psalm 94:21 which say that, "*They band themselves together against the life of the righteous. And condemn the innocent to death*". The same position is maintained in the Holy Quran, where reference is made by Islamic scholars to Chapter 17:33 where you find this injunction: "*Nor take life – which Allah has made sacred – except for just cause. And if anyone is slain wrongfully, we have given his heir authority (to demand*

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retaliation or to forgive) but let him not exceed bounds in the matter of taking life, for he is helped (by the Law)".

What am I saying? The point is that looking at the case being made out as a whole in the light of the entirety of the evidence adduced on both sides, which I have tried as extensively as I can to set out in this judgment, it appears to me that there are very reasonable doubts thrown up in the case, which will make it very difficult for any reasonable tribunal, conscious of the religious and the legal injunctions set out above on the need for care lest an innocent person be condemned, to proceed to find the Defendants guilty of the charges on the strength of the evidence available and just reviewed.

In the first place, the Prosecution have anchored their case on the fact that the payment of the USD40M to the Defendants was described as "*supply of tactical communication kits for special forces*" on **Exhibit ASO2**, the payment mandate. Yet, in evidence it was clear that such description was not one which the Defendants were privy to. As a matter of fact, the 1st Defendant's testimony that he only became aware of this description later was not really challenged. It was clear that such description was really a matter of an internal administration of the Government, specifically among the ONSA, Office of the Secretary to the

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Government of the Federation, Special Services Office whose Permanent Secretary testified as PW1 and perhaps the Central Bank of Nigeria (CBN) in processing the payment of the money, and it was probably important to reference the purpose of the money as being for something openly legitimate and acceptable. The Defendants have no role to play in the said description of the payment. In any event, even in his testimony, PW1 had confirmed that it was the practice to disguise the purposes of the payment for security contracts, in view of their very discreet and sensitive nature, and therefore that there was nothing really wrong by itself in the description which was given for the payment, even if the real purpose was different.

The Defence had stated that the real purpose of the payment was for a special security assignment given to the Defendants by the former NSA, **Col. Sambo Dasuki**, and have indeed furnished evidence of the existence of such. Right from the very early opportunity when the 1st Defendant was accosted with the payment and had been made to write a statement on 23/03/16 and 24/03/16, he had explained as was clear from **Exhibit ASO21(A & B)** that the payment was for a special security assignment given to him by **Col. Sambo Dasuki (Rtd)**, which he had duly performed. As was even confirmed by PW10 during his

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own testimony, the centrality of **Col. Sambo Dasuki (Rtd)** in unraveling the real purpose of the payment is indisputable. Now, since the Defendants at the earliest opportunity had revealed what the real purpose of the payment was, and furnished evidence to show that implementation was done, if the Prosecution was in any doubt as to whether such special assignment was given to the Defendants and if they performed it to the reasonable satisfaction of the man that gave them the assignment, I am of the view that the Prosecution or the State was bound to investigate the narrative provided by the Defendants if they did not believe it or find it incredulous. There was no better way of doing so than by insisting that, as they say, that they will have to confirm it directly from the "horse's mouth"; that is, to interview and question **Col. Sambo Dasuki (Rtd)** who in any event is public knowledge has been in the custody of the State. Unfortunately, the Prosecution failed to do so. The claim by the Defendants of the real nature of the transaction they had with the NSA and for which the payment of USD40M was made, is akin to the defence of alibi. The law is settled that when a Defendant raises a defence of alibi at the earliest opportunity, it is the duty of the Prosecution to investigate it. The consequences of the failure of the Prosecution to investigate the defence of alibi put up by a Defendant is to entitle him to an

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order of acquittal. See: **State v. Azeez (2008) NWLR (Pt. 424) 1423 at 1447**; **Iriri v. The State (2018) LPELR-45043**.

As said, the Prosecution did not investigate the claim nor even interviewed Col. Dasuki who by the admission of PW10, the main investigating officer of the Prosecution, was central to the present criminal proceedings. Needless to say, they did not also call him as a witness, but stating instead that they were not bound to, and that the Defence could have called him if the Defence wished or needed him.

I do not agree with the stance of the Prosecution. I held in **Suit No: FHC/ABJ/CR/186/2016, FRN v. Air Vice Marshal Tony Omenyi & Anor.** decided on 28/02/19 that the fact that the Prosecution bear the burden of proof in criminal proceedings, does not relieve the Defendant of the burden of establishing a defence which he is setting up. However, in the circumstances of the present case, having presented a credible explanation at the very earliest opportunity, and in which **Col. Sambo Dasuki** was at the center of even by the admission of the Prosecution, the burden is on the Prosecution to investigate the matter thoroughly including interviewing and perhaps presenting **Col. Sambo Dasuki** as a witness, and who in any event is in the custody of the State. Since the Defendants here are presumed innocent by the Constitution,

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and bound only to make explanations which create doubts about the central theory of the Prosecution's case that the Defendants were unjustly enriched by **Col. Sambo Dasuki,** perhaps because of the 1st Defendant's filial connections with the former top political leader of this country, the duty is on the Prosecution to dispel the doubts cast in their case. The way to dispel these doubts is to interview and even possibly call **Col. Sambo Dasuki** as a witness. If the Prosecution was also in doubt as to whether the Defendants performed the task for which the ONSA had paid them the USD40M as well as the real reasons for which the payment was made, I am also of the view that the Prosecution ought also to have interviewed relevant officials of the ONSA at the time that **Col. Dasuki** presided over ONSA as NSA and perhaps called them as a witness to come and disown the assignment given to the Defendants by the **Col. Dasuki** as NSA, as well as confirming or testifying that the ONSA or the nation got no value for the USD40M consideration paid to the Defendants. Again, the Prosecution failed to do so, arguing instead that they were not bound to do so.

I agree that the Prosecution are not bound to call any number of witnesses but only to call the number sufficient in their view to prove the case which they have brought to court. But it is also the law that the Prosecution must call material witnesses and that

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failure to do so is fatal to their case. See: **State v. Nnolim (1994) LPELR, 3222**. I am in agreement with the Defence that in this instance, witnesses from the ONSA are vital to this case, and that the Prosecution was bound to call witnesses from the ONSA to testify on the charge in the manner already described above, and that failure to do so, is fatal to the Prosecution's case.

The reason why not investigating thoroughly the ONSA angle of this case, and not having called some vital witnesses such as **Col. Dasuki** and officials of the ONSA is fatal to the Prosecution's case, is because as already noted during the early stages of this opinion when setting out the factual markers, the Presidential Committee which investigated transactions at the ONSA when **Col. Sambo Dasuki** was the NSA and which had petitioned the EFCC vide **Exhibit ASO16** to investigate some payments never mentioned the payment made to the Defendants, as among those to be investigated. According to the PW10, the EFCC merely "stumbled" on this payment when investigating the relationship which the 2nd Defendant had with Messrs Tunji Adeniyi & Co. on the *safe house project*, and this payment because of its substantial nature, aroused their suspicion. But the Presidential Committee which is a fact finding Committee had no issues with this payment, and therefore did not flag it. This could only have raised the

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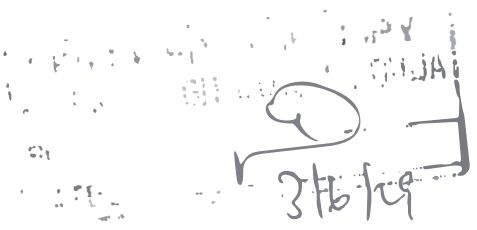
presumption, albeit rebuttable, that the payment was legitimate and that value was indeed received in the manner which the contracting parties, namely, the Defendants and the ONSA understood it. So, if the Prosecution had any doubts about the payment, and did not, as appears from this charge, believed the Presidential Committee's implied assessment of this transaction and the payment as neutral and not warranting any query or investigation, my view is that the Prosecution ought to have done more. Doing more in my view is at the very least calling those who should be knowledgeable about the transaction to assist it in discrediting it.

I do not wish to say that against the background of the ONSA and the Presidential Committee not having complained about the payment to the Defendants and about their performance, as they did in relation to other named payments in **Exhibit ASO16** that the Prosecution or the EFCC cried more than the bereaved. I have already noted that indeed such a transaction could raise red flags, particularly as there was no evidence to show that what was described as the purpose of the payment, "*supply of tactical communication kits for special forces*" was done as described. The EFCC was right to have raised issues because the payment ostensibly is suspicious. But the fact is that the Defendants having

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provided an alternative explanation as to what the payment was for, and given indications of how it was performed, I think it was wrong for the Prosecution not to have dug further or verified thoroughly those claims as made.

There is another point, and which I believe to be very critical. The work of security management of a country is very sensitive and indeed even the PW1 acknowledges that sometimes in that sphere things are done discreetly by way of a disguise of the real intentions. Because also security management is sensitive, I believe that a powerful national office such as the NSA headed by **Col. Sambo Dasuki (Rtd)** is also an office invested with significant or almost limitless discretion. Expecting that things should be acutely and plainly described and that transactions initiated or commissioned by that office should have the very detailed documentation which the Prosecution appear to say is lacking in the manner of the award of the security assignment to the Defendants, including the lack of particularization of the exact details and names and addresses of the elements in the Niger Delta who were pacified pursuant to the security assignment, might pose dangers in the context of security management, and also inhibit the discretion which the occupant of the office of the NSA needs to function effectively. If, for example, national and public interest



dictates that the occupant of such an office should enter into a compromise involving some financial settlement with any underground elements or ideologues or even extremist groups, perhaps necessary to secure the liberty of some helpless citizens, will it be right that such a compromise and the underlying financial settlement, if any, should be documented and particularized in the minutest details? I will be loath to express an opinion on this question, other than to say that there is a need for moderation in the expectations which we are to be had and the viewpoints which we are to be pushed as to the extent of details and documentation needed to be kept and furnished in respect of contracts of this nature.

In any event, I have noted that Col. Dasuki who is an element in the 2 counts was not interviewed. I have also noted that he was not charged alongside the Defendants on this charge, though I note the Prosecution's submission that Col. Dasuki is standing trial in a different court over his stewardship of the Office of the NSA. The Prosecution only made this remark in their written submissions and did not tender any evidence before the Court as to the nature of the charges which **Col. Dasuki** is standing trial for in a different court, and if indeed the transaction forming the subject of the present criminal proceedings is also one of the matters for which

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he is being tried. I have my doubts if the transaction, the subject of the current charge, will be, since as noted earlier, the Presidential Committee being a fact finding body and which investigated the transactions commissioned by **Col. Dasuki** as NSA, did not raise any issues with this particular transaction. In the light of **Col. Sambo Dasuki** not being charged alongside the Defendants in this charge, nor being convicted of any offences arising from this transaction by any competent court, it is difficult to condemn on the face value the transaction which the said **Col. Dasuki** entered with the Defendants. It is not disputed that **Col. Dasuki** acted officially and not in his personal capacity in the dealing which he entered with the Defendants by way of the alleged national security assignment. Having so acted officially, I am obliged by virtue of Section 168 of the Evidence Act which speaks of the presumption of the regularity of official acts to presume that the transaction was regular and valid. There is evidence as already identified in the judgment, to show that this contract was performed, and if the Prosecution wanted the Court to orbit around the legal presumption of regularity, the burden is on them to provide concrete evidence that will assist in rebutting the presumption. From the weaknesses in the Prosecution's case extensively revealed in my assessment of the case, it is obvious that the Prosecution did not discharge this obligation.

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The final point is the contention that the funds of USD40M was paid to the Defendants without any written contract. I find this contention untenable. It is elementary that contracts can be oral or in writing. Contracts need not be in full written documentary form. In security circles, particularly at the level of the NSA which even the PW1 acknowledges that things are done with quite a significant degree of flexibility, it is inconceivable to assert that a payment or an assignment given cannot be legitimate simply because same was not backed up by a full written contract containing all the terms and with all the legal niceties.

In the final analysis, having reviewed all that have been provided, first by the Prosecution in proof of their case, and second by the Defence in aid of their defence, in terms of oral and documentary evidence, as well as reviewed and evaluated the contentions made by counsel in the written submissions and oral adumbrations of same, I am inclined to resolve the issue which I identified in the beginning part of this opinion in favour of the Defence. I am not convinced that the Prosecution have discharged the burden placed on them by law to prove the guilt of the Defendants beyond reasonable doubt on any of the remaining 2 counts of the charge which the Defendants were called upon to present a defence on. Reasonable doubts do exist in the Prosecution's case as made out

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in the body of this opinion. As the law commands, I am bound to resolve the doubts in favour of the Defence and I so resolve them. In consequence, I find the Defendants as being not guilty as charged on both counts, and consequently discharge and acquit them of both counts as listed in the charge.

HON. JUSTICE (DR.) NNAMDI O. DIMGBA
JUDGE
27/05/19

PARTIES: Defendants in Court.

APPEARANCES: **Sylvanus Tahir** for the Prosecution.

Chris Uche SAN with **Marvel Akpoyibo, DIG Rtd, Ignatius Oma, Esq., James Odiba Esq., Kanayo Okafor Esq., Emmanuel Okorie Esq., Adetoun Akerele Esq., Chiamaka Anagu Esq., Isaac Nwachukwu Esq., Chukwudi Maduka Esq., Frank Molokwu Esq., James Ebbi Esq., Francis Nsiegbunam Esq., Chizi Wigodo Esq., Chiemela Izima Esq., Onaedo Chukwudi**

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