

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE JUDE OKEKE**

**ON THURSDAY THE 26<sup>TH</sup> DAY OF JANUARY, 2017**

**CHARGE NO: FCT/HC/CR/122/2013**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA .....COMPLAINANT.**

**AND**

**(1) DICKSON UBLEFFAH }  
(2) NGOZI ANTHONY } .....DEFENDANTS**

**JUDGMENT**

By leave granted to it on 8/5/2013, the Prosecution proffered a-count charge against the Defendants. In Count 1 the Defendants as employees of Vanguard Media Limited were charged with conspiracy to do an illegal act ie theft punishable under Section 97(2) of the Penal Code Act, Cap 532 LFN 2004. In Count 2 they are charged with dishonestly taking out of the possession of Vanguard Media Limited of the sum of ₦1,065,000.00 without its consent between 2007 and 2009 and committed an offence punishable under Section 287 of the Pena Code Act Cap 532 LFN 2004.

They were also in Count 3 charged with dishonestly taking out of the possession of the said Vanguard Media Limited between 2007 and 2009 of

the sum of ~~N~~879,795.00 without its consent and thereby committed an offence punishable under Section 287 of the Penal Code.

They were equally in Count 4 charged with dishonestly taking out of the possession of same company between same period of ~~N~~80,000.00 without its consent and thereby committed an offence under same Section of the Penal Code.

They pleaded not Guilty to each Count of the charge. By leave granted to it on 12/11/2013, the prosecution amended its Proof of Evidence by adding thereto documents marked as Exhibits A and B attached to the affidavit in support of the application.

Trial commenced on 21/1/2014 with the prosecution calling Mr. Gbenga Adefaye who testified on its behalf as PW1.

The witness testified inter alia, that he is a journalist and General Manager Publication and Editor In chief of Vanguard Newspaper. He knows the Defendants. They were ex-staff of Vanguard Newspaper in its Abuja office.

Sometime in 2009, there were stories of allegations of fraud in the affairs of the company consequent upon which the Executive Chairman Mr Sam Amuka appointed a special investigator to wit L. A. Abayi & Company to look into the financial affairs of the company.

When the latter completed its assignment and submitted its report to the Executive Chairman, he (the witness) was instructed by the Chairman to

invite the EFCC ie. Economic and Financial Crimes Commission to look into the Report, help him recover his money that was taken unlawfully and get the law to take its course.

He did a letter which he attached to the Report and forwarded to the EFCC asking it to look into it, help the Company recover the money aforesaid and the law takes its course. He tendered a certified true Copy of the letter dated 12/11/2009 which was admitted as Exhibit A.

Under cross examination by the 1<sup>st</sup> Defendant's counsel, the witness testified inter alia, that he has been with Vanguard Newspapers since November 1986 and is conversant with its workings. He is however not in a position to know the period during which there was financial misappropriated in the company. He would not know how much was misappropriated in the Abuja office of the company as he did not have the financial expertise to know.

The appointment of the 1<sup>st</sup> Defendant who was the company's Sales Representative of the Abuja Office was terminated for a reason he would not know. A letter dated 22/4/2011 written by the Administrative Manager of Vanguard Newspapers to the 1<sup>st</sup> Defendant was admitted through the witness as Exhibit B.

Under cross examination by the 2<sup>nd</sup> Defendant's counsel, the witness testified inter alia, that he made a statement to the EFCC in the course of investigations wherein he said that the General Manager (Purchasing and

Administration) Mr. Godfrey Anika Remi is in the better position to shed more light on the finance of the Company.

He admitted knowing one Mr. Badmus as the Chief Accountant of the Company but he is not in a position to know if the Auditor's report indicted Mr. Badmus of misappropriating over ~~N~~40,000.00 of the Company's money. The 2<sup>nd</sup> Defendant was working under Mr. Badmus.

There was no question in re-examination for the witness whereupon he was discharged.

The Prosecution called Mr. Lawrence Adekunle Ajayi who testified on its behalf as PW2.

He testified inter alia that he is a Fellow of Chartered Accountants of Nigeria and Associate Member of Chartered Institute of Taxation.

He recognized the Defendants as former employees of Vanguard Media Limited.

On 15/9/2009, he received a letter from the Chairman of the Company engaging him to carry out a special investigation into the Company's financial operation.

He commenced the exercise with five members of his staff and visited some outstations of the Company in Abuja, Port Harcourt, Warri, Benin, Sapele and others.

In carrying out the exercise, they obtained Company's financial records which included its weekly returns from the outstations to the headquarters which were supposed to be prepared by the Circulation Co- Ordinators who are employees of the company in the outstations saddled with the responsibility of selling the company's newspapers.

From the proceeds of sales, each outstation was to pay for expenses incurred by them and remit balance to the Company's Bank Account. When they were reviewing the returns in the case of Abuja they discovered some anomalies. For instance, there was a letter from the office of Oladuyin & Co (Solicitors) demanding for a sum of ~~N~~650,000.00 for legal services rendered. The Abuja office used photocopies of this letter to take money from the Circulation receipts at various times, the total of which amounted to ~~N~~1,060,000.00. There was no evidence of actual payment. If the sum of ~~N~~650,000.00 is deducted from ~~N~~1,060,000.00 there is an excess in the money taken in the sum of ~~N~~40,000.00.

The witness also referred to a bill for solid and liquid waste in the sum of ~~N~~435,000.00 but that at various times, the total amount taken for this was ~~N~~1,500,000.00 and what was used to support their taking of the money was a memo written by Abuja Regional Accounts Officer Mrs Ngozi Anthony ie the 2<sup>nd</sup> Defendant. If ~~N~~435,000.00 is deducted from the ~~N~~1,500,000.00, the excess cash taken was ~~N~~1,065,000.00

Testifying further, the witness stated that they also discovered that the Defendants took the sum of ~~N~~1,499,235.00 as medical bill at various times

without any supporting document. They also took ₦1,737,400.00 at various times for water bill without any evidence of payment.

Lastly, there was a bill from Abuja Municipal Area Council for the sum of ₦80,000.00 for Business premises permit. The amount was taken twice. The Defendant's first attached Demand note from the Council when the amount was taken initially. When they took the money again, they submitted photocopy of the official receipt received from the council.

After the above findings, he (the witness) sent a Query to the Defendants' and they responded but their response could not clear them. After this, he submitted his Final Report dated 11/11/2009 to the Company.

An original copy of the letter appointing Mr. L. A. Ajayi & Co. by the Chairman of Vanguard Media Limited was tendered and admitted as Exhibit C; Certified True Copy of the Query issued to the Defendants' was also admitted as Exhibit D while pages 1 to 9 of the Report were collectively admitted as Exhibit E.

Under cross examination by the 1<sup>st</sup> Defendant's counsel, the witness testified inter alia, that he was engaged to conduct an investigation into the affairs of the company for the period 2007 to 2009 and by his letter of engagement this included the incomes and expenditure of the company. He would not remember off hand what was the income of the company within this period as it involves circulation and advertisements made in the newspapers.

While the income from advertisements is the income realized from advertisements placed in the newspaper in Abuja, the circulation cash receipts relate to newspapers sold in the Abuja region which includes the sales of the other areas in the Abuja Zone. This was not contained in his Final Report because he did not find any discrepancies as far as the income was concerned rather it was in the expenditure where they found anomalies that he reported on.

The witness stated too that he could not remember off hand the expenditure of the Company in Abuja as it has been long.

Dwelling further, the witness testified that in the Abuja Branch, it was the responsibility of the Circulation Manager and Accounts Officers to pay monies into the Company's Bank account.

He would not know the length of time Oladuyin & Co. was in the services of the Company. The only thing he knew was that photocopies of letter from the firm were used to take money from the Company and there is no evidence to show the Branch paid any money to the law firm. Apart from the Demand Notice, there was no other evidence to show money was not paid to the firm.

Concluding, he stated that in the Accounting Profession, a query is not an accusation per se but rather a request to explain what has been observed in the course of carrying out the investigation exercise. The Query in the case was given to the 1<sup>st</sup> Defendant. He did not have it in Court.

When cross examined by the 2<sup>nd</sup> Defendant's counsel, the witness testified inter alia, that all parts of the 2<sup>nd</sup> Defendant's answers to the Query were not satisfactory. When shown Exhibit D, he confirmed it as the Query issued to the 2<sup>nd</sup> Defendant and said the 2<sup>nd</sup> Defendant could not explain satisfactorily a total of ~~N~~4,711,635.00

He confirmed having made a statement to the EFCC and that the figure is his final report to the EFCC and he did state in it that the Defendants defrauded the Company of the above sum.

When shown Exhibit E he confirmed it is page 2 of his Report. He stated the total figure in the page 2 is ~~N~~4,791,635.00. There is an omission of ~~N~~80,000.00. If this is added to the ~~N~~4,711,635.00 it gives ~~N~~4,791,635.00 in his report.

The witness admitted he did not write to Oladuyin & Co to confirm how much it was paid. He also did not write to Abuja Environmental Protection Board to confirm or any organization mention to confirm whether any money was paid to them at all.

He insisted his reports were not faulty with respect to Abuja office. That he did the investigations in Owerri, Port Harcourt, Onitsha and Abuja. That he stated in his report for the other stations how the monies were taken. That their cases were different. It is the monies they were supposed to pay to the bank that was manipulated but for Abuja the money they received was manipulated through expenditure.



There was no question in re-examination for the witness. He was accordingly discharged.

The Prosecution next called Mr Ahmed Mohammed Ghali who testified on its behalf as PW3.

He testified inter alia, that he knows the Defendants. Sometime towards the end of 2009, after receiving a Petition from Vanguard Media Ltd alleging some fraud in the Company arising from the investigation report of an External Investigator authorized by the Company to conduct investigation into the books of the company and after submission of the report of the investigation alleging fraud of under lodgment of funds into the account of the company, falsification of letter and over payment of bills among others, one Mr. Gbenga – The General Manager of the Company reported to their office and adopted the Petition. Also the External Investigator volunteered a Statement shedding more light as regards the investigation.

Their team visited the Company and the suspected staff were handed over to them along with documents including bundles of Tellers, weekly Returns and Investigation Report of the External Investigator.

When on return to their office and they interviewed the suspects, the 2<sup>nd</sup> Defendant in her statement which they recorded under caution confirmed that there was over payment of bills in the company especially with regard to medical bills, waste bills. She attributed that to pressure of work on her. That she could not cross check all that was written as paid bills in the

weekly Returns by the 1<sup>st</sup> Defendant who was her Zonal Co-Ordinator. That she signed the Returns based on trust.

In his own statement, the 1<sup>st</sup> Defendant also admitted there was over payment of bills. That that was an over sight due to pressure of work on him also.

The witness stated the Defendants were just shifting blame to each other. That for instance, the 2<sup>nd</sup> Defendant stated in her Statement that there was a time she was called from Lagos by their Accountant that ₦150,000.00 was underpaid.

She called the 1<sup>st</sup> Defendant and informed him and he agreed and said it was an oversight which she asked him to pay up before noon that day which he did.

He also testified that they extended their investigation to the Abuja Environment Protection Board where the Defendants purportedly claimed to have paid over ₦1,000,000.00 between 2008 and 2009. In the Board's response to their investigation activity letter, it denied receiving payments whatsoever between 2008 & 2009 from the Company. The only payment they confirmed, was for 2006 to 2007 which was for about ₦78,175,000.00.

They also wrote investigation activity letter to Kingscare Hospital Abuja and in their response it was shown that the money it received was not up to what was claimed to have been paid.

Upon receipt of these responses, they took additional Statements of the Defendants but they could not in any way rebut the report from the Board and the hospital.

Dwelling further, the witness stated that the 2<sup>nd</sup> Defendant added that the 1<sup>st</sup> Defendant told her that some monies in his drawer were stolen by his boys ie staff of the company working under him. She told him she would confront the boys but he asked her to allow him do it but he never did.

When he interviewed the 1<sup>st</sup> Defendant in relation to this, he confirmed telling the 2<sup>nd</sup> Defendant so but stated that he was about confronting the boys when the matter was reported to their (witness's) office for investigation.

Concluding, the witness stated that they analysed the Returns and Tellers. If there is approval for, for example, ~~N~~100,000.00 to be paid, ~~N~~30,000.00 would be deducted and the approval of that payment of ~~N~~100,000.00 given and attached to the payment of ~~N~~30,000.00 and forwarded to the company. Thereafter this would be repeated.

The witness tendered the Written Statements of the Defendants which were admitted as follows

- (1) 1<sup>st</sup> Defendant's Statement dated 2/12/2009 and 24/7/2012-  
Exhibits F and F1 respectively

Four Statements of the 2<sup>nd</sup> Defendant dated 18/11/2009, 3/12/2009, 18/7/2012, 18/7/2012 – Exhibits G, H, I and J respectively

He also tendered other documents which were added as follows:-

- (1) Certified True Copy of Letter of Investigation Activities dated 10/5/2012 written by EFCC to Abuja Environmental Protection Agency – Exhibit k
- (2) Certified True Copy of Letter of Investigation activities dated 10/5/2012 written by EFCC to Kingscare Hospital- Exhibit L
- (3) Reply letter from Abuja Environmental Protection Board dated 20/7/2012 addressed to EFCC
- (4) Vanguard Media Ltd Weekly Return dated 7/12/2008 with the attachment – Exhibit O
- (5) Vanguard Media Ltd Weekly Return dated 4/5/2008 – Exhibit P
- (6) Vanguard Media Ltd Weekly Return dated 21/12/2008 with the attachment – Exhibit K
- (7) Vanguard Media Ltd Weekly Return dated 23/3/2008 with the attachment – Exhibit R
- (8) Vanguard Media Ltd Weekly Return dated 15/6/2008 – Exhibit S
- (9) Vanguard Media Ltd Weekly Return dated 16/11/2008 with the attachment – Exhibit T
- (10) Vanguard Media Ltd Weekly Return dated 1/6/2008 with the attachment – Exhibit U
- (11) Vanguard Media Ltd Weekly Return dated 5/10/2008, 3/2/2008, 13/4/2008, 6/7/2008 with the attachment Exhibit V to Y respectively
- (12) Vanguard Media Ltd Weekly inter office memorandum signed by the 2<sup>nd</sup> Defendant dated 25/2/2008 – Exhibit Z.

Under cross examination by the learned 2<sup>nd</sup> Defendant's counsel, the witness testified inter alia that they did not conduct any search in the 2<sup>nd</sup> Defendants house. He saw the 2<sup>nd</sup> Defendant in Lagos. She was heavily pregnant then. They called for the 2<sup>nd</sup> Defendants bank Statement of Account and went through it but did not see any trace of depositing money into it.

He insisted that about ₦1,000,000.00 was over paid to Abuja Environmental Protection Board. Between ₦600,000.00 and N800,000.00 was overpaid as medical bills to Kingscare Hospital Ltd.

The 2<sup>nd</sup> Defendant wrote her Statement in her handwriting. When cross examined by the 1<sup>st</sup> Defendant he insisted they extended investigation to Kingscare Hospital and Abuja Environmental Protection Board.

In the course of it, they found that the former confirmed payment of medical bills for services rendered to the staff of Vanguard Media Ltd. They never gave a breakdown of what was in their record. Based on what the Defendant said, the staff of the hospital used to come to their office and collect payments in cash.

The witness admitted he did not narrow down his investigation to the individual who received the money from Vanguard Media Ltd from Kingscare Hospital Ltd. He rather went straight to the Chief Medical Director of hospital who referred him to the Account Department and based on the record of the Vanguard Media Ltd with the hospital, all they could

trace was mentioned to them. They did not mention who collected the money.

Based on their investigations, the Board and Hospital confirmed to them there were payments in 2006 and 2007 of N78,000.00 and ₦175,000.00 or thereabout respectively. The evidence that the 1<sup>st</sup> Defendant paid monies to the two organizations is the acknowledgement of receipt of money from Vanguard Media Ltd tendered in Court ie Exhibits M and N.

When shown Exhibits M and N, he said the figures circled in the attachments and marked represent payments of various sums as received from Vanguard Media Ltd. The total of the sum is N619,440.00. The overpayment was not made to Kingscare Hospital. The hospital received the exact amount due to it but the Defendants claimed to have paid monies to it which they did not. The purported payment to the hospital was not made to it. When shown Exhibits O to Y, he stated they are some of the Returns they received. Some of them ie Exhibit O to Y were prepared by the 1<sup>st</sup> Defendant. There is no column for signature on them but he could see the 1<sup>st</sup> Defendant's handwriting in all of them.

The witness recalled Oladoyin & Co and said he extended investigation to it. That water bills payments were claimed to have been paid through the principal whom he invited. The later admitted it was his boy who was sent by him to go and deposit the money into the bank account of Water Board but the boy ran away with the money. He took the responsibility of refunding the money which he did.

There was no re-examination for the witness. He was accordingly discharged. With this the prosecution closed its case.

The defence next filed a No Case to Answer Submission. The prosecution responded to it. In a Ruling delivered on 16/10/2014, the Court dismissed it and directed the Defendants to open their defence. The 1<sup>st</sup> Defendant opened his defence by testifying for himself in evidence in chief as DW1.

He testified inter alia, that the nominal complainant was his former employer. He was transferred from Sokoko to Kaduna where he was promoted to Circulation Supervisor. He was transferred to Abuja in 2000. He was in 2004 promoted to the position of Zonal Circulation Co-Ordinator.

In the above capacity, his duties were to ensure that the Vanguard Newspapers were circulated to the various outstations and distributed to the various agents in various stations which include Kaduna, Lokoja, Zaria, Kano, Jos, Keffi, Lafia and Makurdi.

In 2006, the complainant engaged simultaneous printing which means it had a Barter agreement with Daily Trust where the papers are printed in Abuja at the Daily Trust Printing Press. This entails his downloading uploaded materials from the Head office of the complainant in Lagos. He ensured that the materials are ordinary prepared, paged and arranged to be taken to the press for printing. This entailed his working through the night to ensure that they met the deadline of 6am every morning when the papers would be on news stand.

After the sales of the newspapers, he collates the sales figures on sold and unsold papers. At the end of every week, returns were prepared by him for further information to the Lagos Head Office. From the sales figures, he is only permitted to make payments of his costs of sending the papers to the stations and maintenance of the circulation figure. Other payments like staff salary, Chairman's Guest House, Medical bills, environmental, solicitors fees, Business Premises get approval from Lagos through the 2<sup>nd</sup> Defendant - the Accounts Officer.

When approvals for these other expenses come through the 2<sup>nd</sup> Defendant to him, he will then make the payments to her. If money on ground is not up to what is stipulated in the approval, he would pay her according to what is available.

He never agreed with the 2<sup>nd</sup> Defendant to steal the Company's money. He did not steal any money belonging to his employer.

With regard to the 2<sup>nd</sup> Count of the charge, he reiterates that approvals from the Head office through the 2<sup>nd</sup> Defendant are always tendered to him before he made payment to her. He was not the one who made requisitions for such approvals.

With regard to the 3<sup>rd</sup> count, he says that payments were made to the 2<sup>nd</sup> Defendant as presented to him by her. Likewise for Count 4 of the charge.

Under cross examination by the 2<sup>nd</sup> Defendant's Counsel, the witness testified inter alia, that the 2<sup>nd</sup> Defendant was the Accounts Officer between



2007 and 2009. In vanguard, they work in what they call Checks and Balances. He was Departmental head in the Circulation Department while the 2<sup>nd</sup> Defendant was the Head in the Accounts Department. The overall Head was the Bureau Chief. In terms of date of employment, he is the senior to the 2<sup>nd</sup> Defendant.

The Company's solicitors have to apply to the Abuja Office through the Accounts Officer for payment of their fees. The application is routed to Lagos for approval.

It is not correct he was asked on 22/6/2009 to refund the sum of ~~N~~975,172.00. The boys working with him never stole any money. What happened was that when their agents made payment through the boys and he met one of their agents, he told him the boys did not give him the correct amount. For instances if they got N200.00 they would tell him it was ~~N~~80.00 that the ~~N~~20.00 is still debited to them. He informed the 2<sup>nd</sup> Defendant of this and that he was going to investigate it before the EFCC case came up which made it impossible for him to go further. Nobody ever took money from his safe in the office.

Dwelling further, he said he made information to Lagos showing payments have been made through the returns they prepare which are signed by the few of them. The returns are accompanied by the letter of approvals from the Lagos office. Where made available the receipts are attached to the returns. Where not available, the 2<sup>nd</sup> Defendant minutes the amount paid on the letter of approval.

When shown Exhibit F, he denied his evidence being different from what he said on it. He said pages 2 and 3 of Exhibit F confirms his evidence above.

When cross examined by the Prosecution Counsel, the witness testified that they had an Advert Manager and that as the Zonal Co-Ordinator he was the Head of Zonal Circulation Department.

He manages proceeds from the sales of the newspaper. The monies are kept in his car before payments are made into the Company's account.

As for the sum of ~~N~~1,650,000.00, payments are not done directly by him. He knows such money was given out to the 2<sup>nd</sup> Defendant but the approval was tendered to him for the preparation of their returns. He always gave out the money to the 2<sup>nd</sup> Defendant. The same thing happened with respect to the sum of ~~N~~879,795.00.

He testified further, that the Accounts Officer sends the Bills of the Abuja office to Lagos for approval. Once it is approved, he would release the money for payment of the Bill. Where what is approved is more than the funds they had at hand, what is available is paid. With respect to the sum of ~~N~~80,000.00 the witness testified that the sum was given on the approval brought by the Accounts Officer.

He confirmed having said there was over invoicing due to pressure of work. That over invoicing means making a payment without knowing he repeated the payment.

He is not in a position to say whether or not all these monies were taken for bills not paid. He was not the one who paid directly to the people mentioned. He does not have evidence to show the monies were paid.

In the absence of any question in re-examination, the witness was discharged.

In her own defence, the 2<sup>nd</sup> Defendant testified as DW2. She stated that she was employed by Vanguard Media Limited on 22/4/96 as an Account Assistant and worked in various Account Section until 2002 when she was promoted as Regional Officer and transferred to Abuja to head the Northern region. Her duties include:

- (1) To cross check the arithmetical accuracy of the return sheets in the Northern region
- (2) Confirm lodgments made in all the Northern region
- (3) Cross cheek advertisement debtors and advertisement records
- (4) Handling of supplement on its project in Abuja
- (5) Other directives from the Chief Accountant

By “northern region” she means the company’s offices in 15 Northern states under the Abuja office. By “returns” she means proposal of what the Circulation Representative wants to pay out from his sales in a particular week. The Return Sheets are prepared by Circulation Representative which is the 1<sup>st</sup> Defendant. She confirmed Exhibits O to Z shown to her were part of the Return Sheets though not complete. She did not sign any of them.

When she cross checked the Returns Sheets, they had a column for sales less expenditure and then the Balance of the money computed in them is taken to the bank. She does not play any role in taking the balance to the bank. She signed the Summary sheets but they are not in Court.

With regard to the Abuja Environmental Sanitation Board bill, she testified the personnel of the Board came to their office and sealed the office on sanitation offence. She, the Bureau Chief and Henry Umoru went to their office at Central area to find out why they sealed up their office. They gave them the bill of ~~N~~435,000.00 to pay. They pleaded with them and they opened their office because of their plea that their head office is in Lagos. She then wrote a memo to the Head office attaching the letter given to them by which they were to pay the bill.

When the bill was approved by the head office it was sent to the 1<sup>st</sup> Defendant for payment. This was because, in the company, it was the duty of the Circulation Rep who makes sales and disburses monies from them and takes the balance for lodgment in the bank.

When the bill was sent to the 1<sup>st</sup> Defendant for payment, he was making provision for it in his Returns Sheet. This is in the sense that he said he did not have the bulk sum of ~~N~~435,000.00 to pay. It is not true the 1<sup>st</sup> Defendant gave her the sum of ~~N~~1,065,000.00 to pay the environmental bill. The bill is a utility bill which is normally paid directly into the beneficiary account and it is the 1<sup>st</sup> Defendant who pays utility bills. She has never paid one.

Even at that, Vanguard Media Ltd is a big organization. Before you collect money from the Circulation Rep documents would be signed. If she collected the money to pay environmental bill, she would have signed for it. She did not sign any such document.

She is an Accountant and would not have collected ~~N~~1,065,000.00 against ~~N~~435,000.00 and did not pay the money.

With respect to payment of medical bills, they take treatments in Kingscare hospital. Sometimes if she was around when they come for their money, and were complaining they were not paid and yet in times of emergency they attended to them, she would intervene and meet the 1<sup>st</sup> Defendant and ask him why he did not pay them. Sometimes she would get him to allow her pay them and receipt of the hospital is issued to the 1<sup>st</sup> Defendant.

It is not true that the sum of ~~N~~879,795.00 was given to her to pay to the hospital for settlement of medical bills. This is because the money was not paid in bulk. It is not her responsibility to pay medical bills. The 1<sup>st</sup> Defendant does.

Testifying further, the witness denied bill being sent from Lagos to her to pay. She said all invoices are sent to the 1<sup>st</sup> Defendant as he is the one who makes payments from his sales.

There was an occasion there was an underpayment to the Bank in the sum of ~~N~~150,000.00. That was when she was away in Kaduna on official duty and the Chief Accountant called and informed her. On return when she

cross checked the return sheet and saw the mistake, and asked the 1<sup>st</sup> Defendant, he said it was pressure of work that made him make mistake. She told him the Chief Accountant said he should pay it back into the Company's bank account before noon that day and he complied and brought the teller to her and she sent it to the head office.

Another instance was when a memo was sent from the head office to her that they were going to deduct N972,000.00 from the 1<sup>st</sup> Defendant's salary. A copy of the memo dated 22/6/2009 was admitted as Exhibit CC.

Concluding the witness said it was possible for the 1<sup>st</sup> Defendant to send Returns Sheets to Lagos without her seeing it. If she was not around, payments are made but if he is not around, no payments are made. If she visits an outstation and not back, he prepares and sends Return Sheets to Lagos without her seeing it.

Under cross examination by the 1<sup>st</sup> Defendant's counsel the witness testified inter alia, that Exhibit CC which was shown to her was a correspondence from the Head Office to the 1<sup>st</sup> Defendant, a copy of which was sent to her by the Chief Accountant so that she would be aware of the deduction from the 1<sup>st</sup> Defendant's salary being the Regional Accounts Officer.

She explained that the ~~N~~150,000.00 the 1<sup>st</sup> Defendant was asked to pay back has nothing to do with solicitors fees, Abuja Environmental Protection Board Bill and Medical Bills – the subject matters of this case. That it was a miscalculation.

When shown Exhibits O to Y, she said they do not represent all the Returns Sheets. That they are expenses analysis. The lodgment Analysis where the Tellers are well written out are not among the exhibits shown to her.

She denied even telling the Court she signs return sheets on day to day basis. She conceded that most times before travelling out she signs blank return sheets for the 1<sup>st</sup> Defendant to file in and on her return she would cross check the return sheet.

She reiterated that when bills come from head office, they are sent to the 1<sup>st</sup> defendant as it is his duty to make sales and pay expenses from it and take the balance to the Bank. She does not make payments to third parties.

She stated that when she was held by the EFCC in Lagos and the 1<sup>st</sup> Defendant had not reported, in most statements she made she used plural terms like “we” since they promised her that if she spoke out they would release her. She cannot remember if she, in that condition said that if approvals comes from Lagos, she would get the cash from the 1<sup>st</sup> Defendant and make the payment to the recipient.

When shown Exhibit H she confirmed it was her statement.

When shown Exhibit D headed “Query” she confirmed it was addressed to her but denies that the use of the words “to you” therein does out mean she

was the one who collected and paid cash. She further denied making payments to third parties.

When cross examined by the Prosecution counsel, the witness reiterated being the Regional Accounts officer with her office in Abuja but that the 1<sup>st</sup> Defendant was in charge of payment of bills in Abuja Zonal Office. She agreed she is supposed to check the weekly return after preparation by the 1<sup>st</sup> Defendant and sign it before it is sent to Lagos. The weekly Returns include expenses being run by the Abuja Zonal office including payment of bills.

She denied being aware money was missing in the Abuja Zonal office though she said in her statement that the 1<sup>st</sup> Defendant told her money was being stolen from his vault in his office. She was not really aware until the External Auditors came. She denied the money stated in the charge sheet was the money that was stolen.

Dwelling further, she said she has no evidence to show money was paid to Abuja Environmental Protection Board and Kingscare Hospital. Likewise for money taken for payment of Business permit. By her understanding, money was not actually stolen from the Abuja office.

She concluded that as the Accountant, it was her responsibility to cross check and ensure every payment was in order. She performed her duties regarding the money being talked about.



There was no question in re-examination for the witness. She was accordingly discharged.

With this the 2<sup>nd</sup> Defendant closed her case.

The parties were next given time frames within which to file and exchange Final Written Addresses. While the Defendants complied after an extension of the time given to all the parties, the prosecution did not. Its right in this regard was accordingly foreclosed. The defendants did with the leave of Court adopt their said Addresses in Court on 12/10/2016.

I have read the said Defendants' counsels' Final Written Addresses. The cardinal issue that calls for determination is whether or not the prosecution has by the evidence placed before the Court vis-à-vis that of the Defendants in defence proved the ingredients of the offences with which the Defendants have been charged beyond reasonable doubt so as to justify convicting any or both Defendants of the offence(s).

The gravamen of the 4-Count Charge against the Defendants is conspiracy to do an illegal act (ie theft) punishable under Section 97(2) of the Penal Code and dishonestly taking out of the possession of Vanguard Media Limited the sums of ₦1,065,000.00, ₦879,795,000.00 and ₦ 80,000.00 between 2007 and 2009 without its consents each of which offence is punishable under Section 287 of the Penal Code Act, Cap 532 LFN 2004.

Under Section 36(5) of the 1999 Constitution of Nigeria (as amended) every person who is charged with a Criminal Offence is presumed to be innocent until he is proved guilty. The Evidence Act 2011 in Section 135

makes provision with regard to proof of allegation of criminal offence. Section 135(1) to (3) provides thus:

- “(1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.
- (2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to Section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.
- (3) If the Prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on the Defendant.”

From the forgoing provisions, there no gainsaying the fact that it is the law that the burden of proving the commission of an alleged criminal offence lies on the prosecution to do so beyond reasonable doubt. For the prosecution to be said to have proved the commission of the offence beyond reasonable doubt, it must prove vide credible evidence all the ingredients of the offence. Where the prosecution is found wanting in any way in this regard, or the evidence adduced is deficient or there is reasonable doubt on any of the ingredients, the Defendant shall be entitled to have the doubt resolved in his favour and for that reason discharged and acquitted of the offence charged. See:- ALIU V. STATE (2015) ALL FWLR (Pt. 782) p. 1706; and UDO V. STATE (2016 ) 12 NWLR (Pt. 1525) p.1.

In this case the Defendants are charged with the offences of conspiracy to do an illegal act and stealing punishable under Section 97(2) and 287

respectively of the Penal Code Act. Section 286(1) defines theft in these words:-

*“Whoever is intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property in order to take it is said to commit; theft”*

In MUHAMMED & ANOR V. THE STATE (2000) 1CLRN P.66, the Court explained that the ingredients of the offence of theft are:-

- (i) Dishonest intention to take the movable property
- (ii) Absence of consent of the owner of the movable property
- (iii) Movement of the said property.

The offence of criminal conspiracy on its part is provided for in Section 96 of the Penal Code as being:

“When two or more persons agree to do or cause to be done

- (a) An illegal act; or
- (b) An act which is not illegal by illegal means.”

Such an agreement is called criminal conspiracy”

The learned author S.S. Richardson at page 58 of his book NOTES ON THE PENAL CODE LAW explained that the ingredients of the offence which the prosecution needs to prove in order to secure a conviction of conspiracy are:-

- (I) an agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means

- (II) where the agreement is other than an agreement to commit an offence, that some act besides the agreement was done by one or more of the parties in furtherance of the agreement
- (III) each of the accused individually participated in the conspiracy.

In NGUMA V. IMO STATE (2014) 7 NWLR (Pt. 1405) The Supreme Court while dealing with the issue of criminal conspiracy, held that in a charge of conspiracy all that is required is evidence of agreement of the parties express or implied before there can be conviction – The offence is complete and established when there is established an agreement to do an unlawful thing and not in doing the thing.

Applying the foregoing principles relating to the charges against the Defendants, the crucial issue is whether or not the evidence adduced by the prosecution is such that it can be said the prosecution has proved beyond reasonable doubts the ingredients of either one or both offences?

For the reason that the Defendants were both charged with theft of the monies and conspiracy to steal the monies and given that the latter were proved renders the former proved whether or not either party did not take part in the act, the Court deems it fit to consider both offences together. To determine these, the Court considers it necessary to review the evidence led by the prosecution witnesses ie the PW1, PW2 and PW3 first before proceeding to the evidence of the Defendants as the burden is first on the prosecution to prove the offence beyond reasonable doubts before the Defendants will be required to prove the doubt. See:- Section 135 (3) of Evidence Act 2011. The gravamen of the evidence of the PW1 is that in

2009, there were stories of fraud in the affairs of the complainant Vanguard Media Ltd wherein he occupies the position of General Manager (Publication) and Editor-in-Chief. In consequence of this, the Executive Chairman of the Company appointed special investigator to wit L.A. Ajayi & Company to look into the finances of the company. After the exercise, the latter submitted its Report to the former and he was instructed to invite the Economic and Financial Crimes Commission (EFCC) to look into the Report and help him recover his money that was taken unlawfully and for the law to take its course. He complied vide a letter admitted as Exhibit A.

Under cross examination, he admitted inter alia, that he was not in a position to know the period during which there was financial misappropriation in the company. He did not know how much was misappropriated in the Abuja office of the company.

The PW2 on his part testified in chief that he was on 15/9/2009 engaged by the chairman of Vanguard Media Ltd to carry out a special investigation into the financial operation of the Company. He and five members of his staff visited the outstations of the company including Abuja. They examined the financial records to wit: weekly returns from the outstations to the Headquarters.

From the proceeds of sales of newspapers, each outstation was to pay for expenses incurred by them and remit the balance to the company's bank account. While they were reviewing the weekly Returns in the case of Abuja they discovered some anomalies. An example was when there was a letter from the office of Olajuyin & Co. (solicitors) demanding for a sum of

~~₦650,000.00~~ for legal services rendered. The Abuja office used photocopies of this letter to take money from the circulation receipts at various times the total of which was ~~₦1,060,000.00~~. There was no evidence of actual payment. If the sum of ~~₦650,000.00~~ is deducted from ~~₦1,060,000.00~~ there was an excess in the money taken in the sum of ~~₦410,000.00~~

There was also a bill for solid and liquid waste in the sum of ~~₦435,000.00~~. At various times the total amount taken was ~~₦1,500,000~~ and what was used to support the taking was a memo written by the Abuja Regional Accounts Officer – the 2<sup>nd</sup> Defendant. If ~~₦435,000.00~~ is taken from ~~₦1,500,000~~ the excess taken was ~~₦1,065,000.00~~.

Testifying further, he stated that the sum of ~~₦1,499,275.00~~ was taken as medial bill at various times without any supporting document. The sum of ~~₦1,737,400.00~~ was also at various times taken for water bill without any evidence of payment.

There was also a bill from Abuja Municipal Area Council in the sum of ~~₦80,000.00~~ for the Business Premises permit. The amount was taken twice. First, the Defendants attached Demand Note from the council when the amount was taken. When they took the money again, they submitted photocopy of the official receipt received from the council.

He issued queries to the Defendants and they responded to same but their response could not clear them. He thereafter presented his report to the chairman.

While a Certified True Copy of the Query was admitted as Exhibit D, pages 1 to 92 of the Report was admitted as Exhibit E.

Under cross examination by the 2<sup>nd</sup> Defendant's Counsel, the witness admitted inter alia, that he did not find any discrepancies in the income of the Abuja station. The discrepancies were in the expenditure. He cannot remember the expenditure of the Abuja Station.

He would not know how long Oladuyin & Co was retained by the company. All he knows was that photocopy of letter from the company were used to take money from the complainant. There is no evidence to show the branch paid any money to the law firm. Apart from the Demand Notice, there was no other evidence to show money was not paid to the firm.

Under cross examination by the 1<sup>st</sup> Defendant's counsel, the witness admitted he did not write to Oladuyin & Co to confirm how much he was paid. He also did not write to the Abuja Environmental Protection Board or any of the organizations mentioned to confirm whether any money was paid to them.

The prosecution's PW3 Mr Ahmed Mohammed Ghali of EFCC gave account of how following Petition alleging fraud in the complainant was received by his office and PW2 report was forwarded to his office to aid its investigations. He testified to how the PW1 adopted the petitions in his office and the PW2 volunteered statements to him and how he interviewed the Defendants and recorded their statements under caution. He said that

based on the Defendants' Statement, they agreed they over paid bills of the company. That they were however just shifting blames to each other.

As part of his investigation activities, he wrote a letter to Abuja Environmental Protection Board with regard to the over ₦1,000,000.00 the 1<sup>st</sup> Defendant claimed he paid to it between 2008 and 2009 but in their response they confirmed having received payments from the company for 2006 to 2007 for about ₦78,175.00. He and his team also wrote a letter to Kingscare Hospital and in its response it stated the amount it received was not up to what was claimed to have been paid to it.

Under cross examination by the 2<sup>nd</sup> Defendant's counsel the witness did state that in the course of their investigation, they found out that Kingscare Hospital Abuja confirmed payment of medical bills for services rendered to the staff of Vanguard Media Ltd. They however never gave a breakdown of what was in their records. The staff of the hospital used to come to the company's office to collect cash and he did not narrow his investigations to the individual who received the money from Vanguard Media Ltd. He also said that they found out that Abuja Environmental Protection Board also confirmed the company made payment to it in 2006 and 2007 in the sum of ₦78,000.00 and ₦75,000.00.

As for water bills payments he also interviewed the principal of Olajuwon & Co (Mr Abimbola) and he said his boy whom he sent to go and pay the water bill in the bank Account of the water board ran away with the money and he took the responsibility of refunding the money which he did.



From all these pieces of evidence adduced by the prosecution witnesses, it cannot be said there is any specific evidence pinning the two Defendants down to an agreement to do an illegal act ie theft of the complainant's ₦1,065,000.00, ₦879,795.00 and ₦80,000.00 as well as physically removing the sums between 2007 and 2009. The evidence of the PW3 regarding how the staff of Kingscare Hospital used to come and collect cash in settlement of its medical bills; the evidence that the hospital failed to disclosed how much was paid to it in its records and his evidence too regarding what the principal of the law firm told him with respect to how his boy ran way with the money he gave him to pay to the Water Board in settlement of the water bills but which he refunded all cast serious doubts over the allegation that the Defendants agreed to and did steal the complainants sum of money for payment of medical bills and water bills. Beside, the PW3 gave contradictory evidence when he said Kingscare Hospital failed to disclosed how much, from its records, was paid to it as medical Bills when the same PW3 tendered Exhibit N which shows the hospital stated it receive a total sum of ~~₦~~619,440.00 from the Defendants between 2008 and 2009. The settled law is that a witness who gives contradictory evidence on a material fact is not worthy of belief. By this, the evidence of PW3 does not induce belief in the Court.

Even the evidence of PW2 under cross examination did not help matters with respect to payment made for legal service, medical bills and waste bills. The witness did admit there was no evidence to show the legal fees were not paid to the law firm of Oladoyin & Co for its services. He also admitted he, as an investigator engaged by the Chairman of the complainant to investigate the financial dealings did not write to the said

law firm of Oladmuyin & Co to confirm how much was paid to it for its legal services. He also stated they did not write to Abuja Environmental Protection Board and the Kingscare Hospital Abuja to confirm whether or not money was paid to them and how much for the waste bills and medical bills respectively. If the PW2 as the financial expert and investigator charged with the duty to investigate and determine the alleged financial misappropriation in the Abuja office of the complainant where the Defendants worked did not write and obtain confirmations from the Kingscare Hospital Ltd how much of the complainant's money was misappropriated by way of medical bills, did not write to the law firm to ascertain from it how much was paid to it as to ascertain how much of the complainant's money was misappropriated by way of legal fees, then how did the PW2 as the financial investigator come to the conclusion that the sums of money mentioned in the charge were misappropriated by the Defendants following their agreement to do so? I hold the view that written confirmation from these organizations of how much the Defendants paid to them vis-à-vis the sum they claimed to have expended on these services would have served to project clearly before the Court the sums of money actually stolen by the Defendants. In the absence of these, it is the humble view of this Court that the complainant's allegations per the sums of money listed in the Counts of the charge as stolen by the Defendants remain in the realm of suspicions as rightly submitted by the 2<sup>nd</sup> Defendant's counsel. The position of the law is that suspicions no matter how strong cannot serve to ground a conviction. The effect of the above identified lapses on the investigation activities of the PW2 and PW3 is that there are serious doubts cast on the case presented by the prosecution with the result that it cannot be validly held it has proved the allegations of commission of the

offences of conspiracy and theft of the sums of money mentioned in the charge beyond reasonable doubts as required by Section 135(1) and (2) of the Evidence Act 2011.

In coming to this view, the Court is not oblivious of Exhibit D which is the PW2's Query to the 2<sup>nd</sup> Defendant. In relations to this, the PW2 testified that the latter and the 1<sup>st</sup> Defendant responded to the Query but their response did not clear them. Whilst the various sums of money over which the query was issued were set out in the Query, the Defendant's response which the PW2 said did not clear them was not placed before the Court in evidence so as to enable the Court examine contents of both documents and determine that indeed the Response did not clear the Defendants. The bases of the PW2's conclusion is thus not before the Court for its guidance and this being the case, the PW2's conclusion cannot be said to have been proved beyond doubts.

The Court is equally not unmindful of Exhibits O to Y tendered by the PW2. Even these are not helpful to the prosecution's case. As rightly submitted by the learned Defendants counsel, these documents which were identified as weekly Returns of the Abuja station were simply dumped on the Court. The PW2 did not lead evidence on them to illustrate for the guidance and benefit of the Court how the documents show the complainant's monies for legal fees, water bills, hospital bills, Business Permit and Abuja Environmental Protection Board Bills misappropriated by the Defendants. As it is not part of the duty of the Court and as such the Court cannot launch into an examination of them so as to identify how they disclose the

allegedly misappropriated funds, the documents serve no useful purpose in proof of the prosecution's case beyond reasonable doubts.

In totality, it is the respectful view of the Court that much as the complainant might have suffered some financial losses in the operation of its Abuja Station between 2008 and 2009, the evidence adduced by the prosecution before the Court could not in unequivocal terms establish that the sums of money listed in the charge were stolen by the Defendants. As earlier said, the burden is first on the prosecution to prove beyond reasonable doubts every ingredient of the allegation of conspiracy and theft of the monies by the Defendants before the burden will swing to the Defendants to prove the reasonable doubts. The evidence of the prosecution witnesses, with respect, do not measure up to the standard of proof required by law which is proof beyond reasonable doubts. As the burden is on the prosecution to prove its counts of the charge beyond reasonable doubts and not for the Defendants to prove their innocence notwithstanding the lapses admitted by the Defendants in their statement in handling the finances, the prosecution's case, at best succeeded in raising suspicious matters or issues against the Defendants but did not prove them. As aforesaid, suspicions no matter how grave cannot result to a conviction. It is for these reasons that the Court resolves the sole issue raised above against the prosecution in favour of the Defendants. In consequence the prosecution's case fails. The Defendants are accordingly discharged and acquitted of each of the Counts of the charge.

**SGND.  
HON. JUDGE  
26/1/2017.**

**LEGAL REPRESENTATIONS**

- (1) Mrs. I. G. Odibo for the Prosecution.
- (2) Mr. Steve Imokhe/Mr Bassey Ewang for the 1<sup>st</sup> Defendant
- (3) Chief A. O. Ajana/Mr. Mr. S. G. Ikuesan/Mr. O. Bamigboye for the 2<sup>nd</sup> Defendant.