IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON FRIDAY THE 16TH DAY OF JULY, 2021
BEFORE THE HONOURABLE
JUSTICE R.M. AIKAWA
JUDGE

SUIT NO. FHC/L/418C/2018

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

PAUL USORO (SAN).....DEFENDANT

JUDGMENT

The Defendant was initially arraigned before this court on a 10 count charge dated 29th November 2018. The Defendant pleaded not guilty to each of the counts as variously charged. The prosecution on the 3rd of July 2019 opened its case in a bid to prove the allegations in the ten count charge. However in the course of the trial, the court of appeal upon an interlocutory appeal struck out counts 1-4 of the charge thereby leaving counts 5-10 as the valid and subsisting counts against the Defendant. The said counts 5-10 read as follows:

"**COUNT FIVE**

That you, Paul Usoro, SAN, on or about the 14th day of March, 2016 in Nigeria within the jurisdiction of this Honourable Court used the sum of N300,000,000.00(Three Hundred Million Naira), property of Government of Akwa Ibom of Nigeria which sum you reasonably ought to have known forms part of the proceeds of unlawful act to wit: criminal breach of trust and thereby committed an offence contrary to section 15(2)(d) of the Money Laundering (Prohibition)Act, 2011 as amended and punishable under Section 15(3) of the same Act.

COUNT SIX

That you, Paul Usoro, SAN on or about the 14th day of March, 2016 in Nigeria within the jurisdiction of this Honourable Court retained the sum of N300,000,000.00(Three Hundred Million Naira), property of Government of Akwa Ibom of Nigeria IN YOUR Paul Usoro & Co's account No.1014604466 domicile in Zenith Bank Plc which sum you reasonably ought to have known forms part of the proceeds of unlawful act to wit: criminal breach of trust and thereby committed an offence contrary to section 15(2)(d) of the Money Laundering (Prohibition)Act, 2011 as amended and punishable under Section 15(3) of the same Act.

COUNT SEVEN

That you, Paul Usoro, SAN on or about the 24th day of August, 2015 in Nigeria within the jurisdiction of this Honourable Court retained the sum of N530,000,000.00(Five Hundred and Thirty Million Naira), property of Government of Akwa Ibom of Nigeria in your Paul Usoro & Company's Clients' account No.0690123425 domicile in Access Bank Plc which sum you reasonably ought to have known forms part of the proceeds of unlawful act to wit: criminal breach of trust and thereby committed an offence contrary to section 15(2)(d) of the Money Laundering (Prohibition)Act, 2011 as amended and punishable under Section 15(3) of the same Act.

COUNT EIGHT

That you, Paul Usoro, SAN on or about the 18th day of September, 2015 in Nigeria within the jurisdiction of this Honourable Court retained the sum of N40,000,000.00(Forty Million Naira), property of Government of Akwa Ibom of Nigeria in Paul Usoro & Company's account No.0690123425 domicile in Access Bank Plc which sum you reasonably ought to have known forms part of the proceeds of unlawful act to wit: criminal breach of trust and thereby committed an offence contrary to section 15(2)(d) of the Money Laundering (Prohibition)Act, 2011 as amended and punishable under Section 15(3) of the same Act.

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COUNT NINE

That you, Paul Usoro, SAN on or about the 3rd day of December, 2015 in Nigeria within the jurisdiction of this Honourable Court retained the sum of N260,000,000.00(Two Hundred and Sixty Million Naira), property of Government of Akwa Ibom of Nigeria in Paul Usoro & Company's account No.0690123425 domicile in Access Bank Plc which sum you reasonably ought to have known forms part of the proceeds of unlawful act to wit: criminal breach of trust and thereby committed an offence contrary to section 15(2)(d) of the Money Laundering (Prohibition)Act, 2011 as amended and punishable under Section 15(3) of the same Act.

COUNT TEN

That you, Paul Usoro, SAN on or about the 27th day of August, 2015 in Nigeria within the jurisdiction of this Honourable Court transferred the sum of N65,000,000.00(Sixty Five Million Naira), property of Government of Akwa Ibom of Nigeria in Paul Usoro & Company's account No.0690123425 domicile in Access Bank Plc to Umemedimo Thomas Nwoko(Hon. Attorney – General and Commissioner of Justice, Akwa Ibom State)which sum you reasonably ought to have known forms part of the proceeds of unlawful act to wit: criminal breach of trust and thereby committed an offence contrary to section 15(2)(d) of the Money Laundering (Prohibition)Act, 2011 as amended and punishable under Section 15(3) of the same Act.

The prosecution called a total of two witnesses who testified as PW1 and PW 2 respectively. At the close of the case for the prosecution, the Learned Senior counsel to the Defendant indicated his intention to make a no case submission on behalf of the Defendant.

The written addresses of counsel in respect of the no case submission were adopted on the 12th of March 2021.

The Learned Senior Advocate to the Defendant in his written address formulated two issues for determination namely:

1. Upon a reasoned review of the evidence presented to the prosecution in this charge, is this a charge that justifies the invocation of the court's powers pursuant to sections 302 and 303 of the Administration of criminal justice act 2015 to record a finding of not guilty in respect of the Defendant without calling upon him to enter his defence and accordingly discharge the Defendant in consideration of the fact that the evidence against the Defendant is not sufficient to justify the continuation of this trial?
2. As a corollary to issue no.1 hereof, does the charge disclose a predicate offence that is known to law in Akwa Ibom and/or Lagos States?

The argument of the Learned Senior Advocate on issue no. 2 is that the surviving counts 5,6,7,8, 9 and 10 do not disclose any predicate offence known to law pursuant to the Akwa Ibom State Criminal Code and the Lagos State Criminal Law. He submits that this is an incurable defect in a charge of this nature which alleges money laundering. He submits with reference to the cases of **FRN v Yahaya (2016) 2 NWLR pt.1496 p.252 at 277. Udeogu v FRN and others(2016)LPELR-43637(SC) and EFCC v Thomas(2018) LPELR-45547(SC)** that a money laundering charge cannot survive without the disclosure of the predicate offence(s) thereof. He submits that the offence of criminal breach of trust which is the purported predicate offence in counts 5-10 is not an offence known to Akwa Ibom State or Lagos State Criminal laws.

The Learned Senior counsel submits that in the absence of a predicate offence known to law in a money laundering charge, the charge against the Defendant cannot subsist and must therefore fail pursuant to and in terms of the provisions of Sections 302 and 303 of the Administration of criminal justice act (ACJA).

Counsel urged the Court to hold that the non disclosure of a predicate offence in the surviving counts of the charge renders the charge incurably defective and justifies the court's powers under sections 302 and 303 of ACJA to discharge the Defendant of all the counts against him.

On issue no.1, it was the Learned Senior counsel's submission in relation to counts 5 and 6 that the essential element of the offence, namely the knowledge by the Defendant of the ownership of the sum N300, 000,000.00 as stated in the charge is the property of Akwa Ibom State Government, was not proved by the prosecution. He submits that the prosecution did not at all prove or make out a prima facie case in regard to this essential element of the offence.

He referred to the cases of **SARAKI V FRN, OHUKA V STATE AND AGABA V FRN**. He also made elaborate reference the testimonies of PW1 and PW2 on the basis of which he urged the court to hold that the evidence against the Defendant is not sufficient to justify the continuation of trial on these counts. He urged the Court to record a finding of not guilty in respect of the Defendant without calling on him to enter his defence.

The learned senior advocate submits in relation to counts 7, 8, 9 and 10 that the evidence against the Defendant is not sufficient to justify a continuation of the trial and therefore urged the court to invoke its power under sections 302 and 303 of ACJA

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In his written address, the learned prosecutor formulates as the sole issue for determination whether from evidence adduced before this court the prosecution has made out a prima facie case for the Defendant to enter his defence.

It was the submission of the learned prosecutor that notwithstanding the fact that criminal breach of trust is neither a crime in Lagos and Akwa Ibom States

nor is it listed as one of the unlawful activities in section 15 of the money laundering prohibition act, it is clear that section15 (6) defines unlawful act to include corruption, fraud and any other criminal act specified under the said act or any other law in Nigeria. He submits that the offence of Criminal Breach of trust is prescribed by Section 315 of the penal code.

It was the submission of counsel that section 15(6) of the money laundering act did not say that the unlawful act must be such that can happen or constitute an offence within the territorial jurisdiction of the court. Rather the law stipulates that the unlawful act must be specified in any law in Nigeria. He urged the court to ascribe the plain and ordinary meaning of the wordings of Section 15(b) of the Money Laundering Prohibition Act.

Counsel submits with reference to the cases of **DABOH V STATE (1977) 5 SC 197 AND EMEDO V STATE (2002) 15 NWLR PT.789 196 AT 198-199 AND IBEZIAKO V COP (1963) 1 SCNLR 99** that at this stage the court is not saddled with the duty of considering whether the evidence adduced by the prosecution against the Defendants is sufficient to justify a conviction, but whether the prosecution has made out a prima facie case against the Defendant.

Counsel submits that with regards to the charge and evidence before this court, the prosecution has been able to establish a prima facie case against the Defendant which requires an explanation from the Defendant.

Counsel urged the Court to dismiss the no case submission as unmeritorious.

In his reply on point of law, the Learned Senior Advocate to the Defendant submits that the interpretation which the prosecution urges on the Court in respect of Section 15(6) of the MLPA alters and distorts the legislative jurisdiction of the various states of the federation. He submits that the penal code and its provisions have no application in the Southern States and in

particular, Akwa Ibom and Lagos States. He urged the Court to hold that the surviving counts do disclose any predicate offence that is known to either the Akwa Ibom or Lagos State Criminal Laws and therefore to that extent the charge is incompetent and should therefore be struck out and/or dismissed.

The Learned Senior Advocate submits further in relation to counts 5 and 6 that no part of the prosecuting counsel's address has the prosecution attempted to show how a prima facie case has been made out against the Defendant in the charge. He submits that the Defendant's submissions in his written address were not rebutted howsoever by the prosecution.

The Learned Senior Advocate made similar arguments in relation to counts 7, 8, 9 and 10. He submits further in response to the prosecution's address that PW2's evidence was manifestly unreliable and discredited by pieces of legally admissible documentary evidence that forms part of the prosecution's proof and under cross examination that no reasonable tribunal could convict upon it.

The Learned Senior Advocate urged the Court to uphold the no case submission of the Defendant and to discharge him without calling upon him to enter a defence.

This is the summary of the arguments of counsel.

The guiding principles in determining a no case submission have been summed up in a number of cases some of which have referred to by counsel in their written addresses. In the case of **AJIBOYE & ANOR. V. THE STATE**, it was stated in the following terms:

> "What has to be considered in a no case submission is not whether the evidence against the accused is sufficient to justify conviction but

whether the prosecution has made out a prima facie case requiring at least some explanation from the accused."

Similarly in the case of **SUNNY TONGO & ANOR V. COMMISSIONER OF POLICE**, the Supreme Court pronounced in the following terms:

" In a criminal trial, at the close of the case for the prosecution, a submission of no prima facie case to answer made on behalf of an accused person postulates one of two things or both of them at once: (a) Firstly, that there has been throughout the trial, no legally admissible evidence at all against the accused person, on behalf of whom the submission of no prima facie case has been made, linking him in any way with the commission of the offence with which he has been charged, which would necessitate his being called upon for his defence. (b) Secondly, whatever evidence there was which might have linked the accused person with the offence has been so discredited that no reasonable court can be called upon to act on it as establishing criminal guilt in the accused person concerned; and in the case of a trial by jury, that the case ought therefore to be withdrawn from the jury and ought not to go them for a verdict."

What therefore is required to be considered by the court at this stage is whether there is some nexus between the Defendant and the offences for which he is charged.

I shall however consider firstly the issue raised by the learned senior advocate namely whether charge discloses a predicate offence that is known to law in either Akwa Ibom and/or Lagos States.

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What is a predicate offence? A predicate offence has been defined as "an offence whose proceeds may became the subject matter of any of the money

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laundering offences. It is an action that provides the underlying resources for another criminal act" It has also been stated that "for an offence of money laundering to be established, the prosecution has an onerous task of proving that the proceeds of a particular act is defined as a predicate offence." See the case of **FRN v Nasiru Yahaya**, supra.

In the present case, the predicate offence as shown in counts 5-10 is criminal breach of trust. The argument of the learned senior advocate as I summarized earlier is that there is no known offence as criminal breach of trust in the criminal laws of either Lagos or Akwa Ibom States. The Learned prosecutor has argued that the offence of criminal breach of trust is prescribed by Section 315 of the penal code and is therefore applicable pursuant to section 15(6) of the money laundering act.

Section 15(6) of the Money Laundering (prohibition) Amendment Act 2017 provides in the following terms:

> "The unlawful act referred to in subsection (2) of this section includes participation in an organized criminal group, racketeering, terrorism, terrorist financing, trafficking in persons, smuggling of migrants, sexual exploitation, sexual exploitation of children, illicit trafficking in narcotic drugs and psychotropic substances, illicit arms trafficking, illicit trafficking in stolen goods, corruption, bribery, fraud, currency counterfeiting, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, hostage taking, robbery or theft, smuggling (including in relation to customs and excise duties and taxes), tax crimes (related to direct taxes and indirect taxes), extortion, forgery, piracy, insider trading and market manipulation or any other criminal act specified in this Act or any other law in Nigeria"(underline mine)

I think these provisions should not just be interpreted literarily but pragmatically too. In my view a reference to any other law in Nigeria in the section should not simply be interpreted to mean a reference to any other law in Nigeria even if that law is not applicable to the case at hand. I take judicial notice of the fact that the penal code is not applicable to all the states of this country. Rather, for historical reasons, it is applicable only to those states of the federation that formed the defunct Northern region. It is therefore not applicable to either Akwa Ibom or Lagos States which are located in the southern part of the country.

Therefore in as much as section 15(6) of the MLPA provides the omnibus clause "any other law in Nigeria", would it be legally and logically sensible for the court to invoke the provisions of the penal code even if the said code is not applicable in the jurisdiction where the case at hand arose? Certainly not. It is a legal impossibility for any person to be charged for alleged offences committed in Akwa Ibom or Lagos States under the provisions of the penal code because it is not operational in those jurisdictions.

The legal reality is that there is no offence known as criminal breach of trust in the criminal codes of Akwa Ibom State of Lagos. I therefore uphold the arguments of the learned senior advocate that the charge has not disclosed a predicate offence that is known to law in Akwa Ibom and/or Lagos States.

On this score alone, I should hold the charge defective and dismiss same.

However, in the event I am wrong on this issue, I shall proceed to consider the other issue raised by both parties though coined in different words, namely whether from the evidence before this court the prosecution has made out a prima facie case against the Defendant.

I have already reproduced the counts preferred against the Defendant. Section 15(2) (d) of the MLPA act reads:

> "Any person or body corporate, in or outside Nigeria, who directly or indirectly-
>
> (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."

Therefore by these provisions, it is imperative on the part of the prosecution to establish a prima facie evidence that the Defendant in relation to all the counts in the charge had reasonable knowledge that the funds in question were part of the proceeds of an unlawful act.

The question is whether the prosecution has been able to establish prima facie, that the Defendant had such reasonable knowledge.

The prosecution called a total of two witnesses. PW1 Udom Indongesit, a staff of Zenith bank PLC, testified entirely in relation to counts 5 and 6 of the charge. In her evidence in chief, PW1 said in part:

> "In the course of my business in November 2016, I was on a marketing hall in Government House, Uyo and I was privy to a conversation between his Excellency and the Accountant General on a payment meant for the Defendant Paul Usoro & Co. This payment I got to understand should have gone to access bank. I took that as an information for myself as the business basically thrives on information. I got back to my office and checked through the system to confirm if the Defendant had an account

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with Zenith bank. I found no such account existing. I informed my zonal supervisor and my head of operations of these and that I would like the prospect to a customer.

On 10/3/2016, Aka Road branch of Zenith was given withdrawal instruction of N700m on the imprest account of the state Accountant General. Though all debits were taken on 10/3/2016, I needed the contact of the Defendant before I could open an account.....On 14/3/2016, I got the contact of the Defendant from the Excellency and put a call through to the Defendant that I had payment for the Defendant and needed to open an account. He instructed me to work with two of his colleagues. When I confirmed the exact name registered for the firm, I sought approval of my zonal head to open the account and make the deposit while waiting for documentation. I filled the deposit slip and the depositor's name I filled was Paul Usoro & co.

As in the standard of the bank, we sent a relationship letter with the account details to the Defendant, from there business relationship commenced."

In my view PW1 in this testimony which I have just reproduced, PW1 did not state that at the time she called the Defendant and informed him of a pending payment in his favour, she informed about the source of the money. The picture was made clearer when PW1 said under cross examination:

"I agree that the Defendant was not informed of the opening of the account at that time. The respond to the e-mail was from my supervisor at 6.57pm.

It is true that as at 14/3/2016, the Defendant was not a customer with Zenith Bank. It is possible that the Defendant at 14/3/2016 did not know who were the customers of the bank. I do not think that the Defendant know who the customer of the bank were.

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> In exhibit 3, in the column where I was supposed to reflect the depositor, I reflected "Paul Usoro & Co" as the depositor. It is correct that a deposit is a person who brings money into the bank as opposed to the beneficiary. The money was not brought into the bank by Paul Usoro. I told the Court that I could not use my name as the depositor. I use the name of Paul Usoro & Co. But it is true that what I reflect was not true, I did not write that Akwa Ibom State Government were the depositor of the amount. The truth is that it was me who deposited the money and mot the Defendant. It is true that only me at that point know where I got the money."

PW2, Abdu Muhammad Rabo, also testified in relation to counts 5 and 6.His testimony in this regard was based on what PW1 told him in the course of his investigation. I do not agree with the learned senior advocate that the evidence of PW 1 could be classified as hearsay evidence, because in my view he was reporting the findings of his investigations. But I agree that his evidence in relation to counts 5 and 6 have added no value to the prosecution's case because his narration was based entirely on the information he got from PW1 as confirmed by him under cross examination. The only addition which I have noticed in the evidence of PW 2 was his statement in his evidence in chief when he said:

> "On the N300m, this was paid to Paul Usoro and co's Zenith bank account. We also believe that he knew the monies were conveyed from the state coppers as PW 1 informed him while marketing in the first phone call she had with which kick started the account opening process"

This is a clear contradiction to the evidence of PW1 who clearly said under cross examination that the Defendant was not aware of the source of the money.

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Having heard from the horse's month as to what actually happened, it is my view that PW2's evidence in this regard goes to no issue.

On the whole therefore, as far as counts 5 and 6 are concerned, It is my view and I so hold that the prosecution based on the evidence it has adduced failed has to establish a prima facie case against the Defendant which would warrant calling upon him to enter a defence.

I will now proceed to counts 7, 8, 9 and 10.The allegations here are that the Defendant retained various sums of money as stated in the various counts, belonging to Akwa Ibom State Government in his access bank account as well as transferring the sum of N65m from the said access bank account to one Uwemedimo Thomas Nwoko, Attorney General of Akwa Ibom State at that time.

From the evidence before me, it is not in dispute that the said sums were transferred to the Defendant's account from the Akwa Ibom State Government or that the Defendant transferred the said N65m to the Uwemedimo. These are not in dispute.

What is in dispute are the reasons for which the monies were deposited into the Defendant's account and transferred by the Defendant to the then Attorney General of Akwa Ibom state.

It is the contention of the prosecution as shown in the testimony of PW2 that the monies were paid by the Akwa Ibom State Government as fees to the Defendant for his legal services to the Governor of Akwa Ibom State in the election petitions tribunal.

PW2 stated both in his evidence in chief and under cross examination that the Defendant under interrogation and in his statement claimed that the said

amounts paid into his access bank account were for other services which he rendered to Akwa Ibom state Government and not election petitions. However it is evident from the testimony of PW2that the prosecution never investigated further to verify the Defendant's claims. PW2 claimed that they summoned the then Attorney General of Akwa Ibom State and some other top Government officials of Akwa Ibom State but they failed to turn up even after assurances by the Attorney General that he would produce them. I find these explanations unpalatable I find it unacceptable that an investigating agency like EFCC cannot secure the attendance of the said Akwa Ibom State Officials if it strongly believes that some crime has been committed.

The investigation was simply inconclusive. The prosecution now settled on mere assumptions and suspicions to charge the Defendant. The court does not act on assumptions or suspicions. The burden is always on the prosecution to establish a prima facie case before the Defendant could be called upon to enter his defence. I agree with the learned senior advocate that to call upon the Defendant to enter his defence on the basis of the evidence before me would rather be calling upon him to prove his innocence. This would be strange to our jurisprudence.

In any case, PW2 has admitted under cross examination that up to the moment of this trial nobody from the Akwa Ibom State Government has made a statement alleging that any crime has been committed in relation to this case.

The Court of Appeal in a recent decision via the case of **FRN v Mike Ezeokhome** **CA/L/174/19** delivered on 14th May 2021, made a very instructive pronouncement. It said:

"The learned counsel to the Appellant had argued that the Respondent ought to have known that the source of money paid to him as professional fees was from an illicit act or "proceeds of unlawful activities." No doubt

a Legal Practitioner is entitled to his fees for professional services rendered and such fees cannot be rightly labeled as proceeds of crime. Further, it is not a requirement of the law that a legal practitioner would go into inquiry before receiving his fees from his client, to find out the source of the fund from which he would be paid. There was nothing on record at the time the money was paid to the Respondent's Chambers to show that the money was from the proceeds of unlawful activities and the lower court was right not to have agreed that the money was from unlawful activities."

This pronouncement in my view would put the provisions of Section **15(2) (d) of the MLPA** in a clearer perspective.

On the whole therefore, my view and which I so hold is that just like counts 5 and 6, the prosecution has failed to establish a prima facie case against the Defendant in relation to counts 7-10. Just like counts 5 and 6, the prosecution has adduced no evidence linking the Defendant with the charge.

I therefore uphold the no case submission of the Defendant. I dismiss counts 5 and 6as well as counts 7-10. I hereby discharge and acquit the Defendant of all the counts 5, 6, 7, 8, 9 and 10 respectively.

The Defendant is hereby discharged and acquitted.

HON. JUSTICE R.M. AIKAWA
JUDGE
16th July, 2021.

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Appearance:

Rotimi Oyedepo with him I.E. Uduak, A.O Mohammed, B.B. Buhari and S.I. Suleiman for the Prosecution

O.E. Offiong, SAN, with Olushina Sofola, SAN, Essien Udom, SAN, Bode Olanipekun, SAN,Chukwu Ikwuazum, SAN, with them M.O. Liadi, Eronin Lilian, Olukayode Enitan, Genesis Francis, Monica Oduogu,Quan Bisayo, mubarak Raji, Onoyeyo Onoteyo, Falilat Olawoyin.

Judgment delivered in open Court.

HON. JUSTICE R.M. AIKAWA
JUDGE
16th July, 2021.

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Cashier's Office
Date 3/8/21
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Cashier.
pls collect the sum of ₦5,000.00 for
CCC - Angel
3/8/2021.

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