

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 16
TODAY, WEDNESDAY THE 16TH DAY OF JUNE 2021

CHARGE NO. ID/154^C/2011

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

1. MR. FRANCIS ATUCHE
2. MRS. ELIZABETH ATUCHE
3. MR. UGO ANYANWU

DEFENDANTS

JUDGMENT

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OPENING

By the amended Information before the court, the 1st and 3rd Defendants stand accused of many Counts of conspiring to steal, and stealing, various sums of money said to be the property of Bank PHB Plc. by the grant of fictitious loans in the total sum of N18, 200, 000, 000.00k (Eighteen billion, two hundred million naira). They also stand accused in other Counts of stealing money from this bank and using the money to buy its shares for certain named companies. There are allegations of a conspiracy to steal, and of stealing, concerning two of those companies that were made against all three Defendants.

The 1st Defendant was the Managing Director and Chief Executive Officer of the bank whilst the 3rd Defendant was its Chief Financial Officer. From the clear, undisputed evidence, the 2nd Defendant is the wife of the 1st Defendant.

Bank PHB Plc. ("Bank PHB" or "the bank") was classified as distressed by the Central Bank of Nigeria after a special examination of its financial records was

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conducted by the Central Bank and the Nigerian Deposit Insurance Corporation in August 2009. After this "stress test" (as it was referred to in evidence), the Central Bank of Nigeria, as a regulator of all banks, exercised its powers to intervene in the management and affairs of the bank. It removed the 1st Defendant from office in October 2009, appointed a new Managing Director in his place, with the bank thereafter undergoing other changes including being renamed "Keystone Bank Plc.". The report of the joint examination of the Central Bank of Nigeria ("the CBN") and the Nigerian Deposit Insurance Corporation (the NDIC") was sent to the Economic and Financial Crimes Commission ("the EFCC") whereupon a number of loan transactions that the bank had carried out became the subject matter of criminal investigation. This investigation led to the filing of this case against the Defendants. All this is undisputed from the evidence before me.

When they were arraigned before this court, the Defendants each answered that they understood the allegations made in the Counts of the Charge that related to them. Whilst the 2nd and 3rd Defendants each pleaded that they were not guilty of all such Counts that concerned them, the 1st Defendant made known his objection to each such Count of the Charge that concerned and affected him. In accordance with the requirements of the law, a plea of "Not Guilty" was entered for him.

The matter proceeded to trial, with the Prosecution calling twelve witnesses in all. Two of its witnesses were recalled by the Defence for further cross-examination. Upon the close of the case of the Prosecution on the 4th of March 2013, each of the Defendants filed applications seeking Orders that they be discharged on the ground that the Prosecution failed to make out a case fit for them to answer. Their respective applications were dismissed whereupon the 1st and 2nd Defendants, starting first, opened their defence on the 17th of July 2013.

However, trial came to be stalled during the hearing of the defence case and when the 1st Defendant was testifying as the ninth Defence Witness ("DW9"). This was upon the Order of the Court of Appeal that a certain interlocutory

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application that had been filed by the 1st and 2nd Defendants and dismissed by this court be heard all over again before another judge of the High Court of Lagos State. Eventually, and with the disposal of that application; and of a number of interlocutory appeals at the Court of Appeal, and then the Supreme Court, trial resumed on the 20th of February 2018, four and a half years later, with the 1st Defendant continuing his testimony. Fifteen witnesses in all testified for the 1st and 2nd Defendants; whilst the 3rd Defendant called four witnesses including him. The case of the 3rd Defendant was closed on the 5th of December 2019 after which the matter stood adjourned for Counsel to deliver their respective final addresses.

Beyond the period of time when proceedings were stayed because of interlocutory appeals, there were also, in the course of trial, a number of interlocutory applications that added to the lifespan of the case. Trial was a lengthy process, given the very large volume of evidence that was presented. The government-imposed restriction on movement in order to curtail the spread of the novel coronavirus disease, COVID-19, and the unfortunate damage and destruction, and looting, of the courts situate in the Lagos Judicial Division of the High Court of Lagos State during the civil unrests of October 2020, contributed to further delay at the closing stages of this case. Then, just when judgment was to be delivered, the Judiciary Staff Union of Nigeria embarked upon a period of industrial action with its members staying away from work all through the time.

Thirty-one witnesses testified in all, with much more than the listed four hundred and nineteen documents being received in evidence bearing in mind other fundamental documents that were attached to many of them.

THE CASE

It is the case of the Prosecution that after first engineering the disbursement of various sums of money running into billions of naira into fictitious bank accounts held at Bank PHB – and this, by way of contrived loan agreements, the 1st and 3rd Defendants, the bank officers, in their continuing acts of fraud and

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deceit, then caused those sums to leave the bank and be deposited in bank accounts in other banks. The Prosecution's case is that they did so by fooling the operators of those accounts in other banks into believing that the sums transferred were from investors desirous of buying the bank's shares during its on-going public offer for subscription to those shares. At that point in time (this was the later part of the year 2007 to the early part of 2008), the bank was engaged in a Public Offer of its shares. Indeed, the facts, circumstances and events of this case all revolve round that 2007/2008 Initial Public Offer ("the Public Offer") embarked upon by the bank.

The evidence is that acting on the false representations of the 1st and 3rd Defendants, the operators of the accounts in the other banks to which the monies were transferred (identified to be a certain Mrs. Elizabeth Ebi who testified as the Prosecution's third witness ("PW3"), as well as one Mr. Peter Ololo}, and who apparently were well-recognised in the field as owners and managers of stockbroking and securities trading companies, not knowing that the monies in question were the subject matter of contrived loans granted their companies and other companies affiliated to them at Bank PHB, in turn issued a number of cheques in various sums as directed, in favour of the "Bank PHB Public Offer" upon receipt of the funds.

The case before the court is that the cheques, in fact, were used to pay for shares purchased in the name of some fourteen companies most of which were shell companies, lifted off the shelf as it were and put into play by the 1st and 2nd Defendants (particularly the 1st Defendant) in a surreptitious way for their own personal gain. The case, further, is that some of the dividend that accrued from those shares was paid into bank accounts that were operated (again in a clandestine manner) by the 1st Defendant through the bank's subsidiary company called "Mortgages PHB Limited". The evidence is that there were two such accounts in use – a fixed deposit account held in the name of a company named as "Claremount Management Services Limited", and a current account held in the name of a company named as "Claremont Nigeria Limited". The names are apparent on the Statements of Account of both companies which

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are before me as Exhibits **P210** and **P211**, respectively. According to the Prosecution, both accounts were held with, and operated at, Mortgages PHB.

The Prosecution's case is that another bunch of accrued dividend was cleared at the bank and paid into the suspense account of its Treasury Operations Department (otherwise referred to as "TROPs") and then converted into Commercial Paper investments booked in the name of yet another company (not one of the fourteen) that happened to be part-owned by the 2nd Defendant – a company named as "Land Partners Limited".

The case is that withdrawals were made from the mentioned bank accounts at Mortgages PHB, and that the Commercial Paper investments booked by TROPs for Land Partners Limited were liquidated in part from time to time, with the monies so withdrawn put to personal use by the 1st and the 2nd Defendants.

Thus, by the first ten Counts of the 27-Count Amended Information dated the 1st of June 2011, the 1st and 3rd Defendants were charged with conspiring to steal and stealing monies being property of the bank by fraudulently describing those sums to be loans that were thereupon converted to personal use. The companies to whom the allegedly contrived loans were said to have been granted by the bank, and to whom the respective sums were disbursed, are five. They are:

- 1) **Futureview Securities Limited** – said to have been granted a loan of N3, 500, 000, 000.00 (Three billion, five hundred million naira),
- 2) **Extra Oil Limited** – said to have been granted a loan of N3, 900, 000, 000.00 (Three billion, nine hundred million naira),
- 3) **Resolution Trust and Investment Company Limited** – said to have been granted a loan of N3, 300, 000, 000.00 (Three billion, three hundred million naira),
- 4) **Petosan Oil and Gas Company Limited** – said to have been granted a loan of N4, 000, 000, 000.00 (Four billion naira), and
- 5) **Tradjek Nigeria Limited** – said to have been granted a loan of N3, 500, 000, 000.00 (Three billion, five hundred million naira).

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As I said, the Prosecution's case is that none of these companies were ever aware of the loans granted them. Four of them were not aware of the bank accounts opened for them in consequence of those loans. The only one that the Prosecution says acknowledged the bank account to which the loan sums allegedly granted it were disbursed – this was Petosan Oil and Gas Company Limited – had only just opened the account but said (through its Managing Director, the earlier-mentioned Mr. Ololo) that it had not applied for a loan, nor was it aware of the disbursement of loan sums into its account.

From the evidence, the turnaround was fast. Within a matter of four to five days, the monies that were credited as loans exited to the other banks.

The remaining seventeen Counts (Counts 11 to 27) accuse the Defendants of conspiring to steal and stealing monies property of the bank by using monies fraudulently described as loans and converted to their use, to buy shares of the bank in the name of the fourteen companies. Counts 23, 25 and 27 are the only Counts that concern the 2nd Defendant in this regard and in the entire body of the Charge. By those three Counts she is accused (in Count 23) of entering into a conspiracy with the other two defendants to steal the aggregate sum of N5, 737, 500, 000.00k being the property of the bank, and by Counts 25 and 27 she alone is accused of stealing the respective sums of N2, 868, 750, 000.00k (which add up to be the amount that is the subject matter of Count 23) by fraudulently converting those sums and using them to buy shares in two companies of which she is said to be a part-owner. The two companies are named to be Ghazali Yakubu Investment Limited and AFCO Associates Limited. Whilst she owns the majority of the shares of Ghazali Yakubu Investment Limited (80 per cent) with a certain Victor Udeh owning 10 per cent and one Grace Atuche (said to be a relative of the 1st Defendant) the remaining 10 per cent, she and the 1st Defendant own equal parts of the shares of AFCO Associates Limited. This is clear from the incorporation papers of the two companies, Exhibits P78 and P83, respectively.

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The companies that are the subject matter of Counts 11 to 27 with the respective sums of money that relate to them, according to the Charge, are as follows:

Guesstrade Services	N2, 390, 625, 000.00k
Sentron Trading Limited	N1, 912, 500,000.00k
Montrax Investico	N1, 912, 500,000.00k
Claremount Asset Management Limited	N3, 825, 000, 000.00k
Arabian Probit Management	N2, 390, 625, 000.00k
"Clearville" Business Support Limited	N2, 390, 625, 000.00k
Commercial Trading and Services Limited	N1, 912, 500,000.00k
Trenton Trade Limited	N1, 912, 500,000.00k
Consolidated Business Support Limited	N2, 390, 625, 000.00k
Noelle Investment Limited	N1, 912, 500,000.00k
Stamford Global Concepts Limited	N3, 825, 000, 000.00k
Felimon Enterprises	N3, 825, 000, 000.00k
Ghazali Yakubu Investment Limited	N2, 868, 750, 000.00k
AFCO Associates Limited	N2, 868, 750, 000.00k

According to the Prosecution, the 1st and 3rd Defendants made an oral arrangement with Mrs. Elizabeth Ebi and Mr. Peter Ololo to have their stockbroking and securities trading companies act as designated receiving agents in a particular regard, over and beyond the normal course, during the bank's Public Offer in order to channel the stolen monies through them. The evidence (from one Mr. Diamond Uju, PW1, a Director and Manager of Extra Oil Limited) is that all stockbroking companies act as receiving agents at public offers and in that role they collect ("receive") subscription monies from intending purchasers of shares placed on offer by a company and make returns of those payments.

The Prosecution presented evidence that apart from the matter of acting as receiving agents for certain investors that the bank would itself put forward through her company, Mrs. Ebi had also, by herself, given to the 3rd Defendant the names of a number of companies for whom she wanted preferential allotments of the bank's shares. It is said that she knew the 3rd Defendant quite

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well, him having audited the books of one of her companies during the time he worked with the accounting firm, "PriceWaterhouseCoopers" (also referred to during trial as "PWC"). The 3rd Defendant confirmed this close working relationship and testified that it continued after he joined Bank PHB with Mrs. Ebi's company being engaged, through him, in a number of investment banking transactions with the bank. The companies Mrs. Ebi had given the 3rd Defendant for the sake of the preferential allotment of shares, it is said, included three, named to be Futureview Securities Limited, Extra Oil Limited and Tradjek Nigeria Limited. The case of the Prosecution is that those were the three companies from Mrs. Ebi with which false loan accounts were opened and into which fake loan sums were disbursed on the basis of fictitious loan agreements.

From the evidence presented by the Prosecution, the genesis of the oral agreement to act as a receiving agent for certain investors that came from the bank was the fact of Mrs. Ebi's company, Futureview Financial Services Limited, having been dropped as an issuing house for the Public Offer but yet having to bear liabilities as an underwriter of the Offer. The evidence is that Mrs. Ebi (who I shall otherwise refer to as "PW3") then approached the 1st Defendant and asked that she be compensated for this change in circumstance. The 1st Defendant it is said, agreed, and asked her to work out "the details" with the 3rd Defendant. And so, an agreement was made by her and the 3rd Defendant that her company would be given the vantage position of receiving a certain class of subscriptions – those coming from foreign investors who wanted to subscribe to the bank's shares during the Public Offer. According to the evidence, it was agreed that upon receiving those funds from the bank, she would then make payment on behalf of the foreign investors by issuing cheques in return in favour of the Public Offer. As a receiving agent, she (that is, her company) was to earn a statutory fee calculated on the basis of the amount of money that she received from the bank on behalf of the foreign investors and then, in turn, paid over for shares. That fee, according to the evidence from the Prosecution, was understood to be the compensation she had asked for upon

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her company being dropped as an issuing house. The case, further, is that it was on the basis of this oral agreement that PW3 then gave to the 3rd Defendant the bank details of her company, Futureview Financial Services Limited, in order to have those monies transferred to her by the bank.

The evidence shows that very early in January 2008, payments (also termed "inflows") were made from the bank (and via funds transfer transactions conducted by its Treasury Operations Department) to Mrs. Ebi's company, Futureview Financial Services Limited. Those payments were in tranches. They were made into the company's bank accounts at Intercontinental Bank, First Bank of Nigeria Plc. and Oceanic Bank International Plc. The Prosecution's case is that these monies were not used to buy shares for foreign investors as had been made out to Mrs. Ebi. Indeed, the bank had put out a public notice soon after (evinced by the copy of the *ThisDay* newspaper publication of the 8th of January 2008 that is before me as Exhibit **D99**) stating that the foreign investment part of the Public Offer (termed "Global Depository Receipts") had been cancelled. The evidence shows that upon receiving the monies, Futureview Financial Services Limited issued a number of cheques dated the 7th of January 2008 in favour of the Public Offer.

The case is that unknown to Mrs. Ebi (PW3), those cheques were used instead to pay for shares bought in the name of some of the companies that are the subject matter of Counts 11 to 27 of the Charge. (Other cheques were issued by Mr. Ololo's companies.) The evidence is that only some of those companies (which were Nigerian companies in view of the cancellation of the foreign investors' participation) had records at the Corporate Affairs Commission whilst others had no registration records at all. And with the ones that were truly incorporated, according to the Prosecution, letters written by the investigating authority – the Economic and Financial Crimes Commission – to them at their stated address received no response.

The evidence, further, is that as at the time the 1st and 3rd Defendants were making the oral agreement with PW3 as alleged, the part of the Offer that

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concerned the receipt of foreign investors' payments was still very much in contemplation. The prospectus for the Public Offer, Exhibit D21, by which applications were to open on the 19th of November 2007, lists the Global Depository Receipts as being part of the Offer at that point in time.

With regard to Mr. Peter Ololo, the case simply is that he had agreed to receive funds from the bank on behalf of the bank's investors and which monies he would in turn use to pay for shares that were to be bought during the Offer. He wrote in his Statement, Exhibit P195, that this arrangement was at the instance of the 3rd Defendant. He said he was unaware of the fact that the monies came from loan facilities "granted" his companies by the bank as his companies had never applied for those particular facilities. The funds, from the evidence, were transferred by the bank into the accounts in other banks of four of his companies also very early in January 2008. These four accounts at other banks belonged to his companies named to be Resolution Securities Limited, Falcon Securities Limited, Pine Petosan Limited and Resolution Trust and Investment Company Limited. The evidence from the Prosecution is that unknown to him, those funds – paid into the four companies' accounts at Zenith Bank Plc. and Oceanic Bank International Plc. – were monies the bank's records portrayed to have been loaned by Bank PHB to two companies that belonged to him, Petosan Oil and Gas Company Limited ("Petosan") and Resolution Trust and Investment Company Limited ("Resolution Trust"), and for whom loan accounts had been opened at Bank PHB.

The case of the Prosecution is that there had to be bank accounts in existence in order to enact the scheme of fraud – the scheme of channelling the funds of the bank into the purchase of shares for the 1st and 2nd Defendant's companies under the guise of loans given to other persons (the five companies that are the subject matter of Counts 1 to 10), and which loans would appear to have been used by those other companies as they wished. And so the allegation, again, is that bank accounts were devised and contrived for the five companies to whom loans had ostensibly been granted so that the monies in issue may be

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put in their hands and at their disposal for use in the manner clandestinely determined and directed by the Defendants towards their intended goal.

With regard to Mrs. Ebi (PW3), the Prosecution as I stated earlier says that three of the companies whose names she had given to the 3rd Defendant as intended beneficiaries of preferential allotments were used by him instead to open bank accounts behind her back. In the case of Mr. Ololo, the evidence from the Prosecution is that loans he never applied for were supposedly granted to his companies, Petosan and Resolution Trust. The "loan" sums were deposited into an account he had only just opened in the bank for Petosan Oil and Gas Company Limited after being solicited ("marketed") by the bank to open that particular account, whilst a fictitious loan account was said to have been created for Resolution Trust, different from that company's already existing account at the bank. This was the evidence presented by the Prosecution.

The bank accounts of the three companies from PW3 were opened on the 31st of December 2007 after the 3rd Defendant had sent an email of the same date (Exhibit P96) to that effect to the then head of the department in charge of opening accounts. This department was named as the "Centralised Shared Services" unit (or "CSS" for short). The person to whom Exhibit P96 was sent was one Mr. Alex Ojukwu. He testified before me as PW8. With loan accounts in the name of those three companies having been opened, the monies in issue were immediately disbursed into them that same day. The Prosecution's case is that there were no account opening documents to support the legitimate opening of those accounts. Instead, the accounts were opened on mere "paper instructions" but immediately, or automatically, flagged with a cautionary "Post No Debit" caveat for that reason. Debits were however made a few days later, and on the 2nd and 4th of January 2008 when all of the monies disbursed into the loan accounts took flight from the bank. This is the evidence presented by the Prosecution.

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As I said, payments of alleged loan sums were also made into Mr. Ololo's Petosan and Resolution Trust accounts. This, from the evidence – their respective Statements of Account, was on the 27th of December 2007.

It is central to the case of the Prosecution that:

- there were no requests by the five companies that loans be granted to them;
- apart from Petosan Oil and Gas Company Limited that had just opened an account, the companies made no applications for the opening of accounts for them and did not know of the existence of the accounts, and
- they equally issued no instructions that the monies lodged in those accounts, being apparent loan sums of which they had no idea, be transferred to accounts in other banks.

The Prosecution led evidence to show that the monies left the coffers of Bank PHB in tranches upon instructions issued by the 3rd Defendant (via his emails, Exhibit P97, sent on the 2nd of January 2008, and Exhibit P95, sent on the 4th of January 2008) to a certain Oby Onwuakpa who headed the bank's Treasury Department. The trail of email messages contained in each of Exhibits P97 and P95 show that Oby Onwuakpa, in turn, issued a directive to the department said to be responsible for giving effect to the Treasury Department's transactions – this is TROPS, the Treasury Operations Department – to carry out the transfers. The officer at TROPS who was to do this, and who did carry out the instructions, testified as PW7. She was a Ms. Ifetayo Obi. According to her, she had raised a query upon receiving the first email, Exhibit P97, when she endorsed on it the words, "outstanding customer's instruction". Her evidence was that she spoke with her immediate boss, the Divisional Director of Treasury Operations, about the fact that there were no instructions from the operators of the five accounts to back up the directive from the 3rd Defendant that monies be transferred from them to other banks. She said that her boss (who she named to be one Kingsley Umadia) thereupon took the email to the 3rd Defendant and came back

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with an attachment to the email that had been signed by the 3rd Defendant. She said that on the basis of that endorsement by the 3rd Defendant, she went ahead to make the transfers out of the bank.

Exhibit P95 was the second email which, according to the Prosecution, was given effect to in a similar way by PW7 of the bank's Treasury Operations Department. It had the same attachment that the 3rd Defendant signed in P97 superimposed on its second page. This attachment to Exhibits P97 and P95 was a list of six companies, including the five companies to whom the loans in issue in this case had allegedly been granted, with the loan amounts also stated.

The Prosecution testified on the policy of the bank by which requirements such as a customer's formal instructions, or documents that were to be submitted by a customer, could be deferred in order to enable the bank treat the customer's request with despatch and thus ensure customer satisfaction. The evidence from Prosecution witnesses who worked as officers of the bank was that this was necessary in order to maintain an edge in the highly competitive banking business. The evidence was that by the guidelines, such deferrals were for a limited period of time (some said within two weeks) as the transaction in question had to be regularised at the earliest opportunity. Another condition, according to the witnesses, was that such an override of laid down rules and procedures as was a deferral could only be by senior members of staff. Whilst PW8 testified particularly on the deferral policy as it related to the opening of bank accounts and the documents needed in that regard (indeed his testimony in that regard was supported by a Defence witness, DW7, Mr. Uguru Onyike who, like him, had worked in the CSS Unit), PW9 (the Chief Credit Officer of the bank, a Ms. Phillipa Ulasi) testified on the deferral policy as it related to the bank's credit process (that is, its loan making/giving procedures). The head of the Internal Audit Department, Mr. Waidi Gbadamosi, who was PW4 and who by virtue of that office was in a good position to know as one of the bank's internal watchdogs, also testified on the ethos, purpose and manner of practice of the bank's deferral policy as it applied to banking transactions generally.

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Prosecution witnesses testified that the 3rd Defendant, by virtue of his position as a senior member of staff, had the power to override laid-down rules on procedure, including customer's instructions being first had and obtained, in the exercise of the bank's deferral policy and for the sake of expediency. The case of the Prosecution is that he activated this deferral policy when he asked that bank accounts be opened in the name of the three companies from PW3, claiming that the required documents would be handed over by him shortly so that the accounts could be opened immediately, and that he again employed the deferral system when he instructed that funds be transferred from the five loan accounts in question to accounts belonging to PW3 and Mr. Ololo's companies at other banks. The case of the Prosecution is also that the 1st Defendant abused the deferral policy when he sanctioned the disbursement of the loan sums into the alleged loan accounts without the stipulated conditions precedent to drawdown ever being fulfilled. In other words, the 1st and 3rd Defendant, acting in concert, abused the deferral policy in order to perpetrate the acts of fraud that are in issue in this case and to pave the way for the theft of the monies the subject matter of this Charge.

After their respective pleas that they had no case to answer had been dismissed, the Defendants were called upon to answer to the Charge.

It is the case of the 1st Defendant that the loans granted to the five companies – Futureview Securities Limited, Extra Oil Limited, Tradjek Nigeria Limited, Petosan Oil and Gas Company Limited and Resolution Trust and Investment Company Limited – were legitimate loans that followed all of the laid down processes and procedures of the bank. The 1st Defendant gave extensive evidence on what those processes and procedures were. In brief, the steps start with the application that is made at the branch level and through the customer's Relationship Manager (or Account Officer) and is then passed on to the bank's Credit Office where the application is critically appraised and if considered viable and worthy, it is sent to the approving authorities (dependent on set approval limits) to, in turn, consider and approve if thought fit. This approval process consists of what is termed the "three credit initials", indicating

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the three different officers who must sign the document, called a "Credit Approval Memorandum". The credit approval memorandum then returns to the Credit Office if the loan (the credit) is approved, in order for all necessary steps and the spelt-out conditions precedent to drawdown to be fulfilled. Once those conditions have been fulfilled – and checked and verified by both the Credit Administration Department and the Legal Department, an "avaiement/utilisation ticket" travels up again to the approving authority (also based on the bank's set approval limits) to sign off on the ticket. When the necessary signatures have been obtained on the ticket, the loan sums are disbursed into the customer's account. The credit avaiement process would commence after the credit approval memorandum has been signed, and after the Account Officer has addressed a letter of offer to the customer and the customer has signed in acceptance of the offer. From the evidence from him, because all of the loans in issue were of an amount that required his direct approval as they were above the sum of N800 million, the 1st Defendant gave his approval to each of them by signing their respective credit approval memoranda and later, the respective avaiement tickets.

The 1st Defendant testified that he does not as a rule, and in keeping with the established norm, see the credit file of the loan applicant as it is a bulky file. It is only the two documents that require his signature – that is, the credit approval memorandum and the avaiement/utilisation ticket – that come to his table for his consideration. He explained that it was impossible for a Managing Director/Chief Executive Officer to read through each and every credit file, given the enormity of the competing duties and responsibilities involved in running the affairs of the entire institution that is a bank that is placed on that person's shoulders. The case of the 1st Defendant is that the bank has very well qualified Credit Analysts who had been carefully selected for the job they do because of their acumen and integrity. He could, therefore, properly rely upon and trust their judgment whenever they recommend a loan application to him for approval. He testified that in circumstances where an appraisal is not favourable

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to the loan applicant, a wider body, the Management Credit Committee, would look into the matter.

It is also the case of the 1st Defendant that the bank has an effective, multi-faceted and multi-layered Control infrastructure firmly in place, with measures aimed at checking, and checkmating, deviations from the norm and unwholesome and illegitimate practices. Thus, apart from the Internal Control Unit which immediately (the very next day) does a "Call Over" of transactions in order to ensure that the due process was followed, there are also a number of units or departments whose job it is to continually scrutinise the risk element inherent in, and to audit, every banking transaction. Specifically with loans, the evidence is that there is a Loan Monitoring Unit that ensures compliance with the terms and conditions of the contract between the bank and its customer/borrower. Then there are the auditors. There is the internal auditing process, the head of which department reports directly to the Board of Directors, and also a committee of the Board of Directors, the Board Audit Committee, existing on a higher level. The evidence is that the bank has external auditors as well. Mention was made of the accounting firm, PriceWaterhouseCoopers. All these checks, the evidence from the 1st Defendant makes plain, are rigorously applied right from the day after the transaction was done and continue on an external level beyond PWC to the level of the regulators of the bank – the Central Bank of Nigeria and the Nigerian Deposit Insurance Corporation – who conduct periodic checks when they come in to examine the books of the bank. In none of them, he said, was he found wanting in any regard.

The 1st Defendant said he had no personal interest in the five companies that were granted the loans in question, or the persons who ran those companies. He testified that he only met Mrs. Ebi (PW3) for the first time in the year 2009 when he went to see her on the matter of her liquidating the loans and paying back the debt. He said he had had no interaction with Mr. Ololo on the events in issue in this case. The case of the 1st Defendant is that it was the bank's "market-facing" officers – that is, its personnel who by virtue of their duties interact with

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the bank's customers or who solicit for customers, who related with those two persons.

As regards the evidence from the Prosecution that he had collected by himself the share certificates of the fourteen companies for whom shares were bought with the loan sums, the case of the 1st Defendant was that he did so as part of the batch of share certificates allotted to him when members of the Board of Directors embarked upon a screening exercise in order to see if any of the new shareholders had amassed a sufficient quantity of shares as to instigate a possible hostile takeover of the bank. He said once this screening exercise had been completed the share certificates were returned to the Company Secretary from whose office they had come.

The evidence, further, was that the opening of bank accounts for the five companies in question had nothing to do with the 1st Defendant who could not possibly oversee every single transaction in every department, and whose duties did not include or involve opening bank accounts. Nor did he have anything to do with the disbursement of the loan sums into those accounts. The point was emphasised time and again that the bank had efficient Control units which went about their business irrespective of the fact that the Managing Director had signed off on a transaction. His case – and evidence – was that nothing, in terms of the account opening process and the credit process relating to those companies, was ever flagged, or otherwise raised concerns by way of exemption reports issued by any one of the bank's Control, Risk or Audit departments. Instead, the loan transactions in issue were all ratified by the Board of Directors at a meeting held on the 9th of July 2008 and when the NDIC had noted the omission to have them considered by the Board. He testified that the bank's Chief Credit Officer (the earlier-mentioned Ms. Ulasi, PW9) gave a detailed report at that meeting of the Board. A copy of the minutes of the meeting is before the court as Exhibit D2. He said that if the Board had failed to ratify them, then by the practice, certain remedial measures would have been taken such as calling in the loans or reducing credit approval limits. And what was more, according to the 1st Defendant, the CBN and NDIC, in their joint

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examination report (Exhibit D20) did not describe any of the five loans in issue, and which loans that report considered, to be fraudulent or illegitimate banking transactions, contrary to the claim in the present Charge that crimes had been committed through them or by them.

The 1st Defendant led evidence that the five companies had been servicing the loan they had each obtained as is made apparent in their respective Statements of Account. It could not be so, therefore, and according to him, that those companies (or the faces behind them) were unaware of the loans. The defendant gave evidence to the effect that once loan sums have been disbursed, the money in question becomes the property of the customer and no longer the property of the bank, and for that reason the customer can do exactly as he pleases with the money that has become his property. He said the bank does not interfere with the way that money is spent. He led evidence to show that in keeping with the ownership rights of the three companies affiliated to PW3 over the monies loaned to them, some of that money, after the transfer to Futureview Financial Services Limited's account at Oceanic Bank, was then placed on a short term investment by the company, so that it was apparent from that action that the companies did as they pleased with the money that had become theirs to spend freely. In this regard, the 1st Defendant asked that the court consider certain documents placed before it (these are in the bundle that is Exhibit P207) which showed that Futureview Financial Services Limited had indeed placed part of the money that had been transferred to it from Bank PHB – the sum of N2, 390, 625, 000.00k – in a call deposit for a few days between the 4th and the 8th of January 2008 and thereby made financial gain.

Evidence was led that the shares purchased during the Public Offer by AFCC Associates Limited (the company admitted by him to be jointly owned by him and the 2nd Defendant) was not from the pool of funds disbursed as loans to the five companies but was rather from money due to the 1st Defendant as his share of the reward given to all members of staff of the bank that had helped to make the Public Offer a huge success. Evidence was led to show that as an incentive

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towards a successful marketing of the bank's shares, every member of staff was given a reward calculated on the basis of the number of shares purchased through him/her *vis-à-vis* the overall volume of shares that came to be subscribed. The 1st Defendant testified that because the Public Offer was very successful, his bonus ("incentive") as the Chief Executive Officer was calculated on the basis of the overall quantified success of the entire exercise unlike staff members whose bonus was individually tailored to the number of shares that they had sold. He led evidence that because of this, his reward amounted to a bonus of N5.2 billion so that he had more than enough money with which to pay for all of the shares (168, 750, 000 units of shares which amounted to the sum of N2, 868, 750, 000.00k) that were purchased by AFCO Associates Limited during the Public Offer. He added that this payment was made through the internal working processes of the bank and not from money that came from "outside" as it were. The case was that the 1st and 2nd Defendants, owners of AFCO Associates Limited, were therefore far removed from any such shares funding scheme of a criminal nature as alleged by the Prosecution.

Regarding Ghazali Yakubu Investment Limited ("Ghazali Yakubu") of which, from the evidence, the 2nd Defendant is the majority shareholder, and a certain Grace Atuche, who the 1st Defendant described to be a distant relation of his father, is also a part-owner, the evidence from the 1st and 2nd Defendants is that the 2nd Defendant had nothing to do with the purchase of shares by that company as her involvement in it was purely nominal. The 1st Defendant testified that the company was the baby of the other shareholder, Mr. Victor Udeh, who ran its business exclusively without any participation by the 2nd Defendant. They said that the 2nd Defendant, for that reason, was completely oblivious of the fact that the company had purchased shares during the Public Offer. She knew nothing about the shares purchase exercise. They (the 1st Defendant, that is) testified that it was because the 2nd Defendant had forgotten all about the existence of, and her involvement in, Ghazali Yakubu that she made no mention of it in her extra-judicial Statement to the EFCC when she

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was being interviewed, and only came to remember the company when she received the Information papers of this case.

And as for the company named as Land Partners Limited, which the Prosecution said was used as a receptacle for part of the dividend that accrued from the shares bought in the name of the fourteen companies in issue, and this, via the booking of Commercial Papers in the name of that company with the monies derived from those dividend warrants, again the 1st Defendant testified under cross-examination, that even though the 2nd Defendant owned 70 per cent of its shares, she, yet, was not involved in the running of its affairs. He agreed that his sister, a Mrs. Veronica Okojie, owned 10 per cent of the shares. He said the company was the brainchild of a certain Mrs. Ifeyinwa Osime, a close friend of the 2nd Defendant who was also a member of the Board of Directors of the bank.

In response to the case of the Prosecution that the other part of the accrued dividend was paid into bank accounts at Mortgages PHB which were owned and operated surreptitiously by him in the name of two companies – Claremount Management Services Limited and Claremont Nigeria Limited, the 1st Defendant gave evidence that he had nothing at all to do with those accounts and that he was not a signatory to the accounts. He said that the account opening reference form (Exhibit P243) that, on the face of it, linked him to those accounts, had been deliberately manufactured. He said he did not receive any of the many emails and letters adduced in evidence that were, also on the face of it, sent to him ostensibly in his capacity as the operator of the accounts, and that the accounts in fact belonged to Mortgages PHB and were clearing accounts held by that mortgage bank at Bank PHB.

Thus, the 1st Defendant distanced himself from any in-depth consideration of the loan agreements in issue, and also from the bank accounts into which those loan sums were disbursed, the transfers of all of the money from the five loan accounts to accounts at other banks, the purchase of shares for the fourteen named companies with the transferred money, and the payment of the accrued

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dividend belonging to those companies into accounts held at Mortgages PHB and into the bank's Treasury Operation Department's suspense account. His evidence was that the loan agreements were validly and legitimately made, and that the loan accounts were properly opened – all in the course of normal banking business, and all with the participation and knowledge of the five companies as customers of the bank through the persons (PW3 and Mr. Peter Ololô) who acted on their behalf. He denied the allegation that AFCO Associates Limited benefitted from the shares bought with the loan sums and testified on behalf of the 2nd Defendant that she had no hand in the way Ghazali Yakubu Investment Limited came to buy shares during the Public Offer.

The case against the 3rd Defendant, in essence, was that he acted as the accomplice of the 1st Defendant. And that in so doing, it was he who made false representations to PW3 and Mr. Ololo that led to them offering companies that belonged to them or were in their portfolio, for use in enacting the alleged scheme of fraud. With respect to the three companies put forward by PW3 and for whom bank accounts were opened at the 3rd Defendant's instance, his evidence was that she, rather, had given him the names of those companies, asking that he help with the opening of accounts for them. He was emphatic that all he did, by his email to the CSS, Exhibit P96, was to make a "request" in that regard. His evidence was that the minimum required account opening documents were in fact submitted to the CSS before the accounts were opened that day so that no caution was ever placed on the accounts. He said a Post No Debit warning is not something that can be trifled with as it is one that is imposed by way of a Court Order or by a law enforcement agency. The bank, therefore, cannot simply lift it at will as the Prosecution would have one believe.

It is the 3rd Defendant's case that being the Chief Financial Officer of the bank he does not fall within the definition of a "market-facing" officer even though he may attend to the specific request of a customer from time to time as part of the service delivery efforts expected from him as an officer of the bank. He said he was far removed from the credit process; indeed, the work of making or granting loans does not come under his purview save on a global level when

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he comes to consider the financial standing or strength of the bank as a whole. His evidence was that the first he came to know of the loans in question was when PW3 and Mr. Ololo telephoned him to ask for his help in transferring the loan sums out of the five loan accounts in issue to other banks. His case is that it was merely out of a desire to satisfy the needs of customers of the bank that he then sent the emails (Exhibits P97 and P95), which he said again were mere requests, to the Treasury Department in order that the process may begin. He said he otherwise had no hand in the funds transfer events, nor did he override that process by imposing his will on his colleagues in other departments of the bank. As with the 1st Defendant, he stressed the point that in all the actions undertaken by him pertaining to the opening of the accounts and the funds transfers none of the departments that scrutinise the bank's transactions so as to ensure that there was compliance with laid down rules on practice and procedure, or to ensure that there was no breach of such procedures, raised red flags or made exemption reports. He described as erroneous the statement by the auditing firm, KPMG, that he "overrode control" as regards the bank's money that was used in buying shares during the Offer and which shares could not be traced to the bank or any stockbroker. That report by KPMG had been considered at a meeting of the Board of Directors of the bank held on the 25th of August 2010 after the CBN's intervention of October 2009. The minutes were received in evidence as Exhibit D12.

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The 3rd Defendant testified rather that the then head of the bank's Internal Control Unit, a Mr. Fidelis Omachonu who later gave evidence on his behalf as DW19, when Mr. Omachonu's attention was drawn to the funds transfer transactions by an Internal Control Unit officer who was stationed at the Treasury Operations Department, directed that officer to enquire about the transactions. He said that after he (the 3rd Defendant) had explained to the junior Internal Control officer that the transfers were to bank accounts in other banks to whom their own customers were related (that is, they were "related-party transactions"), the officer asked him to sign the emails (Exhibits P97 and P95) such that they became a "back-up" for posting the transfers. He denied having

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signed because PW7 had written on Exhibit P97 words that in effect queried the absence of customers' instructions. He also denied having anything to do with the list of companies and loan amounts that was appended to the two emails.

The 3rd Defendant gave extensive evidence on the work of the Treasury Operations Department. He said the funds transfers were indeed carried out. Just like the 1st Defendant, his case and his evidence was that once loan sums have been disbursed into the account of a customer, the money becomes the property of that customer to do with as he pleases. He said it was not for the bank to interfere or to question the customer's exercise of his freewill in the way he chooses to spend that money. He said that he had made the transfer requests on the customers' behalf once he was satisfied that there were sufficient funds in all five accounts.

The 3rd Defendant denied having entered into an oral agreement with PW3 that her company, Futureview Financial Services Limited, would act as a receiving agent for the bank's expected foreign investors' inflows. He said the Global Depository Receipts aspect had already been cancelled at that time PW3 was talking about. He equally denied the Prosecution's case that she had given him the names of the three companies not for the sake of opening bank accounts but for the purpose of a preferential allotment of shares in their names. He did testify though that he was placed in charge of attending to the request of those persons who wanted a preferential allotment at the time. He said it was the duty allocated to him as a member of a team of selected heads of departments (which he named to be the "Transaction Monitoring Committee") that were to oversee the Public Offer exercise. He explained that it would be persons or companies of high standing or high value that would apply for preferential allotments, and because the Board of Directors was mindful of the possibility of outsiders gaining control of the bank through the means of controlling a huge amount of shares bought during the Public Offer, his job in the committee was to give particular attention to those applications for shares of a value of N1 billion or more which he was to pass over to the Board for their consideration. He said letters and emails requesting preferential allotments started coming in

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to his office (he said his office was also known as "The Corporate Centre"), and his duty included filling out application forms for such requests whenever they were not accompanied with already filled forms.

Exhibits **P40 to P50** are the application forms of most of the fourteen beneficiary companies in issue in this case – the companies for who shares were bought with the loan sums. The 3rd Defendant confirmed having personally filled them as they were for amounts above N1 billion. He said he also signed most of them himself. He led evidence {by himself and through a certain Gbemiga Oladele (DW17) who had worked under him} to say that the ones he did not sign were signed on his behalf by members of staff in his office engaged in the exercise with him. The staff identification number unique to him was on all the forms. His evidence was that this was for no more than "collation and tracking purposes". His evidence, further, was that he received no benefit or pecuniary gain from carrying out his official duty by filling those forms.

The 3rd Defendant gave evidence that all of the sums transferred out of the loan accounts at his behest were indeed used to buy shares for the fourteen companies in issue. It was his evidence that he had no personal interest in, or any link of any sort with, those companies. It was also his case that he was merely doing his job of assisting the bank's customers when he attended to the request of PW3 regarding opening bank accounts for the three companies associated with her (and which companies he said were in reality owned by her), and the further request of both PW3 and Mr. Ololo in transferring monies belonging to their companies to other banks as they wished.

This, I believe in summary, to be the case on all sides.

ISSUE FOR DETERMINATION

From my consideration of the case before me, of the evidence – both oral and documentary, and of the submissions of Counsel in their respective final

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addresses, I am of the view that there is just the one issue for determination. I believe it to be this:

Whether or not the Prosecution succeeded in discharging the burden on it to prove the case it made out against each Defendant to the requisite standard.

This is because the legal expression, "he who asserts must prove", carries a more acute meaning in the matter of the allegation of the commission of a crime. This is so because a defendant will always be presumed to be innocent unless and until he is found to be guilty as charged. And as a natural consequence of this presumption of the law which, incidentally, is based on our principles of natural justice and the twin notions of the right to a fair hearing and the maxim, *audi alteram partem* ("let the other side be heard!") that stem therefrom, it is again the well-settled position of the law, so well-grounded that it has become trite, that that burden on "he who asserts" (the Prosecution), must be discharged to a standard that eliminates reasonable doubt. The standard is certainly not so high as to remove "all" manner of doubt from one's mind but still the case, as backed up with proof, must be strong and cogent enough to eliminate that kind of doubt that the regular man (or woman) on the streets – Lord Denning's famed "man on the Clapham omnibus"; the mature, objective thinker with sufficient breadth of learning, understanding and exposure – would consider to be "reasonable". This, in criminal jurisprudence, is the "probative" burden of proof that is imposed upon the Prosecution, and stays permanently fixed on the Prosecution, all through the trial. It does not shift, unlike the "evidential" burden of proof, which comes to rest on a defendant whenever there is adduced evidence of sufficient calibre and strength as would sustain the Charge. See the provisions of section 135(3) of the Evidence Act on this evidential burden. And when the evidential burden of proof shifts to a defendant in a criminal case, it imposes on him a lesser burden to cast reasonable doubt on the case made out by the Prosecution. A burden, that is, that will be discharged on a balance of probabilities. But ultimately – when all is said and done, it is for the Prosecution to prove its case to the higher standard that is

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demanding in criminal matters; it is for the Prosecution to sustain the case it had made out.

And so, by applying provisions of the laws relevant to this case to the facts (when they are established), I will then come to consider, and determine, whether the Prosecution has succeeded in proving its case against each of the three defendants.

I will start with the Counts on the offence of stealing after which I will consider the matter of a conspiracy to steal as alleged in other Counts of the Charge.

THE MERITS OF THE CASE OF STEALING BY FRAUDULENT CONVERSION

The Criminal Code Law, set out in Chapter C17 of the Laws of Lagos State of Nigeria 2003, was the law in force at the time of the events in issue herein. It is, therefore, the law that is relevant to this case and not the new law that has taken its place. The pertinent section of the Law, its section 383, defines the offence of stealing. It states as follows:

(1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing.

(3) The taking or conversion may be fraudulent, although it is effected without secrecy or attempt at concealment.

(4) In the case of conversion, it is immaterial whether the thing converted is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it. It is also

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immaterial that the person who converts the property is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of the property.

...

(6) *A person shall not be deemed to take a thing unless he moves the thing or causes it to move.*

In order to prove this case in the manner determined by law, the Prosecution is obliged to prove each and every element (or "ingredient") of the offence to the requisite standard – the said standard of proof beyond reasonable doubt. And those elements, by settled case law, are the following:

- 1) that the thing that was stolen was owned by the alleged victim;
- 2) that this stolen thing is something that is capable of being stolen, and
- 3) that the stolen thing was taken fraudulently, or converted fraudulently (for the use of the person who took it or that of any other person).

See, for example, the decision of the Supreme Court (per Adekeye, JSC), in *Wahabi Adejobi & Anor. v The State* (2011) LPELR-97(SC) at page 39.

Embedded in the third element of the offence, I believe, is the requirement to prove two things:

- i. the appropriation (the taking or conversion) of the thing, and
- ii. doing so in a fraudulent way.

And in determining if the act was done in a fraudulent way, sub-section (2) of section 383 provides that any one of the following intents must be proved, viz,

- a) *an intent permanently to deprive the owner of the thing of it;*

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- b) *an intent permanently to deprive any person who has any special property in the thing of such property;*
- c) *an intent to use the thing as a pledge or security;*
- d) *an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;*
- e) *an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;*
- f) *in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.*

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And so, with these principles of the law in mind, I will now consider the case of stealing as it has been made out before me.

But I should add that there are two circumstances of stealing in this Charge. There is the case of the fraudulent conversion of sums of money that were "described as ... [loans]" in Counts 2, 4, 6, 8 and 10 of the Charge, and then there is the case of the conversion of monies fraudulently made out to be loans used to purchase shares in the name of the beneficiary companies. The latter circumstance is what Counts 11 to 22 and 24 to 27 of the Charge are about. The former deals with the loans granted the five companies ("the loan companies") whilst the latter scenario concerns the use of purported loaned sums to purchase shares for the fourteen other companies ("the beneficiary companies").

I. COUNTS 2, 4, 6, 8 and 10

By each of these Counts, the 1st and 3rd Defendants are accused of stealing the different sums of money that are stated to be the property of the bank "*by causing same to be fraudulently described as a loan ... and converting the said sum for your personal use*".

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As I have said before, there are five loans in issue, granted to the five companies hereinbefore mentioned. The companies, in the order stated in the Charge, are Futureview Securities Limited (Count 2), Extra Oil Limited (Count 4), Resolution Trust and Investment Company Limited (Count 6), Petosan Oil and Gas Company Limited (Count 8) and Tradjek Nigeria Limited (Count 10).

In my consideration of the case with respect to them, I will start by looking at the second mentioned element of the offence.

THE THING THAT WAS STOLEN MUST BE CAPABLE OF BEING STOLEN

In our bid to determine the merits of matters in dispute, courts of law never act on the basis of assumptions, suppositions or speculation. For, justice must be done in a transparently unbiased manner in order for there to be confidence in the justice delivery system of the body polity. And so, even if it may appear to be a trifling matter, even if it may seem obvious and clear, the court, as the impartial umpire that it is, must first be assured that whatever it was that was said to have been stolen was, truly, something that could be stolen. If it were something that cannot, by its definition, be stolen, there can be no crime of stealing. Once that first "hurdle" has been cleared, the court would then be in good standing to consider other ensuing matters.

The "thing" here is money. Large sums of money that amount to billions of naira; money said to have been used ultimately to buy shares. I consider it to be a thing of value for the reason that it is used as a means of exchanging value – here, as alleged, the value of the shares of the bank. Being of value, used to exchange value, and indeed sometimes used to add value, it can be stolen. The value in it can be taken (appropriated) by someone else. This I consider to be the logic and sense of the reasonable man. For this reason, and even though it may be palpably clear, I must still make the decision – and I reach the decision – that the thing that was said to have been stolen here is something that is capable of being stolen.

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OWNERSHIP OF THE THING THAT WAS STOLEN

The money in issue – the money transferred into the respective bank accounts and soon after, transferred to other banks – originated from somewhere. It had a "source" in terms of the ownership of it. The physical source was the vaults of the bank but the proprietary source I consider to include those persons who, as customers of the bank, deposited their money for safekeeping in the bank. This is the purpose for which banks exist; their reason for being. By keeping their money in the bank, those depositors have entrusted the bank – and the persons running the bank – with the care of that money. It is for that reason that we say in law that the relationship between the banker and the customer is of a fiduciary kind. It is based on trust, and it is built on trust. And so, for example, whenever the customer fears that his/her money is not in safe hands, there is invariably what is termed "a run on the bank" – a scramble to get that money out of the bank. I take judicial notice of this fact.

The law, further, is that the bank, as the institution entrusted with the care of this money, can in turn use it in other ways for the time being; ways that are geared towards maximising the value of the money and geared towards making the bank's business a profitable business for itself and for its customers. It acts as a trustee, if you like, with all the legal and proprietary rights conferred on one with respect to the property held in trust by it. And so, in order that it may be enabled to carry out the functions and duties of banking (some indeed of a statutory nature), and acting in this fiduciary capacity, the monies in the coffers of the bank are also said to belong to the bank. This, again, I believe is well-recognised by law. See, for example, the case of *Wahabi Adejobi v The State*, *supra*, in which Galadima, JSC, in delivering the lead judgment, held as follows at page 29 of the report:

In the case at hand [the] prosecution has established that the sum of Seven Million Naira stolen through Exhibit 'H' was

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property of a juristic person, the Bank, holding the said sum
in trust for its diverse customers or depositors.

(The emphases are mine)

In my humble estimation, the fact of the existence of this fiduciary relationship that confers proprietary rights and interests on the bank is the reason why banks are in a position to lend out money deposited with them – acting in that wise, not in the name of a particular depositor or number of depositors who left their money for safekeeping along with other depositors, but rather in the name of the bank as “the lender” of those sums. And to hone the point, it must be said that banks do not manufacture money by themselves, or for themselves.

The Defendants have not denied this. What they say is that when the money in the bank was handed over to the five companies as loans, the money assumed a new ownership. It stopped being depositors' funds left in the care of the bank, or funds entrusted to the bank over which it exercised proprietary rights, but took on a new dimension and became the money of those borrower-companies who spent it as “they” pleased.

But then, as the 1st and 2nd Defendants' first witness, Professor Patrick Utomi, testified – and I am persuaded by this, the bank “still has control” over money that left its coffers “no matter who used it.” (My emphases) “Control” over money being “used” by another is, of course, clear testament to the bank's continuing rights over that money. And as the 1st Defendant also testified, again without challenge on this aspect of his testimony, the bank, in lending out money, does so for profit. Using one or the other of the Statements of Account of the five companies to explain this point, he said the bank earns profit (it derives financial gain) from the charges and fees that are paid on the money lent out by it. It stands to reason therefore that it is because of its proprietary attachment to that money that has taken temporary flight from its vaults that the bank can, by law and in law, continually earn money from the money it had loaned out. The money continues to “work” for it until it is returned to it. It retains its foothold over the money because the money put at the disposal of the

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borrower remains money kept in the care of the bank. This is why, as the 1st Defendant also explained without challenge, the bank has its own corresponding loan account, existing internally, in order for it to account for that money it had loaned out.

The bank thus retains legal rights over the money hence the standing and the power given it by law to file an action to recover that money temporarily released by it to the borrower should the borrower fail or refuse to repay the loan.

With all due respect, it would be to stand logic on its head, given this position of the law acknowledging the proprietary rights of the bank over the money it gives out in the form of a loan (not given out as an act of charity), to postulate that that money stopped being the money of the bank and became the money of the borrower to do with as he pleases as soon as it is disbursed. But not only does it defy logic and common sense, it defies the simple, plain, ordinary meaning of the verb, to "lend"! Of course, there is a clear distinction between "ownership" and "possession" of a thing. The lender always has proprietary rights over the thing that was lent out. The borrower merely has possessory rights of it, and can use it, on the condition – indeed, subject to the condition – that he will use it for an agreed purpose, in an agreed way, and for an agreed length of time. The conditions exist (the terms of the lending contract) because the borrower is not, and can never be, the owner of the money, and by agreeing to those conditions, the borrower acknowledges this to be so. **Thus, the fact that the borrower comes to be in possession of the property does not translate into him becoming the owner of it exercising ownership rights over it.** And indeed, it is for the very reason that the borrower acknowledges the lender's continuing proprietary rights over that thing; recognises that it does not belong, and never has belonged, to him, that he agrees to use it only for a short while and then hand it back. With respect, it would be to ridicule the law if one were to advance the position that the money that the law acknowledges that the bank is empowered to lend out in the course of its functions as a bank, when then it is lent out, cannot be regarded by the law as money still under the

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control of the bank. This is why I am persuaded by the evidence of Professor Utomi, DW1. It accords with the law and with common sense.

And it would be a strange thing to say that the borrower of that money can use it "at will" just because it stands as a credit in his bank account when, in fact, the money was lent to him under the dictates of stipulated terms and conditions on its use. The borrower who must – by law – comply with such dictates of the loan contract cannot be described as the "owner" of the thing borrowed. His rights over that money are subjugated to the rights of the actual owner.

I am, here, reminded of the very instructive words of the esteemed jurist, Justice E. O. Ayoola, in the case of Maersk Line & Anor. v Addide Investments Limited & Anor. (2002) LPELR-1811 (SC) when he said as follows at page 70 of the report:

The judicial process malfunctions and is discredited when it is bogged down by technicalities and is manipulated to go from technicality to technicality and thrive on technicalities. That is why, at all times, the tendency towards technicality should be eschewed and the determination to do substantial justice should remain the preferred option and the hallmark of our judicial system.

I find, and I hold, that the money in issue in this case is money that belonged to the bank being a collection of depositors' funds kept under the care of the bank. The fact of its use by another after it had left the vaults of the bank and had been deposited in someone else's account for a temporary period of time does not change that fact.

THE MATTER OF A FRAUDULENT INTENT

Leading on from the above, the question next arises – were there really loans in the first place? This paves the way for my consideration of the *mens rea* for the offence in the circumstances of this case – whether there was a criminal intent

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behind that outward façade of loan agreements that were properly and legitimately made; whether the loans were a hoax as was famously (or infamously?) said by Mr. Hamma'Adama Bello, a detective and an Investigating Officer with the EFCC who testified before me as PW12. This, in my estimation, is the crux of the matter in terms of the case of the Prosecution.

In answering this pertinent question, it is necessary that I look more closely at the loan agreements. But by way of a preface I should say that it matters not, in my considered view, whether either or both of the CBN and the NDIC considered the loans to be genuine. I see that it is not the findings they made in their joint report (Exhibit D20) that translated automatically into this criminal case even if, in terms of the history, their special examination of the bank was the genesis of the events that culminated in the institution of this case. This case, rather, and from the Information papers before the court, was instituted because of the findings and conclusions of the EFCC after investigative activity conducted by them. Exhibit D20 may have led to that investigation, but from the evidence laid bare, even though it formed a part of what was considered during the criminal investigation, it was not the only part. In other words, when invited to investigate the affairs of the bank, the EFCC beamed its searchlights beyond Exhibit D20 in coming to its findings and reaching its conclusion that the loans in question were all a hoax.

Two members of the team of investigators in the EFCC that investigated the loans testified before me. Apart from the earlier-mentioned Mr. Bello (PW12), another detective, Mr. David Olom Nkpe, gave evidence as PW10. They both testified as to the investigation activity that the team carried out. That investigation, from the evidence, included a consideration of documents in the records of the bank, and their interaction with, and interview of, officers of the bank including the 1st and 3rd Defendants. I see that they interviewed other persons as well; persons they considered to be central to their investigation. These other persons included the 2nd Defendant, it included owners of the five companies said to have been granted the loans, and it included officers of the bank's subsidiary company, Mortgages PHB Limited.

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PW10 and PW12 testified about a forensic investigation that led them on a trail; tracing the monies that originated from the bank accounts opened for the five "loan companies" until they reached the end of the trail which, according to them, was the transformation of those sums into dividend warrants being the earnings from shares bought in the name of the fourteen "beneficiary companies" with the money, and which warrants were paid either into bank accounts allegedly operated behind the scenes by the 1st Defendant, or were paid in at a branch of the bank (from documents and the testimony of PW7, I see that this was the "Victoria Island 1" branch at the bank's head office) and then booked as Commercial Paper investments in favour of a company of which the 2nd Defendant owned the majority shares.

For ease of understanding, I should explain again that of the five companies to whom these loans are said to have been granted, three of them are affiliated to Mrs. Ebi, PW3. These three are Futureview Securities Limited, Extra Oil Limited and Tradjek Nigeria Limited. I have used the word "affiliated" because the company registration documents of Extra Oil Limited and Tradjek Nigeria Limited (Exhibits P201 and P205, tendered by the 1st and 2nd Defendants during their cross-examination of PW10) show that those two companies do not belong to PW3. From what I see, she does not own shares in either company, nor is she a member of the Board of Directors of either of them. Indeed, and contrary to the testimony of the 3rd Defendant, I do not see that PW3 ever testified that she was the "owner" of Extra Oil Limited and/or Tradjek Nigeria Limited. She described both companies to be "clients" of her company who had consented to having their names put forward along with her own company, Futureview Securities, for the preferential allotment of shares during the Public Offer.

The other companies that are said to have loan agreements with the bank – Petosan Oil and Gas Company Limited and Resolution Trust and Investment Company Limited, belong to Mr. Peter Ololo. This is clear from their incorporation papers as well, Exhibits P199 and P156, respectively.

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The Existence or No of Genuine Loan Agreements

For their finding that the loans in issue were a hoax, the Investigating Officers relied, amongst other things, on their interview of the owners of those companies, including PW1 (the earlier-mentioned Mr. Diamond Uju who testified that he was the Managing Director of Extra Oil Limited), PW3, and Mr. Olobo. A certain Mr. Jude Kemakolam was also interviewed. A brother of PW3 (from the evidence elicited from her under cross-examination), he is, from the company's incorporation papers, the majority shareholder of Tradjek Nigeria Limited. It is clear from their extra-judicial Statements to the EFCC that they all denied ever having entered into loan agreements, or ever having contemplated entering into loan agreements, with the bank contrary to what was contained in documents from the bank that portray the loans.

I must say here that I do not agree with learned Counsel for the Defence when they submitted in their final address that the Statements made by those persons who did not appear before the court to testify are not open to the consideration of the court. I believe the law to be well-settled instead that the bases of the findings of an Investigating Officer – his summations from his interview of persons during the course of his investigation activity amongst other activities – do not amount to hearsay evidence. Those interviews, rather, form part of the actions the officer took **directly** by himself – what he did, what he saw, what he heard – that led to the conclusions about which he was testifying. They explain the outcome of his investigation of the case and they reveal to all, the reason behind those findings and conclusions that he made. It would be a different matter entirely if the officers who conducted the actual investigation did not appear before the court to testify. Then, in such circumstances, the Statements made to them, will, I dare say, amount to hearsay evidence. But this is not the case here. PW10 and PW12 testified on their interview of the persons who made those Statements, and which interviews, amongst other activities led them to their findings and formed the bases of the conclusions of the team. The argument that the Defendants were not afforded the opportunity to cross-examine the persons who made those

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Statements and who did not testify, in my humble view, and with all due respect, amounts to a misconception of the position of the law. As I said, those Statements were received in evidence to show what the Investigating Officers did and to back up their testimony on how and why they arrived at their findings. And so, it is those Investigating Officers that would be cross-examined on what they have revealed to be the bases of their findings in order for the court to ascertain what, if any, value to give to those findings and conclusions about which they testified. And indeed, PW10 and PW12 were extensively cross-examined by all three defendants in this respect. Learned Counsel for the 1st and 2nd Defendants, particularly, grilled PW12 on the definitions of the findings and conclusions of the team and what it was that they were based upon in a "no holds back" way, and in a manner, I believe, that was designed to test the efficacy and integrity of the foundation of the said findings and conclusions.

The law on this, as I said, is well settled. The issue, therefore, brooks of no real argument in my respectful view. See, for example, the case of Ijeoma Anyasodor v The State (2018) LPELR-43720 (SC) and Ibrahim Kamila v The State (2018) LPELR-43603 (SC) at pages 22 to 23. See, also, Yahaya Yusuf Ayodeji v Federal Republic of Nigeria (2018) LPELR-45839 (CA) at pages 44 to 45, and further, Juliet Sabastine v The State (2020) LPELR-50319 (CA). The testimony of the two detectives on what they heard, what they saw, and what they read, and their findings in that regard, are certainly open to the full scrutiny and consideration of the court.

Regarding the further contention that the Statements of PW1 and PW3 in particular, were adduced in evidence at a time after they had left the witness box so that the Defence were denied the opportunity to cross-examine the makers thereof, I see instead that both witnesses were indeed cross-examined in a pointed, direct manner about what they had written in their respective Statements, and which Statements were always in the Proofs of Evidence. They were cross-examined on the case made out by the Prosecution of which the Defendants had foreknowledge. There was, therefore, no act of prejudice or

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disadvantage suffered. For the reason that the Defence Counsel always referred to the contents of those Statements when cross-examining those two persons, I do not see that the Defendants' rights were breached.

But beyond this, it was for Defence Counsel, if they wanted to challenge those Statements, or make use of them to contradict PW1 and PW3, to call for the Statements (which they knew existed) and have them immediately adduced in evidence at that point in time they were cross-examining PW1 and PW3. That, I consider to be the procedure in law.

Going back now to consider the case of the Prosecution that the loan agreements were not real, PW1, when in the witness box, said as follows:

My company, Extra Oil, has no business at all with Bank PHB. Extra Oil has never visited Bank PHB for any transaction of any nature. We have not opened any accounts in that bank. We have no dealings with that bank. I have no credit transaction with Bank PHB. I have been in the financial industry for over twenty-five years. I do not see how someone who doesn't have an account, will have a facility with any bank.

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He said he knew the 3rd Defendant from the 3rd Defendant's days at PriceWaterhouseCoopers when he was the auditor of Futureview Financial Services Limited, a company on whose Board PW1 also sat. Under cross-examination, he said he knew nothing about the oral agreement PW3 had said she made with the 3rd Defendant concerning the participation of companies in their group in the Public Offer, nor did he know about another "oral agreement on a loan transaction" between the bank and Extra Oil. He said instead,

In my twenty-five years in the finance industry, I have not seen where a loan is obtained by oral agreement; a loan of the magnitude that the EFCC showed me – N4 billion. I have never seen it in my twenty-five years in the industry.

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In his Statement of the 22nd of October 2009 (Exhibit P187), PW1 said to the Investigating Officer as follows:

I was shown a facility packaged by Bank PHB for N4, 000, 000, 000.00 ... on Extra Oil account for the purchase of a 300 man houseboat. I am not aware of this facility. We cannot have a facility in a bank where we do not have an account. The address on the document shown to me does not belong to Extra Oil Limited. Alhaji Hamza Abubakar and Amadi Austin mentioned in the package as members of the Board and Management are not known to me. Kemakolam Tochukwu is known to me but he is not an economist. He is a Lawyer and has never worked in Oando contrary to what was mentioned in the loan package. I have no personal relationship with any of the executive management of Bank PHB neither have they brought this to my knowledge. I heard and saw this package for the first time here.

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The mentioned "Kemakolam Tochukwu" (a Mr. Tochukwu Kemakolam), who described himself to be the Company Secretary/Legal Adviser of Futureview Financial Services Limited, also made a Statement to the EFCC. In that Statement, Exhibit P189, he wrote that he had been referred by the interviewing officer to "a loan application of N4 billion dated September 10, 2007 by Extra Oil Limited purportedly having my name as the Managing Director/CEO and a purported board resolution dated 20th December, 2007 authorising me and one Amadi Austin to sign all documents relating to the Equipment Lease facility offered by Platinum Habib Bank Plc to Extra Oil Limited vide the purported offer letter of December 15, 2007". He continued:

For the avoidance of doubt, am not a shareholder or director in Extra Oil Limited. A search at the Corporate Affairs Commission can attest to this. These purported documents did not originate from me or my employers. ... The credit

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approval shown to me relating to Extra Oil Limited purported credit facility of N4 billion for equipment lease via a CP dated November, 2007 still has my name as a director and management staff of Extra Oil Limited. I wish to state again that am not a director neither am I a shareholder nor a management staff. The profile attached to my name is also totally false. ... The above documents to wit: board resolutions and the profile are not true and forged.

Regarding Tradjek Nigeria Limited, the earlier-mentioned Jude Kemakolam said to the EFCC in his Statement, Exhibit **P190**, that he was the Managing Director of that company. He wrote that he had been shown a copy of the availment/utilisation ticket issued by the bank regarding a term loan in the sum of N3.5 billion that the bank had granted Tradjek. He wrote further,

My reaction to the above is a total surprise. One, we never opened any account with any Bank PHB branch let alone asking for loan. The address attached to our company, I have not heard or used it for any transaction. The address on the credit approval is not our address. The correct address is 161D Aufu Taylor Close V/Island. The ownership and management stated in the Availment/utilization Ticket of Bank PHB on the purported facility availed to Tradjek Nig. Ltd are not in our registration document and I disclaim them, namely Mr. Anthony Gwam Nwachukwu and Chioma Esiagu.

He said he did not know the members of staff of the bank mentioned in the ticket nor was the 1st Defendant known to him. He identified PW3 to be his elder sister. He also said,

The Bankers to Tradjek Nigeria Ltd are United Bank for Africa, Zenith Bank PLC. Apart from Tradjek Nig. Ltd am also involve (sic) in facility management and the only account we have is

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*with First Bank of Nigeria in the name of RS & W Facility
Managers Limited.*

PW3 had testified that her company, Futureview Securities Limited, did not apply for a facility from the bank, and indeed had no relationship with the bank. According to her, the name of that company amongst other companies, including companies that were their clients, were given to the 3rd Defendant when he visited her office at the inception of the Public Offer in 2007 for use in receiving preferential allotments of shares during the bank's Public Offer. She distinguished Futureview Securities Limited from Futureview Financial Services Limited. From her testimony, Futureview Financial Services Limited had expanded business dealings unlike Futureview Securities which was limited in its scope of business. She said that Futureview Financial Services Limited had been appointed as an issuing house, an underwriter, and a receiving agent during the bank's Public Offer but when the Securities and Exchange Commission directed that the number of issuing houses should be reduced, Futureview Financial Services was "stepped down".

She said the 1st Defendant came to see her in August 2009 and pleaded for himself and the bank that "Futureview" assist them as they needed to "move" some shares because of Bank PHB's over-exposure at the capital market but she had declined his request for help. She wrote as follows about ensuing events:

Sometime in October, weekend of October 2008, 9th, I had a visit from Charles Ojo ... He was one of the Executive Directors at Bank PHB. ... He came with Uzoma Okoro to see me, and came with apologies from Mr. Francis Atuche for using the names of some of our companies to book facilities for some of their investing clients. And, at the time he [that is, the 1st Defendant] came to see me in August, that he didn't know that that situation existed, and that he just found out that that was done and pleaded that I work with them in order

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to put together ... in order to document what had been done. The whole thing came to me as a shock because I just could not understand what was being communicated to me and I wanted further clarification. And he told me what he had done, and that he had actually booked facilities in the name of Futureview Securities, Extra Oil and Tradjek. I tried to find out how much are we talking about. He said "About nine billion". I said, "Wow!" I said, "How could that be? How is it possible to book such a facility without our knowledge, without any documentation; no documentation?" He said, "Yes". "Okay, before I can even say further, can I see these documents and know what has happened? Maybe somebody has gone and booked facilities without my knowledge". But before I could even make any further enquiries on it, and I told him that this world is crazy, you know, to have such a situation at hand. He demanded for me to say that I should not panic, that everything was under control, that they have been servicing the debt and it's actually performing. So ... and that they've given commitment, and that they accede to what they have contrived and support with documentation; that they will ensure they are up to date with servicing those facilities, and make sure nothing goes wrong. At that point, I was dumbfounded. I just could not comprehend how that could happen. At that point I was just focused on, "Okay, let me see the documentation you have. Let me know what has transpired". Because I was thinking that maybe there is some fraud within the company or something; "Let me see". So he promised that they will get me the documents, you know, by the following week. ... And in all of this, he kept on repeating apologies from Mr. Francis Atuche about what has happened;

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that they are very sorry about it, and asking for my cooperation.

*...
They wanted me to take responsibility for those loans; that I should take responsibility and then complete the documents. These documents were later brought in... documents that had offer, letter of application for the loan for the different companies, Board resolutions already framed*

She said that a certain Nnaemeka Obiaraeri, a member of staff of the bank who had once worked with her (he testified later as PW6) telephoned her the Monday after and handed over the phone to the 1st Defendant. She continued,

... Francis came on the phone and started pleading again, expressing his apology about what had happened, and also requesting that I help tidy up the documentation for the facility. At that point, I told him I cannot do that, there is no basis for me to do that.

She said PW6, when the telephone was returned to him, told her he had been instructed to bring the documents to her nonetheless. She said she too was curious to see them. PW6, she said, brought them over to her in the evening of the following Wednesday. She said the envelope included already prepared Board resolutions for Futureview Securities, Extra Oil and Tradjek, computer print-outs showing the movement of funds in accounts created for the affected companies, prepared acknowledgments of the facilities, and more. She said PW6, when handing them over, apologised for the "fraudulent act" and advised that she should not sign any of them. She said the documents, which she believed to be the very documents the 1st Defendant and Mr. Charles Ojo had spoken to her about, were handed over by her to the EFCC during investigation. The documents in question, which were unsigned letters of application for loans and Board resolutions in that respect prepared for each of the three

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companies, similarly unexecuted letters of offer of facilities addressed to each of them by the bank, and Statements of Account for the three companies, were received in evidence as Exhibits P58 to P75. The documents had dates for the year 2007 save for those letters that were made out to be the restructured facilities and were dated 2009. The official envelope of the EFCC in which they were contained was Exhibit P76.

Testifying on the documents she said PW6 had passed over to her – that is, Exhibits P58 to P75, the witness denied knowledge of the transactions contained in the Statement of Account said to be for Futureview Securities Limited, saying that even though that company existed as a registered company, it was not operational as a securities trading business at that particular period in time in the year 2007. She also queried the authenticity of the documents prepared for the company named as "Futureview Financial Securities Limited", saying there was no company bearing that name, and of which she was the "Managing Director/COO" as she was further described. She said rather that she was the Managing Director and Chief Executive Officer of Futureview Financial Services Limited.

Under cross-examination by the 1st and 2nd Defendants, PW3 answered that her company, Futureview Financial Services Limited, did not sell shares to investors directly during the bank's Public Offer. She said it did so through the 3rd Defendant. She testified that she had met with and spoken to the 1st Defendant "at the floor of Nigerian Stock Exchange" at the time they were dropped as an issuing house. She said,

I met him aside and told him that this has happened, and for us to continue to act as underwriters for this Issue, that they have to look for other ways of compensating us. And he said that I shouldn't worry, that I should discuss with Ugo, that all that will be done. So I have been speaking with Francis Atuche.

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The details of the transaction was discussed with Ugo Anyanwu. Then, I told Francis – he's still alive – that they needed to compensate us for still working with the institution even after they dropped us as issuing house.

She denied the assertion of cross-examining Counsel that the 1st Defendant, during his visit of August 2009 to her, had come to discuss how she would pay off the loans. She said again that they had no loan agreement with the bank. She said,

... All the indication was ... how to compensate us for this transaction that they dropped us on. They didn't say they were going to use our names to book loans, false loans and all of that.

She insisted that the total sum of N10.9 billion, which she said had been transferred from Bank PHB to accounts of Futureview Financial Services Limited at Oceanic Bank, First Bank and Intercontinental Bank, was not the proceeds of a loan she took to purchase shares, describing that assertion as "very incorrect". She also answered that the three companies put forward by her were not allocated any shares after all despite their applications for preferential allotments and despite the proposal that had been sent to them by the bank in that regard.

In one of her Statements, Exhibit P186, PW3 had said to the EFCC as follows:

... During the Bank PHB offer we acted as Underwriter, and Agent. However our initial mandate was for Issuing House/Underwriter/Receiving Agent. When the Issuer and the parties to the Issue went for the quotations meeting, the Nigeria Stock Exchange insisted that the issuing houses can only be four. They advised the issuer to drop two of the Issuing Houses since we were six at the time. Futureview Fin. Services Ltd was one of issuing Houses [dropped]. It is

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important to note here that as a nonbank financial Institution providing underwriting service, The sweetener is usually the issuing House aspect of the mandate. For us to continue on the mandate, I extracted commitments from the Bank through Ugo Anyanwu to bring us in as Receiving Agents for some of the huge foreign investments that they were expecting. He agreed to so do to compensate Futureview for being dropped as an issuing house but still willing to provide the underwriting commitment. On this basis we continued our agreed role on the offer. Towards the end offer (sic) Ugo Anyanwu called me to inform me that some of the funds have come in and ... provided the details of the inflow and outflow. All the funds transferred to Futureview were all returned through cheques as requested. When we requested for the [back-up] details of the investors he promised to provide the list subsequently. Due to the high tempo and frenzy of activities in the capital market at the time we failed to adequately follow up to obtain the List. Another effort was made on receipt of the Agency fee to obtain the list of investors and the filing document. Another promise to deliver the records were made but not fulfilled.

It is pertinent to note that during all of this communication and interaction I never for once suspected any fraud. I knew Ugo Anyanwu from his days in PWC when he led the team of auditors to audit ... Futureview accounts for ... several years. Ugo himself never at any time took me into confidence or mentioned their ulterior motives for the supposed concessions they gave. The payment made to us represented 1% of the funds mobilized in line with the approved commission rate. During the period it was also common for issuers to pay a premium to encourage Agents to route their

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subscriptions through their banks and even paid their staff additional incentives for funds mobilized. This allows them the use of the float for some time before they would make full returns. They usually earn good income trading ... with the funds before allotment. Receiving a cheque from them therefore for payment of this commission was not strange. I strongly reiterate that we are not privy of this wicked and fraudulent act to use the names of innocent companies to book facilities to fund share purchase of some faceless companies and individuals. We are yet to recover from this shock and look forward to the quick resolution of this matter. ... At the time the commission was paid we thought we earned good money. Based on information available to us now, it is obvious that the whole transaction was a well thought plan by the bank.

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During the course of her cross-examination on this Statement, this time by Counsel to the 3rd Defendant, and in refuting the assertion that she had failed to report suspicious transactions if indeed the funds in the total sum of N10.9 billion that was transferred to Futureview Financial Services' accounts at three other banks were not proceeds of loans, she answered,

There was no suspicious transfer ... At the time, I was clearly told that those transfers were coming, and that they were funds being transferred for investment from ... on behalf of investors that Bank PHB offered.

PW3's testimony about the appeals to her by Charles Ojo and the 1st Defendant in October 2009, and her evidence that she received unsigned documents thereafter which the three companies were to execute in order to show that there were loan agreements in the year 2007, were corroborated by PW6. He said to the court that his boss, Charles Ojo, had asked to know how well acquainted he was with PW3 and when he answered that she was like a

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mother to him, Mr. Ojo, asked him to help him book an appointment to see her. He said,

He ... pleaded with me to see if I can arrange a meeting between him and Mrs. Elizabeth Ebi on behalf of Mr. Francis Atuche; that they did something terrible with her accounts and they need to sort it out.

He said that when he met with her after Mr. Ojo's visit accompanied by Uzoma Okoro (he said Mr. Okoro was PW3's nephew), PW3 told him upon his enquiry that she did not know about the transactions that had been done using the three companies. He continued,

She said she wasn't aware, that she doesn't have the details. That's her exact word – that she doesn't have the details of what they were talking about; that I should follow up ... with Charles to pick the documents. So I called Charles who told me that he was on his way to Abuja next day, that I should contact my former MD who is Mr. Francis Atuche to discuss. So I called him. He said I should come to the house. So I went to his house in the afternoon. I met him. He brought out some documents in an envelope and he gave to me that I should go and give it to Mrs. Elizabeth Ebi. So I asked what it was. I had to open it. It was application letters and offer letters from the bank. They were blank. So I took it and went to Elizabeth Ebi's office straight. ... I delivered the documents to her and I remember I asked her again if these documents, she knows anything about it. She said, "No". I said, "Okay, I have been asked to deliver the documents to you but for your own good, I will advise you, if you don't know anything about it, don't sign". That was my exact words to her. "Keep it because you may need it tomorrow". And I left her office.

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He identified Exhibits P58 to P75 to be the documents he had collected from the 1st Defendant and handed over to PW3.

The witness did say, when under cross-examination by the 1st and 2nd Defendants, that if he knew that PW3 had truly entered into loan agreements with the bank he would not have advised her not to sign the documents. When asked if he had ever checked the bank's records before giving her such advice, he answered that his advice was based on the fact that he did not have any records of the loan transactions in his group (this he testified was Investment Banking) and in his position as the Head of Department of that group within the bank.

The Prosecution also led evidence in its bid to prove that the loans granted Mr. Peter Ololo's companies were similarly contrived. In this regard, and to give weight to the testimony of the Investigating Officers, they placed before the court the Statements Mr. Ololo had made to the EFCC in which he denied ever entering into the loan agreements attributed to Petosan Oil and Gas Limited ("Petosan") and Resolution Trust and Investment Company Limited ("Resolution Trust"). These are Exhibits P191 to P195.

In Exhibit P193, Mr. Ololo wrote as follows:

... I am the Managing Director/Chief Executive of Petosan Oil & Gas Ltd. I saw the name in Central Bank of Nigeria ... publication of our indebtedness of over N4, 050, 426, 724.00. We hereby wish to confirm that we are not indebted to Bank PHB Plc as claimed by CBN publication. We are not aware of this facilities (sic) and we didn't received the loan proceeds in any form. No offer letter issued to us and accepted for the sum of N4, 050, 426, 724.00. We didn't delegate the power to operate manage and run Petosan Oil & Gas Ltd to any other third parties verbal or in writing. My Statement of Account showed that a loan facilities (sic) has been credited without my knowledge. Immediately asked my account officer who

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claimed ignorance of this facilities (sic) which must have been booked opened by the Head Office (Branch).

In Exhibit **P194**, he stated further:

Petosan Oil & Gas Company Ltd never applied for N4 000,000,000.00 loan from Bank Phb Plc, the purported application letter dated 28th September, 2007, Board Resolution dated 7th November, 2007 accepting the facility and Authorising Mr. Darlington Anokpobia and Peter Ossai to sign all documents in relation to the above facility, the above letters didn't emanate from Petosan Oil & Gas Ltd to the best of my knowledge. Though the signatures appears to be my signatures but was not signed by me. The offer of Banking facility dated 1st November, 2007 for N4, 000, 000, 000.00 from Bank Phb Plc was not received ... and accepted by us since we didn't applied (sic) for the facilities. Mr. Darlington Anakpobia and Peter Ossai was not authorised to sign any documents by Petosan Oil & Gas Ltd. We don't have any business relationship with them. They are not shareholders or Directors of Petosan Oil & Gas Ltd. General Paul Omu (Rtd) is not the chairman of Petosan Oil & Gas Ltd and also not a shareholder's Petosan Oil & Gas Ltd. Mr. Darlington Anakpobia is not a Director/shareholder of Petosan Oil & Gas Ltd. Mr. Peter Ossai is not the General Manager, Operations and logistic of Petosan Oil & Gas Ltd. I don't know any of them. I don't have a Tank farm [anywhere] in Nigeria not to talk of establishing one in Calabar. I have never applied for the restructuring of the facilities.

Exhibit **P195** was in respect of Resolution Trust and Investment Company Limited. In it, Mr. Ololo wrote as follows:

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Resolution Trust & Investment Company Ltd is my company, the account was opened 27/12/07 with Bank PHB Plc Victoria – Island, Lagos Branch. We never applied for any loan facilities in the name of Resolution Trust & Investment Company Ltd from any Bank Phb Plc Branch. The application letter dated 11th November, 2007 did not emanate from me and any of the shareholders and Directors of Resolution Trust & Investment Company Ltd. The Board Resolution dated 11th November, 2007 never emanated from me or the Board of Directors of Resolution Trust & Investment Company Ltd. We never received or seen (sic) the purported offer of Banking facility dated 12th October, 2007. We are not aware of the N3, 300, 000, 000.00 ... Bank facilities from Bank Phb Plc. We are only aware of Resolution Trust & Investment Company Ltd current a/c No. 001102000643 We never requested for a second current Account to be opened. The lodgement of over N3.5 billion into the 2nd Current Account which was opened by Bank Phb Plc we received the lodgements from Bank Phb Plc which was issued back on the instruction of the Financial Controller Ugo Anyanwu for Bank Phb Plc Public Offer which they said represent various investors who purchased Bank Phb Plc Public offers through them. We are not aware that the proceeds that was credited to our currents (sic) was actually a loan facilities account created in our name without our consent. We never discussed or have prior knowledge any loan facilities granted to Resolution Trust & Investment Company Ltd with Mr. Ugo Anyanwu or Mr. Francis Atuche ... of Bank phb Plc or my Account officer (Helen Eriyo) We never knew how the purported loan was liquidated and we were never informed of this loan or any demand made on us. We want the Commission to look into Pine Petosan Ltd Current

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Account since the same has happen to Petosan Oil & Gas Ltd and Resolution Trust & Investment Company Ltd.

His Account Officer, Ms. Helen Eriyo, did testify as PW5. She said she started work (assumed office) at Bank PHB Plc in December 2007 after which she solicited for the Petosan Oil and Gas Company Limited account from Mr. Ololo. Her evidence was that she was successful in that regard as Mr. Ololo opened the said account later that month. The current account opening form of the company, Exhibit **P111**, confirms her evidence in this regard. It shows that she attended to the opening of the company's bank account at the Head Office branch of the bank at that point in time, December 2007, whilst the Statement of Account, Exhibit **P101**, shows that transactions commenced on the account on the 27th of December 2007. Ms. Eriyo said even though she was its Account Officer, she was unaware of the existence of a loan agreement between the bank and Petosan during this time. She testified, under cross-examination by the 3rd Defendant, that a customer's request for credit starts at her table, she being the Relationship Manager at the branch level. Indeed the 1st Defendant lent weight to this particular piece of evidence when, in testifying on the credit process of the bank, he said requests for credits start with the Account Officer at the branch level.

Certainly, it is strange that being the Account Officer who had brought the account to the bank, she would be unaware of transactions on that particular account between the customer and the bank, especially one of as huge an amount as N4 billion, even if that transaction had been done, as the paperwork suggests, a month or two before she joined the bank. As the paperwork also suggests, the loan was yet to be disbursed at that time that she became the Petosan Account Officer so that in the ordinary scheme of things she should have come to know about the loan in the course of her duties as the Account Officer. If the assertion of learned Counsel for the 1st and 2nd Defendants to her (when cross-examining her) was true – the assertion, that is, that Mr. Ololo played a role in her coming to be employed by Bank PHB and was instrumental to her being made his company's Account Officer – then it would be stranger

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still that she was in the dark about this loan agreement between the bank and Mr. Ololo's company, Petosan Oil & Gas Company Limited. Indeed, her being unaware of the loan lends credence to Mr. Ololo's Statement that he too was unaware of the loan.

The details of each of the five alleged loan agreements – the stated purpose and the terms and conditions of each one – are in evidence before me. They are, as contained in the respective credit approval memoranda prepared by the bank's Credit Office. Each one of them was signed as approved by the 1st Defendant. Also in evidence are the availment/utilisation tickets for each company signifying that all the prerequisites for disbursement of the loan sums had been satisfied so that the customer could be availed of the approved credit. {I say this because it is the evidence given by the bank's Chief Credit Officer, Ms. Phillipa Ulasi (PW9) when questioned about the credit process. By reason of her office, I believe she would be in a good position to know, and to give reliable evidence on this credit process. She had explained that it was only after satisfying the conditions precedent to drawdown contained in a credit approval memorandum that a customer comes to be availed of a loan facility. That piece of evidence was repeated by the 1st Defendant when testifying on the procedure for granting loans at the bank.} The Statements of Account of each of the five companies then show that the sums availed them were indeed disbursed. They were paid into the loan accounts in issue at the tail end of December 2007. In other words, the conditions precedent to drawdown, on the face of it, had indeed been fulfilled.

In order to determine the genuineness of these loans, each of those credit approval memoranda and availment tickets will come under scrutiny. This is because the 1st Defendant, in his bid to cast reasonable doubt on the case of the Prosecution that the loans are fictitious and exist only on paper, gave evidence that each such credit process followed the due process requirements of the bank in that regard, and that each one passed unconditionally all of the

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rigorous, multi-faceted Control regimes of the bank. What was more, it was his evidence that the bank's internal auditor and its external auditors raised no issues and made no exemption reports on each loan agreement. There were no red flags of whatever kind. And that finally, the Board of Directors ratified the loans at their meeting of the 9th of July 2008 after calling for, and being satisfied with, detailed explanations on each of them.

I should first explain that the document named a Credit Approval Memorandum contains information on the loan applicant, the purpose of the loan, the amount to be approved, the nature of the project for which the loan request was made, the profitability of that intended project, how the money is to be disbursed in line with the execution of the project such as to protect the interests of the bank, the risk factors and mitigating factors that have been taken into consideration by the bank, and, bearing all these in mind, the set conditions that must be met by the applicant before the loan is made available – that is, the "conditions precedent to drawdown". I see that it is a document prepared by the bank in the credit appraisal process.

The 1st Defendant had explained when giving evidence that credits ("loans" by another name called as a witness, PW4, explained) are part of the money-making business of a bank. And so, the bank makes financial gain, it earns profit, from that business – this, from the interest and other charges and fees the customer incurs on a loan. The 1st Defendant further testified that the viability of the loan request is contemplated upon and appraised by those he called Credit Analysts. It is these Credit Analysts; junior and senior, that would consider the request and make recommendations for approval or non-approval. He said the loans in issue in this case were in sectors of the economy that were highly profitable at that time so that the bank considered them to be very viable for it in terms of its (the bank's) profit-making consideration. They were in the capital market, oil and gas field, and the real estate sector. He further testified that the kind of Chief Credit Officers the bank employed were carefully selected. They were people of integrity; highly skilled and very competent at their work so that he would comfortably rely on their analyses and recommendations. He said, "/

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can swear by them. I can swear that whatever they have done, that it's above standard". And so, the fact that the credit file of the loan applicant does not come to him, and all he sees are the two documents he is to sign – the credit approval memorandum and the availment ticket, should not be to the bank's detriment. What was more, as he testified, the professional judgment of the Analysts in the Credit Office, and of the Chief Credit Officer, are assured because they do not see the loan applicant; they are not customer-facing officers of the bank.

This is what he had to say about the bank's credit process:

... [I]n terms of credit analysis, credit review and approval process ... there are three blocks. First block is the business side ... or the Experience Centre. The Experience Centre is the marketing staff, the Relationship Manager, the Executives that are market-facing. What they do is that ... when they get a loan request, they will review it, and if they are comfortable with it, they will pass the credit file, which will contain the application, the prepared credit approval form, they will pass it to the Credit Office. The Credit Office on the other hand do not see customers. They don't meet the customer. They have the assurance side or control side of credit review and their work is to ensure that every credit meets: (1) the risk acceptance criteria of the bank – meaning, is the risk acceptable, is it not acceptable? (2) the target market definition. The target market definition means sectors of the economy where the bank can lend. They will also like to know the portfolio risk because geographically if there is ... let's say this 2007/2008, there was massive kidnapping, Niger Delta challenges, if we had thirty or forty billion naira reserved as portfolio for South-South, these challenges at this point in time will make the bank to downgrade that portfolio So the Credit Office has three processes. There is a Credit Analyst;

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analyst will review the work of the Relationship Officer or Relationship Manager or Account Officer as the case may be. If he or she agrees, he will escalate it to the Senior Credit Officer. A Senior Credit Officer, if he or she agrees, they will escalate it to the Chief Credit Officer. So there is what is called Management Credit Committee; it's a full committee. And there is a forum of managing credit ... when they are not sitting which is called the "three credit initials".

So the Experience Centre propose. The Policy Centre or the Assurance Centre is the Credit Office; they agree or disagree. When they agree, it means the loan can be approved by three credit initials. When they disagree and it is necessary to continue on the pressing of that loan, it means that a full MCC, Management Credit Committee, will be called. It is this Management Credit Committee that can override the Chief Credit Officer when they are sitting in a committee. Nobody else can override the Chief Credit Officer or his or her team when he's going through by circulation.

So there are three blocks in the three credit initials. Block One is the business side, Block Two is the Credit Office side, and Block Three is the office of the MD. Now Block Three can also be an Executive Director if the amount is lower than N800 million. Block Three can even be a Regional Manager if the amount is, say, somewhere between ten and fifteen million naira. So it is just to ensure that loans go through the assurance part so that the bank will be well secured in its business dealings with customers. It is also the Credit Office that retains the file.

Now when a loan is approved by the Credit Office, it comes to me as Managing Director/Chief Executive Officer, and also in

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my capacity as the chairman of the Management Credit Committee, and also in the capacity as the interface between Management and the Board. So I sign in my capacity ... if it is N5 billion and below, I sign in my capacity as Managing Director/Chief Executive Officer. But I cannot sign a loan that has not been ... recommended by the Credit Office through the three credit initials of the system. But I can override the three credit initials system if taken to the full MCC. ...

...

No two applications are the same, and no two customers are also the same even when they are the same sector of the market. But a typical credit file will have: ... (a) the application for loan; (b) the credit analysis which goes up to the Credit Office; (c) the credit approval form which if approved by the three credit initials forms part of the basis for giving a loan. Now the credit file will have also three years' ... financial years' Financial Statement, it will have financial projection, it will have business plans, it will have cash flow analysis, some of them will have (inaudible) memo, it will have call memo to visit a customer, and then discussions you had with the customer. So we have a lot of documents. And eventually when the loan is approved, you also have an offer letter. The branch or the business office that proposed the loan will take the file to the Credit Office, and the Credit Office maintains the file. The file does not go to the Executive Director.

...

Once the Business Office has sent a proposal to the Policy Centre or Credit Office, they will do their analysis, make their recommendation, and bring the credit approval form alone,

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without the file, because the file is very bulky. And reliance is always placed on the decision of the Credit Office. ...

... there is a unique form called the credit approval form or credit approval memorandum But they bring it, you will see the purpose, the date, all the defence. But the important thing for the CEO who is making a decision – has the Policy Centre, the Assurance Centre, the team empowered to look at this credit, dispassionately given the nod? If they have, there is a likelihood that the CEO will approve.

So when the loan has been approved, the Credit Office will now give it to Credit Control. In the Credit Office you have credit analysis as the first phase through which loan comes in. When the loan is approved, it goes to the Credit Control. And again, Credit Control is made up of eighty per cent lawyers and other operators. They will give the approved document to the Account Officer, he will prepare the offer letter, sign, and then bring to Credit Control. Credit Control will say, I have seen all the documents, precedent to drawdown, before they will sign. When they sign, they take the document to the Credit Admin. The entire file now will move to Credit Admin. ... I understand that the Credit Control doesn't look at adequacy but they look at sufficiency. Something like that I heard them say. So the Credit Control will move the file, having satisfied themselves that all permissions and precedents are correct, to the Credit Admin. The Credit Admin now keep the file, and now prepare the avilment ticket. The avilment ticket is again taken from the Credit Admin, sometimes to Credit Control, most times to the Credit Risk,

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*and depending on the volume, to either Executive Director ...
again to myself. When I approve an availment ticket, I have
no more role to play in a loan unless during reviews.*

The 1st Defendant testified on each of the credit approval memoranda and availment tickets in issue in this case. His evidence was to show that they were all approved by him as they all met the set criteria of the bank and they each followed the due process as scrupulously applied. The loans were therefore availed and the monies disbursed in line with what was laid down, or spelt out, in each memorandum. The evidence of the 1st Defendant was that once all requirements had been met and the monies paid over to each company, it was not the business of the bank to dictate what the customer does with those funds. This, the 1st Defendant testified, is because the money, from that point onwards, is no longer the bank's money but that of the customer to whom all ownership rights – including the liberty to do as he pleases with the cash in his hands – have now passed. I have said this before.

And so, the case of the 1st Defendant is that him having legitimately signed off on the credit approval memoranda and availment tickets, and in so doing, acted in the ordinary course of his duties as the bank's Chief Executive Officer, then each loan agreement cannot be considered to be a hoax. They were truly made with each company, and to the knowledge of PW3 and Mr. Ololo – the alter egos of their respective companies.

Also in a bid to discharge the evidential burden of proof that had come to rest on him when called upon to answer to the Charge, the 1st Defendant when testifying denied PW3's assertions and evidence of an oral agreement between him and her, and the details of which she was to work out with the 3rd Defendant. He said instead that he met her for the first time in the year 2009, well after the period of the loan, and when trying to resolve the matter of paying back the loans, and not as she said, at a much earlier time at about the time of the commencement of the Public Offer (I see that it opened on the 19th of November 2007), and after her company had been dropped as an issuing

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house. To support his position, he referred to one of her Statements in which she had said that officers of the bank had come to her to invite her to subscribe to the bank's shares during the Public Offer.

The 1st Defendant was cross-examined extensively on the contents of each of the credit approval memoranda that are in issue in this case with the aim of showing that the loan agreements were not real.

With respect to that for Futureview Securities Limited, said to have been granted a loan of N3.5 billion, the credit approval memorandum and the availment/utilisation ticket were received in evidence as Exhibits P125 and P122, respectively. The credit approval memorandum states that the bank gave approval to the request for a loan in November 2007. The purpose of the loan was to enable the company "*to take strategic position of selected stocks*". The collateral with which the loan was to be secured was stated to include a "*Lien on quoted shares of blue chip companies*".

But then, the acknowledged Managing Director and Chief Executive Officer of Futureview Securities Limited, PW3, has said – and this, without any evidence in rebuttal – that Futureview Securities Limited was not carrying on its business of securities trading during the period 2006 to 2010. She testified that it stopped operating in the year 2006 when it transformed into Futureview Financial Services Limited, and then came to be reincorporated that same year. She testified further that it took some time, not until 2010, before it obtained all the necessary licences and approvals to enable it resume business as a securities trading company. As I said, this evidence (even though challenged under cross-examination) was not controverted by evidence that proved it to be wrong. I find that in such circumstances, it would be hard to believe that the company, in 2007, would have applied for a loan in order "*to take [a] strategic position [on] selected [stock]*". In such circumstances of it not being operational, it would be difficult also to believe that repayment would be the "*Proceeds from cash flow of the Company's Operations*" as also stated in Exhibit P125. Also improbable is the statement (under the sub-heading, "The Request") that,

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This project seeks Management approval of N3.5billion to fund working capital requirements such as trading activities, DAUE for payment to clients, Gen Admin expenses. ...

Of course, the veracity of PW3's evidence that Futureview Securities Limited was not operating at that time could have been tested in a more concrete, and certainly independent, way – with evidence from the Corporate Affairs Commission, the Nigerian Stock Exchange, and the Securities and Exchange Commission. In the absence of rebutting evidence however, I am of the considered view that it has come to be established that the company, Futureview Securities Limited, was not carrying on business of the type that warranted the loan it is said to have applied for – a loan to enhance working capital for a non-existent securities trading business.

Beyond the conditions precedent to drawdown, there were other conditions to be complied with according to Exhibit **P125**. One of them was the condition that,

All [out-of-pocket] expenses including registration, legal fees, stamp duties and other fees incurred by the bank in processing this facility ... will be for the account of the company.

But the Statement of Account, Exhibit **P105**, shows otherwise. It shows that the bank, by itself, made redundant this term of contract when it transferred **all** of the loan amount out of the account within just a week of disbursement. In other words, the purpose of the facility was defeated by the bank itself when, known to it, the monies took flight from the account. No such deductions as described, aimed at giving effect to the loan agreement on account of the bank "processing [the] facility", were made. What were deducted instead were charges incidental to opening a bank account; any bank account. And even though he testified about a loan monitoring unit in the bank, and made mention of the credit review committee he named to be "Risk Management and Control", headed by the Chief Risk Officer who he said reports to him on a day-

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to-day basis and sends him minutes of the committee's meeting, I see that the 1st Defendant had nothing to say regarding any remedial measures that were taken regarding this loan for during a period of a year and a half when it had clearly not been put to the stipulated use; a loan of a huge amount. All of this does not help the case of a genuine loan transaction.

The credit approval memorandum that relates to Extra Oil Limited is part of Exhibit P120. The company is said to have applied for an "*equipment lease facility of N4B ... to finance the purchase of 6 brand new 300 passenger houseboat[s] from Wright International Ltd*". It continues, "*This is to be for onward lease to NAOC and other members of their clientele lists for their deep sea facilities*". But the 1st Defendant, when probed regarding the listed conditions precedent to drawdown was unable to answer in the affirmative the question whether any of them had been fulfilled before he signed the avallment ticket.

"Conditions Precedent to Drawdown" had been stated in each credit approval memorandum that is in issue. These were terms and conditions of each loan that the 1st Defendant approved of, and which terms and conditions, according to him, were all fulfilled before he signed each and every avallment ticket. I say so because he was emphatic, during his cross-examination, that the deferral system as it relates to the avallment of a loan was not activated; it was not put to use with regard to the avallment of all five loans in issue in this case. And that deferral policy regarding the avallment of loans, from the evidence, is for the sake of making available the agreed amount even though all conditions of the loan agreement were not fulfilled.

But then, contrary to the condition that the Board resolution in question must not only authorise the loan but accept it as well, Exhibits P269 or D95 which were produced by the 1st and 2nd Defendants as the Board resolution of Extra Oil Limited do not evince an acceptance of the facility. They were also stamped as received by the bank in January 2008 and October 2009 when the Board resolution in question was to be a condition precedent to drawdown. As I said,

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the 1st Defendant's evidence was that there was no need to employ the bank's deferral system so as to waive or defer that stipulated condition regarding the company tying itself down to a liability in the sum of N3.9 billion as was approved. From the evidence, no other condition precedent was fulfilled including the important one of presenting an "[e]xecuted purchase agreement with Wright International Limited", the seller of the houseboats.

What was more, the stated "Board & Management of the Company" were a set of people different from those contained in the company's incorporation papers before me, as PW1 had said in his Statement to the EFCC. He said the person named as the "General Manager Operations", one Amadi Austin, was unknown to him. PW1 was the Managing Director of Extra Oil Limited; he gave unchallenged evidence to this effect. Tochukwu Kemakolam, described to be its Managing Director, told the EFCC that he occupied no such role in the company and did not work for it. Another member of the Kemakolam family, identified to be Ibe Kemakolam, was the one who sat on the Board of Extra Oil, and who, indeed, was the majority shareholder of the company. None of this evidence that show the basis of the findings and conclusions of the investigating team has been contradicted.

The credit approval memorandum of Tradjek Nigeria Limited is included in Exhibit P121. It reads that a loan of N3.5 billion was approved for that company in October 2007. The purpose was to enable it "*purchase [a] huge expanse of land located in [Phase 2] area of G. R. A. [Port Harcourt] Rivers State for real estate and also conclude preliminary works such as provision of access roads, drainage system, electricity, water supply, paving and landscaping*".

Given the fact that the location of the land that was to be purchased for the housing estate to be constructed was stated and therefore known (indeed the memorandum stated that a part-payment of the purchase price in the sum of N1.5 billion had already been made by Tradjek to the seller of the land), it is strange that the documents of title to that parcel of land and the search report regarding the same – documents that would prove the viability of the project

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and were therefore essential in determining whether or not to hand over such a huge amount as N3.5 billion – were not in the possession of the bank. I say this because the 1st Defendant, who asserts that the loan agreements followed the due process, has failed to produce them in evidence when the Prosecution's case is that they do not exist. Indeed, the 1st Defendant had said in answer to the question from Prosecuting Counsel that he had not bothered to call for the documents; to ask that a *subpoena* be issued for the bank's credit files of all five companies. But yet he also said that there were no deferrals of any of the conditions precedent before he signed their availment tickets. In other words, even though he wants the court to believe that those said documents exist, and were considered by the bank, he did not ask that the court order their production in evidence as vital as they were in giving credence to his testimony on authentic loan contracts.

Just as with Extra Oil Limited, the persons stated in Exhibit P121 to be the owners and managers of Tradjek Nigeria Limited are different from those in Exhibit P205, its company registration papers at the Corporate Affairs Commission (the "CAC"). Neither of the two persons said to be directors of the company are mentioned in its verified Particulars of Directors at the CAC. One of the verified Directors, a Mr. Jude Kemakolam, told the EFCC investigators instead that those two persons mentioned in the bank's document, Exhibit P121, were strangers to the company.

I see that the money disbursed also took immediate flight just as the loan account was opened, and contrary to the terms of Exhibit P121 by which the bank itself stipulated that disbursements were to be in instalments. When asked about the legal mortgage over the land that was to be purchased, and which was to serve as security for the advance, the 1st Defendant answered that the fact that none was executed was "not an issue" to him. Again as with Extra Oil's loan documents, none of the conditions precedent to drawdown was shown to exist beyond the 1st Defendant's bare words that there was no need for a deferral of them.

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The loan documents prepared for Petosan Oil and Gas Company Limited are the credit approval memorandum, Exhibit P115 (the very same document is Exhibit P118) and the availment/utilization ticket, Exhibit P113. The evidence from the Investigating Officers was that Mr. Peter Ololo, the owner of the company, had denied this loan agreement. Indeed, he had said in his Statement to them that he knew none of the persons stated in Exhibit P115 to be the owners and management of the company, and he had no business relationship with any of them. The company's incorporation papers, Exhibit P199, prove this to be true. Neither of the two persons mentioned in Exhibit P115 to be the chairman of the Board and its Managing Director are included in it.

The loan in question was the sum of N4 billion. It was stated to have been approved of in October 2007 for the construction of eight petroleum products storage tanks (a tank farm) in Calabar. Mr. Ololo, in his said Statement (Exhibit P194), had also been emphatic that he had no tank farm in Nigeria, and had no intention to have one constructed in Calabar. Just as with the other loan documents, the Statement of Account of Petosan (Exhibit P101) makes it clear that contrary to the "Transaction Dynamics" (defined by the 1st Defendant to mean "*the way it will flow*" – that is, how the loan transaction will be carried out), the funds were not "*disbursed along with the project terms*". Indeed, there is nothing to show that any of the conditions precedent to drawdown as listed in the memorandum, were fulfilled. The funds, instead, were disbursed and they immediately left the account (four days after) to the knowledge, and by the actions, of the bank.

The credit approval memorandum, of Resolution Trust and Investment Company Limited, Exhibit P240, approved of a loan of N3.3 billion in October 2007 to be used by the company to increase its paid up capital. There were conditions to be fulfilled before the money would be paid, listed to be as follows:

1. *Receipt of customer's request letter.*

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2. *Receipt of executed offer letter and board resolution authorising acceptance of the facility.*
3. *Receipt of executed personal guarantee of MD/CEO to cover the full facility sum.*
4. *Receipt of executed certificate of pledge/letter of set off.*
5. *Receipt of upfront processing fee in respect of the facility availed.*
6. *Receipt of undated letter to CSCS authorizing the bank to sell the shares in the event of default.*
7. *Receipt of all executed commercial paper instruments towards availment of the facility.*

When the evidential burden of proof shifted to the 1st Defendant, none of those documents were produced for the court to see. And even though the memorandum states that the facility was "fully secured", yet the 1st Defendant agreed under cross-examination that the "*shares of blue chip companies valued at over N4.3 billion*" that were to be used to secure it (this is also stated in the letter of offer, Exhibit **P241**) were the very shares that were to be purchased with the monies to be advanced by the bank. And to add to the difficulty with the loan documents, the availment ticket (Exhibit **P242**) states a different type of security completely. Unlike the credit approval memorandum and letter of offer purportedly signed by the company, it states this to be an "All Asset[s] Debenture over the company"! What is more, whilst the credit approval memorandum states the company's "Managing director/CEO" to be a certain Mrs. Roli Oldo, the letter of offer was signed by its acknowledged owner and promoter, Mr. Peter Ololo, with the title, "MD/CE".

With all these incongruences, this "disharmony", standing without any viable explanation from the 1st Defendant to iron out the inconsistencies between the loan documentation and the reality on ground, the evidence before me from the Investigating Officers that the loan agreements were not authentic remains credible and strong.

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I think that it would be a difficult thing for the reasonable man to imagine, that loan sums in such huge amounts were disbursed and then immediately after, allowed to leave the respective loan accounts *in toto* without any attempt to put the stated mitigants in place. It would be even more difficult to believe this when one considers the fact that those "mitigants" were designed to reduce or eliminate known, well considered risks that had been put into contemplation by experts in the field – the Credit Analysts. Equally amazing is the speed with which those sums were allowed to exit the bank without any care about the reason for them having been availed as described in the respective memoranda. After all, it was not for any reason that money was handed out; it was for the purpose of the projects and investments that the bank seemingly accepted and approved of, and on the bases of mitigants that were calculated to meet the risks of lending those sums. Bankers, as custodians of other people's monies (depositors' funds) will be taken to be well aware of their fiduciary duties. The 1st and 3rd Defendants, as experienced bankers, will also be taken to be aware of those duties so that the "escape" of the money in a heedless way can only be intentional.

There is also evidence that at the material time when the loans were said to have been created, the last quarter of the year 2007, the bank's set approval limits in terms of approving credits was that its Management Credit Committee (of which the 1st Defendant as Managing Director was a member) could approve of applications of an amount not exceeding N500 million whilst the approval limit of the Board Credit and Asset Quality Committee (a committee of the Board) was N2 billion. Any loan application that was for an amount higher than the N2 billion mark must then receive the approval of the full Board. This was the testimony of the Chief Credit Officer of the bank, PW9, who, as I said before, would know what she was testifying about by virtue of her office and role. Indeed she said she was the Secretary to the Board Credit and Asset Quality Committee, she being the Chief Credit Officer of the bank. She gave this evidence whilst undergoing cross-examination by the 1st and 2nd Defendants.

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She insisted that the approval limits were only changed in July 2008 when the Board reviewed the matter. She also said that the credit requests in issue were not considered by the Board's Credit and Asset Quality Committee. The 1st Defendant had identified the signature of only him and another Executive Director (apart from the signatures of the recommending Credit Analysts) on the credit approval memoranda in issue. He also unwittingly agreed that the applications, which were all above the sum of N2 billion, were not approved of by the Board before availment and disbursement when he said they came to be "ratified" some six months later because the NDIC had made some observation when examining the books of the bank. To "ratify", of course, is to repair a breach in procedure by turning round to accept the act belatedly.

Not only is PW9's evidence on this cogent because of the "opportunity of knowledge" at her disposal, not only was it unknowingly backed up by the 1st Defendant, also instructive is the fact it was evidence given under the test, and pressure, of cross-examination. It is the law that evidence extracted during this test which supports the case of the party who called the witness has even higher probative value and would ordinarily be given that recognition by the court. The unfriendly circumstance in which such evidence was elicited, and the involuntary and spontaneous way it came to be extracted, gives the strong suggestion that it must be the truth.

I have just alluded to the evidence presented by the 1st Defendant in his further defence on this point. This was the evidence from DW1, Professor Patrick Utomi (a member of the Board of Directors of the bank, and indeed the Vice Chairman of the Board), who presented Exhibit D2, the minutes of the meeting of the Board of Directors of the 9th of July 2008. The minutes were presented to back up the position that the loans were genuine as they came to be ratified by the Board. But as I have said, the very fact that they had to be ratified by the full Board (as the 1st Defendant testified) means, in my considered view, that PW9 was right when she said that the loans in issue could not simply be approved of by the Managing Director of the bank, or by the Management Credit Committee

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for that matter, but always required the approval of the full Board in the first instance.

In the event, it is my finding that there was a deliberate bypassing of the Control measures put in place by the bank when the 1st Defendant alone went about signing off his approval of the loans.

The 1st Defendant testified on what a credit file would contain. His evidence on this has been quoted earlier. That piece of evidence, I see, was of a general nature. It had to be as he said he did not see the credit files concerning the loans in issue given their bulky nature. But I am of the respectful view that those credit files were extremely important to the case of the 1st and 2nd Defendants as they should have helped in showing that work, genuine work, was done in the preparation and processing of the loan agreements. The 1st Defendant testified about the credit file containing "call memos" – that is, evidence of visits by officers of the bank to the loan applicant and, I dare say, the outcome of such visits. He said it would contain the financial analysis of the customer including financial projections, business plans, and a cash flow analysis. Had these files, containing all what the 1st Defendant described, been placed before the court, I believe the Prosecution would have had difficulty sustaining the case it had made out. But there is evidence from PW12, one of the Investigating Officers, that when the EFCC moved in to investigate the bank, they found that the credit files were "scanty"; bereft of any such paperwork. He said all that existed were the very questionable credit approval memoranda and availment tickets that were used to disburse money into the loan accounts.

In other words, there is evidence before the court – and this from a witness (PW12) who related with officers of the bank whilst investigating the bank, making enquiries and calling up documents from them – that none of the usual processes towards creating a credit were found in the credit files that they saw; that there was nothing that evidenced any interaction with the alleged borrowers in the way and manner portrayed by the 1st Defendant such as to lead to the conclusion that genuine loans had been made. I would add that the

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fact that the investigating team related closely with the bank's officers and worked with the bank's documents is made clear by, amongst other things, the testimony of one of those banking officers, PW7; by the letter, Exhibit P198, written by the bank's Compliance Unit, and by Exhibit P216, the Statement made to the EFCC by the head of that unit, a certain Ms Theresa Ekong. An officer from the subsidiary company, Mortgages PHB Limited, a Mr. Sunday Okolie, also wrote in his Statement, Exhibit P263, about how he had been made to take a particular file to the head office of Bank PHB to show it to the investigating team who were working out of that office. No doubt, PW12 read through bank documents and files when carrying out his investigation activity.

In such circumstances, and with the evidential burden of proof having shifted to the 1st Defendant, and given his defence case that "bulky" credit files that show that genuine loan agreements do exist, thus lending authenticity to his evidence, it became not just expedient but very necessary for him, in his bid to cast reasonable doubt on the case made out by the Prosecution, to make use of the opportunity afforded him by law to cause a *subpoena* to issue on the bank or the EFCC to produce those credit files. That procedure, I might add, is made available to guard his right to be heard fairly. The *subpoena*, being an Order of the Court, cannot simply be ignored. Unfortunately, no such attempt was made even before one comes to consider if any such attempt was fruitful. The 1st Defendant admitted (under cross-examination by the Prosecution) that he had not called for those credit files, nor had he called for any documents that would show that the loans had truly been secured.

I will here dwell a bit on the incidence of the shifting burden of proof. As I had explained before, when it comes to a defendant in a criminal case, this burden can only be of an evidential nature as the burden to prove that a crime was committed stays permanently fixed on the Prosecution.

Section 135(3) of the Evidence Act is the relevant provision of the law. It states as follows:

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If the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the defendant.

The failure of the 1st Defendant to cause the credit files to be produced, I find, leaves unshaken the evidence from the Prosecution that no true credit files ever existed.

Very instructively, and such that it challenges the 1st Defendant's evidence of knowing no more than what was stated in the credit approval memoranda and availment tickets, there is the evidence from PW9 which shows rather that he knew more about those loans than met the eye, and knew more than what was written down on paper. PW9 testified that she assumed office as the Chief Credit Officer in December 2007 but that she had deliberately backdated the Petosan credit approval memorandum (Exhibit **P115** or **P118**) to October of that year when, after consulting the 1st Defendant on the matter, he directed her to insert that wrong date. She also testified (this time, under cross-examination by the 3rd Defendant) that upon receiving the credit approval memoranda of three of the other companies – Tradjek Nigeria Limited, Extra Oil Limited and Resolution Trust – she had conferred with the 1st Defendant and asked him whether she should process them, with the 1st Defendant giving her the go-ahead to do so.

Indeed, in one of her Statements to the EFCC, Exhibit **P173**, PW9 had said thus:

*Having received the file of Petosan Nig Ltd, I recall that the credit of N4B ... **originated from MD's office**. On very rare cases, credits of this nature do come, but it is not a common occurrence. The common occurrence is for credits to come from branches. But because EDs & MD are also market facing, they relate with customers & bring in both deposits and credit proposals sometimes, but not very often. The directive to treat this credit was from MD*

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In Exhibit **P174**, she continued,

When the credit appraisal memorandum ... with a date of October 2007 came to me I queried it, but the Managing Director, Francis Atuche directed that we should use the October date to tally with when he received the proposal. This directive was verbal.

In Exhibit **P175**, she wrote again:

... When I received the proposals on Future View, Extra Oil and Tradjek three different customers' credit proposals for three different purposes as stated in the respective credit memorandum, On enquiry from the Managing Director, he directed that I go ahead and regularise the credit proposals as they border on the agreement already reached with the management of the respective ... companies at an earlier date.

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(All the emphases are mine)

I accept the evidence from PW9 as true because I found that the Defence did not successfully contradict it. Instead, other underlying factors or surrounding circumstances – the absence of evidence of the existence of the projects for which the loans were granted, the false information in the credit memoranda, the avilment of loans without conditions precedent being fulfilled, the absence of any processing of the loan applications in the manner detailed by the 1st Defendant (visits, inspections, meetings with the borrower, etc.) such as would back up the analyses contained in the crafted memoranda – all attest to the fact that, just as she said, PW9 had simply acted as she had been directed.

Certainly, the 1st Defendant was not as "ignorant" of the details as was the picture he painted to the court. He had, in a subtle manner, directed PW9 on what steps to take. Most unwittingly, and when under cross-examination by learned Counsel for the Prosecution, it was put to him that he had never made

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reference to oral agreements on the loans, he answered, "There were oral agreements".

PW9 went on to testify – again when being cross-examined by the 1st and 2nd Defendants – that approval limits set for credits were different and distinct from approval limits for availment. Indeed, and backing up her testimony, there is before me, as Exhibit P200, an Internal Memorandum issued by the bank on the 15th of February 2007 entitled, "Approval Limits for Credit Availment". (my emphasis). From the testimony of the bank's officers who appeared before me – specifically, PW5, PW9 and the 1st Defendant – it is clear that a credit approval is a different process entirely from a credit availment during the credit journey. And so, the contents of Exhibit P200, which set a different set of limits altogether, would not be helpful to the position of the 1st Defendant that the loans in question were properly and legitimately approved.

Exhibit P200 is relevant when it comes to the matter of the deferral policy of the bank when a loan that has already been approved is to be disbursed. It states thus:

*Where There Are Outstanding Documents or Conditions
Precedent Have Not Been Met*

A dully (sic) completed deferral form must be submitted. The deferral must be approved by

- *The BBM*
- *Regional Director/Group Head Concerned*
- *The Risk Manager and*
- *Head of Legal Dept,*

There is evidence to the effect that this deferral form is supposed to be attached to the availment ticket before the ticket is submitted for approval. But there is also evidence that there was no rigidity in the form such a document may take. It need not be in the format stipulated in Exhibit P200; it may be in another way. But certainly, if any deferrals of unfulfilled conditions precedent to

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drawdown in respect of these loans were to come to the attention of the 1st Defendant so as to enable him take a decision as to whether to sign the availment tickets or not, there was to be something in writing spelling them out and guiding him on how to exercise his discretion. That document, by logic and of necessity, would have had to go along with each ticket. That was the purport of the above-quoted part of Exhibit P200, judging by the simple, ordinary meaning of the very firm words that were employed. But even though it is clear that conditions precedent to drawdown were not fulfilled, the 1st Defendant, as I said, answered under cross-examination by the Prosecution that the deferral policy was not activated with respect to any of the loans in issue. Indeed, there is no evidence at all of deferrals that were granted by any of the four officers listed in Exhibit P200 before the availment tickets travelled up to him. It would appear then, given the failure to ensure compliance with conditions precedent to drawdown, that it was always the intention to brush aside in-house regulations and brusquely sign off on those tickets.

In a further bid to prove that the loan agreements were authentic and that the five companies were aware of them, the 1st Defendant caused certain documents said to be resolutions of the respective Boards of Directors of the three companies associated with PW3 (Futureview Securities Limited, Extra Oil Limited and Tradjek Nigeria Limited) to be adduced in evidence. They were received through the recalled PW1 and the recalled PW3 as Exhibits P267, P269 and P271, respectively. Documents that appear to be the original version of each of those exhibits were later produced and admitted in evidence as Exhibits D93, D94 and D95. They were produced by the EFCC upon a *subpoena* issued at the behest of the 1st Defendant. For the sake of ease in understanding, I shall identify the documents as they relate to each company. They are as follows:

- Futureview Securities Limited – Exhibits P267 and D93,
- Extra Oil Limited – Exhibits P269 and D95, and
- Tradjek Nigeria Limited – Exhibits P271 and D94.

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The case of the 1st Defendant, and of the 3rd Defendant, is that the "D" series are the original versions of the "P" series. Their case, further, is that it was those Board resolutions that empowered each company to enter into the loan agreements, and to open the respective loan accounts. Most importantly, that they show that PW3 was always aware of the existence of the loans, and the loan accounts opened for the companies, from the get-go. They are a different set of resolutions from those the 1st Defendant had sent to her through PW6 in October 2009, and which, he testified, were to replace this particular set that he said he could not, at that later time after the CBN intervention, have access to when trying to see that she paid back the loans.

The documents all read alike. They each state as follows:

BOARD RESOLUTION

At the extra ordinary meeting of the Board of Directors of [company named] held at [address written] on [date and time stated], the following resolutions were proposed and duly passed.

- 1. That the request to enter into banking relationship with Banks for the purpose of raising funds to meet the company's investment objectives is hereby granted.*
- 2. That the undersigned are duly appointed and hereby authorized to act as signatories to the transactions.*

Dated this [date specified]

Authorized Signatory

Authorized Signatory

Each one was signed by an unnamed "Authorized Signatory". But the signatures appear to be those of PW3 and PW1, judging by their specimen signatures on Exhibits P272 and P270, respectively. Both witnesses, when

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further cross-examined upon their recall, denied the assertion that they had signed the documents. They said that even though the signatures looked like theirs and were similar to theirs, they were not their signatures. I should add that the "P" series were the versions with which they were cross-examined. The "D" series were received in evidence much later during the course of the 1st and 2nd Defendants' presentation of their defence.

The documents – the resolutions – are meant to have been kept at the bank's Centralised Shared Services unit ("CSS") according to one of the 1st Defendant's witnesses, Mr. Uguru Onyike. Mr. Onyike, DW7, had told the court he was the Head of Operations at CSS and that the resolutions (the "D" series) had been brought over and stored at the CSS as was the norm, as part of the account opening documents received from the three companies. The 3rd Defendant said as much when he testified later. He said he had passed over those very Board resolutions to the then head of the CSS (this was PW8) on the 31st of December 2007.

It is clear that the "P" series are meant to be photocopies of the "D" series. In other words, they are meant to be a complete match of each other, with the "P" series reflecting exactly the same things as are on the "D" series. However, whilst the "P" series have two different dates of receipt at the CSS stamped on them – these were the 25th of January 2008 and the 26th of October 2009, the "D" series have a CSS "Received" stamp of the 25th of January 2008 alone. No explanation has been given regarding these two different dates of receipt of the same set of documents at the same department. I also see that whilst Exhibit D93 has the CSS "Received" stamp of the 25th of January 2008 impressed on it twice – at the top left-hand corner and at the bottom left-hand corner, the version that is meant to be its exact replica, Exhibit P267, has only one stamp of that date on the top left-hand corner. Again, there is no explanation of this anomaly from the persons that caused the documents to be adduced in evidence. And then, whilst Exhibit D93 has a list of the Directors of the company printed at the bottom, Exhibit P267 has no such list (or even the first line of such a list) at the bottom of the sheet of the same document.

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Looking at each corresponding "D" and "P" version, I see that the handwriting of the person who it states received the documents at the CSS on the 25th of January 2008; a certain "Amusan, M.N", differs slightly on each copy that is held out to be the very same document as photocopied. The obvious discrepancies, I see, apply to the Board resolutions of all three companies. And so, for example, the letter "A" for "Amusan" on Exhibit P269 crosses over the time stamped on the document as the time of receipt, "3:28". But on the supposed replica of that document, Exhibit D95, that "A" falls underneath that time, "3:28". Also, on Exhibit P267, the initial, "N", from "Amusan, M.N" crosses over the second lower-drawn stroke of what is put out to be PW3's signature, but on the document held out as the original version from which that photocopy was made – that is, Exhibit D94, the very same initial, "N", crosses over the first of the two lower-drawn strokes of the signature instead.

What all these mean is that there are fundamental difficulties with the presentation of the "P" series as being the very same documents as the "D" series, and there are difficulties with the different, contradictory dates of receipt stamped on them. These discrepancies have a direct bearing on the vexed question of whether or not Board resolutions had truly been signed by PW1 and PW3, and whether they had been received by the bank as stated on the face of them. It again has a bearing on the other important issue of when it was that they were received. Clearly, the integrity of both sets of documents are very much in doubt and because of this, I regret that I cannot consider them to be reliable pieces of evidence in determining the material issues at stake. For this reason also, the evidence of the 1st Defendant's handwriting expert, Mr. Raphael Onwuzuligbo, DW5, is, with respect, of no relevance. It cannot cloth either set of documents with the much needed authenticity.

To add to this, there is the evidence from PW3, when further cross-examined on the "P" series, that she is not a Director of, or a shareholder in, Extra Oil Limited and Tradjek Nigeria Limited so that she could not have signed the Board resolutions of those companies. Indeed, that piece of evidence from her has been proven to be true by the documents of incorporation of those two

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companies. She testified that from her knowledge of the way the three companies are run (she said she was familiar with them as they are companies associated with her business), resolutions of their Boards of Directors, ordinarily, are signed by their own Directors, whose names would have been stated clearly along with their signatures in order to identify those signatures, contrary to what was done with each of the documents in contention. She wondered how the people who supposedly were being conferred with authority would be the ones to sign the document that conferred them with such authority and not the empowering Directors who appointed them. She testified that the resolution prepared for Futureview Securities Limited was not written on that company's genuine letterhead, and that the company does not prepare resolutions in such wide, general terms as was done in this case, most especially when it concerns matters of finance. She added that contrary to their norm, the resolution in issue (this is Exhibit **P267/D93**) does not mention the loan amount. She said Futureview Securities Limited's resolutions are for distinct purposes and with differing terms to match such separate purposes so that a resolution authorising borrowing from a bank would be specifically addressed to the particular bank, with the amount to be borrowed and the details of the borrowing transaction clearly spelt out and defined. She denied having ever submitted Board resolutions of all three companies to the bank.

As I said, I am unable to rely on any of these resolutions as whatever evidential value they may have had has been completely whittled away. I dare say that all of the observations of PW3 make perfect sense to the reasonable man.

I must make it clear that in so saying, I have not gone into the issue of the way the "D" series came to be found and produced before this court. I have deliberately refrained from making a finding as regards the veracity of DW7's testimony in that regard. This is because I have it on record that there is a criminal case pending before another court on that very matter, and by which the 1st Defendant, DW7, and another officer of the bank have been charged with forgery. I should not, therefore, transgress bounds and be drawn into another matter that is *sub judice*. My finding, rather, is restricted and confined to the

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matter of determining whether they support the position that PW3 was aware of the loans and the corresponding loan accounts, and whether she (and PW1) had entered into agreements with the bank on behalf of all three companies in that respect. I am, of course, to determine the issues in contention before me here, and my decision is that they serve no useful purpose to the court in its consideration of the Defence case in this proceeding.

The 3rd Defendant, on his part and in his defence, said he had no hand at all in the business of granting loans. He testified that his office and his scope of work do not contemplate any such involvement by him in the credit making, or credit granting, process of the bank. He denied being involved in the loan agreements in issue. With respect to the credit approval memorandum of Extra Oil Limited (Exhibit P120) in which it was written that he was the company's Account Officer, he testified that since he did not perform such a role in the bank, the insertion of his name in the column was inexplicable and could only have been an act of mischief. Apart from his denial of being involved in the credit process, I see that the 3rd Defendant did not otherwise present any evidence that would take away from the Prosecution's case that erodes the integrity of the loan documents signed by the 1st Defendant. But he did agree with the 1st Defendant that the due process was followed, and that there were no red flags to show any breach of the rules and procedure in the process of making those loans.

Certainly, and even though the 3rd Defendant said he does not get involved in "*the nitty-gritty of loan creation*", by his own description of his job schedule and work duties, he would have had knowledge of the disbursement of sums of money amounting to billions and billions of naira (he described those sums to be "infinity" to him). He would have known that they had been taken out from the coffers of the bank. And he would have known where they ended up – in the disputed loan accounts. Indeed he was aware, having given directives to the Treasury Department regarding the transfer of those sums of money, and having had discussions with the Head of Treasury on the matter as he himself testified. He would have been aware, him being privy to the existence of loans "*on a global level*" as he equally testified. He said, during his evidence-in-chief,

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... [W]hen we do our strategic management, we create limits for every single asset. And loan is a very important asset for any bank because that is where we earn most of our income; if not 80% or more of income of most banks come from loans. So it's a very important asset. So we would have set up parameters from the beginning of the year and also review them as we go along as to what value of loans we need to create in order to earn certain levels of income. So I, as a CFO, we monitor that. ...

... I wouldn't know how many loans are in the process of being approved, I wouldn't know where they are at any point in time, I wouldn't know whether they have been approved or not disbursed. I see loans only when they are disbursed into accounts because they will form part of what I monitor as the CFO in the books of the bank.

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(The emphases are mine)

I find that this piece of evidence was somewhat echoed by PW6 who had said, under cross-examination, that the reason he had advised PW3 not to sign the letters of offer and other documents the 1st Defendant sent through him to her was because he, as the head of his department (the Investment Banking Department), did not see any such loans (this was a total sum of N10.9 billion for the PW3-associated companies) reflected in the records of the bank.

What is more, the second page of an email written by the 3rd Defendant in his official capacity (page 2 of Exhibit P96) reads as follows:

Below are the other names:

- Tradjek Nigeria Limited
- Futureview Securities Limited
- Extra Oil Limited.

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The documents of these guys are with me and we can do CPs.

("CPs" is the common abbreviation in banking of the term, "Commercial Papers". Indeed, the 3rd Defendant said as much to the court. He explained, in essence, that it denoted a money-making transaction.)

This document reveals his knowledge of the loans created in the name of those companies at the time money was set aside by the bank in the companies' names. It was not something PW3 came to inform him about on the telephone as he said. The document portrays his consideration, as the Finance man, of what to do with that allocation of funds in the time being. In so saying, I note that there is nothing that suggests that any other funds, other than the ones in issue in this case, were allocated to the said companies.

Finally, the 1st Defendant who, as Managing Director and Chief Executive Officer of the bank was very much in good stead to make an authoritative statement in this regard, explained to the investigating team in his Statement, Exhibit P177, that,

The big number loans are managed usually by the Corporate Banking group where the skill sets are different from the smaller numbers at the Commercial banking and branch business.

The 3rd Defendant has described his office to be the bank's "Corporate Centre", apart from him being in charge of the bank's finances. I see that PW8 said as much in his Statement, Exhibit P139, when he described the 3rd Defendant as "IMD Corporate Centre/CFO" ("IMD", from the evidence of the 1st Defendant, standing for "Internal Managing Director". And I see also that "CFO" denotes "Chief Financial Officer"). No doubt, the sums in issue here, running into billions of naira, are "big numbers".

But over and beyond the 1st Defendant's explanation on the running of the affairs of the bank, I am of the considered view that the 3rd Defendant knew

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enough about the nature of the funds in issue – all of the amount. Going by his own words of monitoring loan activity, he is taken to know what those funds were all about. This, because the monies were so huge as to make an impact on the financial books of the bank as the Defendants themselves (the 1st and 3rd Defendants) agreed when cross-examined. And so, when directing the transfer of the loan sums out of the bank just as they were being disbursed into the accounts, the 3rd Defendant would have known that there was no performance by the customer of each and every loan contract as there was no room – no time, no allowance – for any such step to even commence. This would explain his consistent statement when justifying his action (just as was repeatedly said by the 1st Defendant) that the monies, upon being disbursed as loans, became the monies of the customer and that the bank had divorced itself of all rights of ownership over those funds.

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In the event, and from a consideration of all of the evidence relevant to this issue, it is my finding that the Prosecution succeeded in proving that there were no real loan agreements as appear to be so on the face of the credit approval memoranda and availment tickets in evidence. I see, instead, that there were sheer acts of fraud evidenced by those documents which are a complete departure from the reality of the ownership and management of the companies in question. I see that availment tickets were signed for each one by the 1st Defendant without any of the drawn-up conditions precedent to drawdown having first been fulfilled, or ever being fulfilled. Those terms and conditions, then, were manufactured to suit an unwholesome end. No wonder the fact that the documents that purport to evidence the loans were all internal documents of the bank.

What this means is that it is true, as the Investigating Officers concluded from Mr. Ololo's above-quoted Statements, that he did not write or sign the letter said to have been written by Petosan on the 28th of September 2007 (Exhibit P114) seeking a loan of N4 billion. Nor did the company accept the purported letter of

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offer of the loan from the bank (Exhibit P117) or make the Board resolution (Exhibit P112) authorising persons unknown to it to "sign all documents" related to this supposed loan. This, in my considered view, explains the sheer ignorance of the Account Officer (PW5) of the existence of such an "agreement" when wooing the customer and attracting it to the bank! Ordinarily, the fact of her being kept in the dark on the "loan agreement" all through the time – after she had joined the bank, after she had brought in the customer, after she had opened the account; and after she had been put in charge of the customer's business as its Relationship Manager – would have been unfathomable to the reasonable man.

I should add that PW5's evidence of being unaware of the loan agreement made for Petosan was not dented under cross-examination. I see that what she said to cross-examining Counsel for the 1st and 2nd Defendants when agreeing with him that she knew of an already existing relationship between Mr. Ololo and the bank, was that she did not, even at that, know the details of that earlier relationship as she was not the one in charge of the already existing accounts. In other words, the earlier relationship concerned other accounts (not this Petosan account) that Mr. Ololo was operating in the bank before her time.

Indeed, it is strange that the bank would rely on an application letter it says was written by Mr. Ololo, and an offer letter it says was signed by him, and at the same time rely on a credit approval memorandum (which ordinarily would be prepared on the basis of that supposed application) that states that other people entirely, different from the person who applied for the loan, and different from the persons named in incorporation documents to be owners of the company, owned and managed, and were in charge of the company! Equally incredulous is the notion that the bank would depart from the person it knew and had always related with (the evidence is clear from the cross-examination of PW5 that even before the Petosan account was opened, Mr. Ololo had an established relationship with the bank; the evidence is clear that the 1st Defendant knew him to be the promoter of Petosan), and simply accept some strangers as the purported owner and managing director of the company who

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(as claimed in Exhibit **P112**) were authorised to sign any and all documents relating to a **liability** incurred in the name of that company of an amount as large as N4 billion. In other words, the 1st Defendant expects the reasonable man to believe that persons other than the person known **by him** to be the alter ego of the company who ran its business would be authorised to sign off on documents pertaining to a liability in the colossal sum of N4 billion! He need not see the bulky credit file to know something was seriously amiss.

The Prosecution, I find also succeeded in proving, as Mr. Ololo also said to the EFCC, that Resolution Trust and Investment Company Limited did not enter into a loan agreement with the bank in the manner portrayed in the credit approval memorandum and availment ticket prepared for that other company. The evidence has come to expose those documents to be false, so that the idea of a loan agreement existing on the basis of them is equally untenable.

Thus, Mr. Ololo's Statements to the investigating team were indeed investigated, and I find that the representations he made in them as quoted above was echoed in the team's findings.

For the same reason of false documents put forward as their credit approval memoranda and availment tickets, it is also true, as the Investigating Officers concluded, that the true owners and directing minds of Extra Oil Limited and Tradjek Nigeria Limited knew nothing about the loans supposedly granted their companies as they did not enter into any such agreements with the bank as they too had said to the EFCC. Those true owners were deliberately made unaware. "Deliberate" because as the 1st Defendant said, and in doing so agreeing with Prosecuting Counsel, the bank relies on documents kept at the Corporate Affairs Commission in order to ascertain ownership of a company when considering that company's application for a loan. I should add here that according to the Credit Analyst and Chief Credit Officer, PW9, in her Statement to the EFCC, Exhibit **P175**, the credit documents of those particular companies (as well as those of Futureview Securities Limited) had already been "analysed" (my choice of words) by the 1st Defendant who then directed her to "regularise"

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the papers. She said he told her they had been prepared to conform to what had already been "agreed" upon with the "customers".

I consider it to be significant here that a certain part of PW6's Statement, Exhibit **P136** (PW6, Mr. Nnaemeka Obiaraeri, was the person sent by the 1st Defendant to PW3 with loan documents for her to sign), was not challenged when he (PW6) was in the witness box. This was when he wrote as follows:

I visited Atuche's house on Sunday, October 11, 2009, around 7.00pm to 7.30pm, where he pleaded with me to beg Mrs. Elizabeth Ebi to forgive him for what they did with her accounts. The following day, being Monday, October 12, 2009, he called me to his house in the afternoon to come and pick the documents. When I got to his house, he pleaded with me to sign on behalf of the authorised signatories of the bank which I declined.

(The emphases are mine)

Because this account was a **graphic** narration of events by a direct, first-hand participant, I believe that they carry real weight when left undisturbed.

According to PW3 in her Statement, Exhibit **P185**, when Mr. Obiaraeri then brought over the documents to her after his interaction with the 1st Defendant, he (PW6) told her that there was nothing in the bank's files and that those documents were a belated attempt to build up their files.

Also significant is the fact that PW3's testimony that Futureview Securities Limited was not active during this time it is claimed that it was granted a facility **for its business operations**, stands without evidence that contradicts it. I have made mention of this before. This is what PW3 had said, when responding to questions from learned Counsel for the 3rd Defendant on the matter:

Question: In 2008 you signed a document which was deposited at the Corporate Affairs Commission where you increased the share capital of

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Futureview Securities Limited to one billion naira. Is that correct?

Answer: Yeah, that could be correct.

...

Question: Now, but you told this court that Futureview Securities Limited was not in existence in 2006? You said that to this court. Do you still maintain that position as at today?

Answer: For the purposes of the records, Futureview Securities was reincorporated in June of 2006 but was not operative. It took processes to get it to become operative. The shareholding had to be increased, we had to get Stock Exchange – Nigerian Stock Exchange, approvals, we had to get SEC approvals. All these happened till 2009. ... Securities and Exchange Commission approval, before the company started operation fully in 2010. So ... Futureview Securities was not operating during this period between 2006 and 2010 when it started operating as a securities company.

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Question: Was it ... That company, was it incorporated and in existence in 2008? That is the question.

Answer: It was incorporated in 2008, it was in existence in 2008, but it was not operating as a company. ... I'm putting the records straight. It was in existence. It was reincorporated in 2006 but before then, it was non-existent.

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Question: Now let me ask you, you are an investment banker, can a company be incorporated twice? Tell this court ... with your experience in America and Nigeria. Is it possible?

Answer: In this particular case, that was what happened. We had a change. It was initially incorporated in 2003 and -

Answer: It was incorporated 1993 and then commenced business 1996. The name was changed to Futureview Financial Services in 2006. So this meant that at that point, Futureview Securities, ceased to exist. We had to reincorporate that company in 2006, and I have the records to show for it.

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Although it was put to her that she had lied to the court, nothing was adduced in evidence to back up cross-examining Counsel's assertion in this regard and in the face of her denial. There is nothing before me that shows that Futureview Securities Limited was carrying on business in securities trading in 2007 or 2008 as the 3rd Defendant has contended. Instead, I see from their company registration papers (Exhibits P202 and P203) that the very same registration number used by Futureview Securities Limited as at the year 2002 – the number "217005" – was passed on by the Corporate Affairs Commission to Futureview Financial Services Limited, thus supporting her evidence of a transformation into a new company. I also note her testimony under re-examination and during that recall that,

... No resolution was made, to Bank PHB under Futureview Securities with RC number 659055 for any kind of loan.

(My emphasis)

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That registration number she spoke about, "659055", being different from the number 217005, and coming later in the order of numbering, I believe supports her evidence that Futureview Securities Limited was reincorporated at a later point in time. I say so, taking into consideration the order of numbering adopted by the Corporate Affairs Commission.

This evidence, extracted as it was during the test that is cross-examination, in my view adds to the strength of the Prosecution's case of non-existent loan agreements. It confirms PW3's testimony that that company's name was put forward (along with others given to the 3rd Defendant) in order for it to be a recipient of preferential shares, and not for the sake of enhancing some supposedly on-going securities trading business as the loan documents falsely claim.

Thus, there is a rhyme, a consistency, in the Prosecution's case, and in the testimony of its witnesses. There was a consistency that made sense, and which was backed up by the fact that the documents that the 1st and 3rd Defendants would ordinarily have had to rely upon to show the existence of any true loan agreements came to be discredited. In so saying, I should point out the fact that neither of the 1st and 3rd Defendants has denied the fact that the terms and conditions contained in each of those now discredited credit approval memoranda were the terms and conditions that formed the basis of the supposed loan contracts. Indeed, they could not do so, as their defence position was that in line with the credit process established by the bank, there would have been a letter of offer containing those very terms and conditions the 1st Defendant approved of, which the customer/applicant would have signed in agreeing to the said terms of conditions, and consequent upon which the availment/utilization ticket was prepared and signed by the 1st Defendant.

Again instructive is the fact that neither of those two sets of documents that were supposed to portray valid loan agreements – the credit approval memoranda and the availment tickets, are documents the customer would ordinarily see. As Prosecuting Counsel has said, they are internal documents of

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the bank. The 1st Defendant admitted as much under cross-examination. This fact lends credence to the denials by PW3, PW1, Mr. Jude Kemakolom and Mr. Ololo that they knew anything about the loans created in the name of companies that belonged to, or were run by, them. And in saying this, I have of course readily discountenanced the "external" documents – that is, the unsigned loan application papers (Exhibits P60, P61, P62, P63, P64, P65, P71, P72 and P73) and the unsigned Board resolutions, Exhibits P66 to P70 (a different set of resolutions, that is, from Exhibits P267, P269 and P271 and D93 to D95) – that had been prepared for those three companies ... and then backdated. Those were the ones the 1st Defendant had sent to PW3 in October 2009 to sign. The evidence exposed them as having been manufactured well after the fact, as it were. The other set of external documents – Exhibits P267, P269 and P271/D93 to D95, have no evidential weight either, given my findings about them, and also the fact (of which I am now convinced) that the alter egos and true directing minds of those companies knew nothing about the loans. Similarly disregarded by me is the letter of application for a loan said to have been signed by Mr. Ololo on behalf of Petosan Oil and Gas Company Limited (Exhibit P114) as the much more convincing evidence before the court has proved it to be a fake document just as he had said to the team of investigators.

And so nothing existed from any of the owners of the companies themselves, nothing was signed by them, in acknowledgement of the existence of validly created loan agreements. The loans, indeed, were a hoax.

The Loan Accounts

It is, I believe, very clear that it was because of the purported loan agreements that all the loan accounts were created – even the account that was not denied by its owner, the Petosan Oil and Gas Company Limited account. This is clear to me from the sequence of events and the flurry of activities leading up to the opening of all those accounts in December 2007. Indeed, the 1st Defendant testified as to this when telling the court that when a loan is granted, a loan

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account is created for the customer into which the loan sums are disbursed. He went on to explain that a corresponding account is simultaneously created in-house for the bank, and used by it internally to credit the charges and fees that arise from the customer's loan liability. And so the accounts in issue had to come to be in order for the purported loans to become a reality. None of the five companies, before this time, had been operating the particular bank accounts into which the loan sums in issue were disbursed. None of those loan accounts existed at the time (the period October to November 2007) when the loans were being fashioned out. Those accounts were opened for the sake of the payment of the monies in issue in this case into them; they were designed to be a receptacle for those funds.

To further support this finding, I see from the respective Statements of Account of all five companies that there were no prior transactions at all on each and every one of them before the money said to be loans was credited into each of the accounts.

And specifically on the Petosan account that was not denied, and which the 1st Defendant said was actively solicited by the bank, it is clear that it came to be created just in time for it to receive the supposed loan sums. The 1st Defendant had testified about Petosan being considered to be a good "prospect". The evidence from him was that it is normal in the banking world to prepare loan agreements in advance as a means of "wooing" such prospects. And so, given the fact that there was no true loan agreement, I believe that Petosan was specifically targeted (wooed) so that it could be used. The aim, according to the Prosecution, was to channel funds to established securities trading and stockbroking outfits in an apparently innocuous manner, and to hide under cover of those stockbroking companies (they were Issuing Houses under the Public Offer) to buy shares for the fourteen beneficiary companies. I will say more on this *anon*.

And indeed, dwelling on Exhibit P114, the letter said to have been written by Mr. Ololo seeking a loan on behalf of Petosan, if the bank actively targeted and

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solicited the Petosan account as the 1st Defendant said (when reacting to PW9's testimony of him having made her backdate the credit approval papers from December to October 2007), and the bank, to that end, prepared those credit papers in advance in order to use them to lure the prospect (Petosan) into a banking relationship, the mind boggles as to whether this same company which had no idea of the loan being packaged on its behalf, would have written to the same bank ever before then and in September 2007, seeking a loan in the very same amount and for the very same purpose of constructing a tank farm? Could it be a sheer coincidence for it to be seeking, already, that loan for the same purpose and of the same amount about which it was also being actively wooed? I dare say that this would too magical to be believed by the reasonable man. I do not think it to be a case of a coincidence. The contradiction in terms, rather, draws one to the conclusion that Exhibit **P114** had been deliberately manufactured for a particular end just as the credit approval memorandum had been deliberately backdated to that same end. The contradiction in terms means that the "prospect" did not apply for a loan just as it was not aware of a loan. The tale of wooing a prospect by dangling a loan agreement in front of him is just that – a story.

The Prosecution, as I have found, succeeded in proving that there were no true loan agreements to warrant the opening of the accounts. It has also led evidence to the effect that the four other companies (other than Petosan) knew nothing about the existence of the accounts opened in their names. **But in view of the ultimate probative burden that always stays fixed on it, the question still needs to be answered very clearly and firmly – were the companies aware of the existence of those loan accounts? And in the special case of Petosan Oil and Gas Company Limited, was it aware of the lodgement of the sum of N4 billion into its acknowledged bank account?**

The owners of the four other companies (including Mr. Jude Kemakolam of Tradjek, and PW1 who ran and managed Extra Oil Limited – and owned one share of the company) have all said they had no clue that those accounts had been opened for their companies. And indeed, apart from the discredited Board

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resolutions, there is nothing before the court, nothing in writing, that shows that they authorised the opening of the four accounts. What there is (and this is with respect to the three companies linked to PW3), is an email (Exhibit **P96**), sent by the 3rd Defendant to Mr. Alex Ojukwu on the 31st of December 2007. (Mr. Ojukwu, as 1 said, headed the CSS unit at the time. He testified as PW8.) With Resolution Trust and Investment Company Limited, there is no document at all produced in evidence that validates the opening of its account. Mr. Ololo, in his Statement to the EFCC, acknowledged the existence of one account owned by that company but said the other current account into which the sum of N3.3 billion was lodged was unknown to him.

By the email, Exhibit **P96**, the 3rd Defendant had stated that he would want accounts opened for Futureview Securities Limited, Extra Oil Limited and Tradjek Nigeria Limited along with another two companies which, from the evidence, were also associated with PW3. The email continued,

The documents of these companies will be received later today and we would forward them to you ASAP.

The 3rd Defendant, in giving an account of the genesis of Exhibit **P96**, said that he had received a telephone call from PW3 earlier that day – the day of the email, the 31st of December 2007, seeking his assistance in opening the accounts, and promising to send to him all the necessary documents in order for that to be done.

I shall pause here and say that it beats the imagination how PW3 would suddenly pick up the phone and ask an "unrelated party" in a manner of speaking (that is to say, a bank officer whose business is not to open accounts and who has said it was the branch officers who had solicited PW3's custom in that regard, and who, also, said he played no role in the credit process) to be the one to "help" her open those accounts if, indeed, the three companies had only just been granted loans by the bank. I believe that the reasonable man and the objective bystander would think, rather, that the Account Officer at the branch level who treated the loan applications would be the one who, in

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continuation of the ordinary course of things, would then attend to the task of opening accounts for the sake of the disbursement of the "loans". I say this because the 1st Defendant, in attempting to distance himself from PW3, told the court as well that it was branch level officers who had approached ("marketed") her. It should therefore be this Account Officer that would send the loan applications of the three companies up the ladder for approval, who would prepare the ensuing letters of offer, and who would finally receive the signed availment tickets as the 1st Defendant also said was the process in the bank. It would not be someone else (the 3rd Defendant) who says he was far removed from the branch level and far removed from the loan transactions that resulted in those accounts. And so, as the physical and outward link with PW3, this "customer-facing" or "market-facing" Account Officer would be the one to receive the account opening documents from PW3 and the one to forward them to the CSS unit. From the undisputed evidence before me, the CSS unit is the place at which all accounts are opened via information and documents sent from the branch offices. Application forms, mandate forms, and all would have been handed over by the Account Officer to the customer to fill and then passed over to the CSS unit for further processing. This is the logical deduction from the evidence before me on the bank's processes. In saying all this, I am not oblivious of the 3rd Defendant's explanation that he had "*a very close personal relationship*" with PW3 such as would warrant the interventions on his part (there was more than one intervention at the end of the day). But he had also described this relationship in much more lukewarm terms as a "*longstanding functional relationship*". He had also echoed the 1st Defendant's testimony that it was the branch business officers that wooed her into becoming a customer of the bank. And so what colour or hue to give to their relationship would seem to depend on the circumstances about which he was testifying! I should add that it is just because of the evidence from the 1st and 3rd Defendants themselves on the established processes and procedures of the bank that I find this alleged detour by PW3, this diversion from the normal bank route as the 3rd Defendant says was the case when she went straight to him, to be quite improbable and strange. It throws up a number of contradictions in the

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said Defendants' respective accounts to the court but then gives fillip to PW3's own account of an earlier interaction/understanding between her and the two of them. There was some reason behind her passing over to the 3rd Defendant the names of the companies contained in Exhibit P96. That reason cannot be the opening of accounts since the two defendants have said she had related in that respect with the branch office.

Going back to the contents of Exhibit P96, Mr. Ojukwu (PW8), in turn, directed his colleagues at the "CSS Help Desk" to open the accounts. In forwarding the 3rd Defendant's email to them, he wrote,

Lizzy/Joshua,

Please process now and issue 100 leaves Cheque books each.

PW8 testified that he attended to the 3rd Defendant's instructions because the 3rd Defendant, his senior at the bank, had given his assurance that the necessary documents with which to open the accounts would be sent over shortly ("ASAP"). He said no such documents were ever submitted by the 3rd Defendant. He had also said as follows to the EFCC officers in his Statement, Exhibit P139:

... the account opening documents which were claimed by the CFO [that is, the 3rd Defendant] to be in his possession were never submitted for regularisation as our review of the archives have shown as at Friday 30th October 2009. Account opening packages do not therefore ... exist for Future View Securities Ltd, Extra Oil Nigeria Ltd and Tradjek Ltd. When account was opened and in accordance with our standard account opening a message notification "Post No Debit" was placed on the screen. It appears now that inputters ignored this message and went ahead or debit account. Our preliminary review revealed that a loan disbursement may have gone in first into the account.

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There is also a letter from the acting head of the bank's Compliance Unit, a Ms. Theresa Ekong, to the EFCC, which, from the evidence of the officers, was relied upon by the investigation team in making their findings. In the letter, Exhibit P198, dated the 28th of October 2009, she wrote as follows:

With regards to the account opening packages of Extra Oil Nigeria Ltd; Tradjek Nigeria Limited and Futureview Securities Limited, our diligent search for the relevant documents show that they are not available.

The Statement Ms. Ekong had made to the EFCC when she was interviewed two days after her letter was adduced in evidence at the request of learned Counsel for the 3rd Defendant. It was received as Exhibit P266 during the cross-examination of PW12, one of the Investigating Officers. In it, Ms. Ekong gave the officers a more detailed explanation about the efforts that had been made in searching for the missing account opening documents. She stated thus:

In respect of your enquiries on the accounts Extra oil, Tradjek, Futureview securities; our search has revealed that the accounts exist in the system. We have carried out further searches from processors and other relevant units concerned with account opening and we have not found as at now any account opening documents. If compliance unit is advised on an account that exist without account opening documents, we would usually advise regularisation within a very limited time and failure to do so we would advise ... closure. Regularization would only be advised where some basic documents are in place only.

As it happened, no account opening documents were ever adduced in evidence, save for the documents put forward as the resolutions of the Board of Directors of the three companies. None like Exhibit P111, the account opening package of Petosan, is before the court. And so, the Prosecution presented

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strong evidence to back up its case that the owners and managers of the other four companies had no idea about the loan accounts.

When he was answering to the case made out against him, the 3rd Defendant had said that the account opening documents were indeed sent by him to the CSS unit (and not PW8) on the very day of his email, Exhibit P96, whereupon all three accounts were opened. He said the accounts were not opened until the minimum required documents were received by the CSS's "Documents Control Unit". He identified the Board resolutions, Exhibits P267, P269 and P271, as part of the documents he had passed over to the CSS. But in view of the discrepancies that I spoke of as between those exhibits and the copies put forward to be their replica and the original version of them (Exhibits D93 to D95), I consider them all to lack integrity and so they will be discountenanced. And in view of the evidence of PW3 which also put a large question mark on their authenticity, I cannot accept them as documents that truly emanated from the three companies. I should explain that I have accepted PW3's testimony in this regard because, in denying authorship of those documents, she gave many cogent reasons why they could not have been the handiwork of the Board of Directors of the three companies as she was familiar with the drafting style and content of their usual Board resolutions. Those reasons, I find, stood up to the test of cross-examination. Her evidence about being familiar with the three companies could not be challenged.

There is the evidence from certain documents attached to Exhibit P96 (the pages containing computer "screen shots" identified as pages 5 to 9 of the exhibit) that show that the accounts were opened with "paper instructions" and so money could not be withdrawn from them. They show that each account had a restriction – a "Post No Debit" ("PND" for short) placed on it. That PND was the pop-up message on the screen shot of each of the three accounts.

When in the witness box, PW8 said that he had attended immediately to the opening of the three accounts because the bank's policy guidelines allow mandatory requirements to be deferred in order for the bank not to lose ground;

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not to lose customers, in the highly competitive banking industry. When under cross-examination by the 1st and 2nd Defendants, and asked if he knew why the companies had refused to submit their documents, he answered that he had no idea. He also said that even with a PND placed on the accounts, the bank's deferral system allowed for an override. He further explained, in answer to the question from cross-examining Counsel for the 3rd Defendant, that even though he was posted out of the CSS unit the very next day after the accounts were opened, he went back to search the bank's archives when the EFCC, in October 2009, asked him to make a Statement. He answered that there was a need to post a PND message on the accounts because the required documents were yet to be submitted. Upon his re-examination, and just as Ms. Ekong had stated, he said a deferral does not mean dispensing totally with documents that were required.

It is the case of the Prosecution that the 3rd Defendant had used and abused the deferral policy of the bank as it related to opening accounts. A number of witnesses, including PW8 and a Defence witness, the earlier-mentioned Mr. Onyike, DW7, who had also worked at the CSS, testified on what the deferral system was about in this particular regard. Another witness was the head of the bank's Internal Audit Department and its Chief Inspector, Mr. Waidi Gbadamosi. He was PW4. He explained that because of his office, he was very conversant with the processes and procedures of the bank, and his duties included ensuring that those processes complied with the bank's policies. Just as the woman from the Compliance Unit had stated to the EFCC, he testified (under cross-examination by the 1st and 2nd Defendants) that whenever there was a departure from the normal procedure, that departure, an "exception", must be regularised "*within a specific time*". He agreed that accounts can be opened, and the "*computer can allow you to do transactions ... if there are certain things that are not in place ... but it remains an exception and the computer will flag it*". The "flagging" here, from the related evidence of PW8, was the Post No Debit message on each of them. DW7 then gave supporting evidence when he testified that to post a PND message on an account is to flag that account

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because the required documents were not complete. DW7 also said, again echoing PW8, that any transaction on an account that has a PND placed on it "will call for an override".

I should add here that it is not so, as the 3rd Defendant has said, that PW4 said there were no red flags or exceptions as regards the transactions in issue here. His evidence, rather, was that the audit team, during its visits, does not check all the accounts in a branch but instead does a sampling of them. He also said that even with the sampling, they usually find exceptions that had to be regularised. And when pointedly asked by the 3rd Defendant if he had issued any query at all over the use of the deferral system in opening the three accounts in question, he answered that he, personally, had not investigated those accounts and so he did not issue a query on any of them. He also answered that he did not know if his department ever issued a query, and said again that he had not seen any. In other words, he was non-committal. Not that he was categorical.

As I said, the evidence from the 3rd Defendant was to the effect that there was no such abuse of the deferral system – and this, because he had had no need to employ that system at all. He said that after the instructions contained in Exhibit **P96** had been received at the CSS unit, the head of its Documents Control Unit who he named as Mojisola Sofodu called him asking about the documents he promised to forward to the CSS. He said he thereupon made a three-way call involving PW3's Personal Assistant, who he named to be a Mr. Onyemelukwe Okoye, and Mojisola Sofodu regarding the need for documentation and said Mr. Okoye promised to send over the documents he could immediately lay his hands on. He said further:

Mojisola confirmed he faxed them not too long after that three-way call. ... So having met those minimum standards by the fax messages that were sent to Mojisola Sofodu ..., they sent an instruction and this instruction was an automated instruction, two-way instruction. One of them goes to the Cheque Printing Unit, the second instruction goes to Account

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Opening Unit of CSS.And I will say that for this transaction, based on the fact that we met the minimum documentation and subsequently sent the account package to CSS when it was received ... there was no Post No Debit inputted on this.

He said the complete account opening package was received later that day.
He continued:

Mr. Onyemelukwe Okoye brought them to my office ... So I took a cursory look at the envelope he brought which had, like, account opening packages that was signed, it had mandate cards and the few IDs for signatories. I didn't check whether they were complete or not, just a cursory look at it. There were also incorporation papers like Certificate of Incorporation. I believe there was a CO7 and other things So I sent that through my office assistant, Mr. Charles Chukwu, to the bank's mail delivery system. We have an internal mail system ... and they are quite efficient and very reliable. So I sent it to CSS, attentioning Mojisola Sofodu so that she can receive it and do with it however she wants to do.

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In denying the assertion that the deferral policy had been engaged, he said,

... in our deferral policy there is a fourteen-day room or twenty-one day room ... to your supplying if there were any missing documentations, to ensure that that document is received. If it's not, this account will be entirely blocked. But in this instance, I had connected them to the customer before the account was opened when the DCU called. And they faxed relevant minimum required documents to satisfy them. So the instruction they gave subsequently from the Documents Control Unit did not have anything to do with PND, did not ask them to put a Post No Debit on the account, because if

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that happened what we are looking at in this bank Statement wouldn't have happened, My Lord. This N2, 000 cheque leaves charge would not have gone in because that's what the Post No Debit means.

He said again, and in specific response to PW8's words (in his Statement, Exhibit **P139**) that the documents were not received at the CSS and were not found in the archives during PW8's search for them much later in October 2009,

I said on that Exhibit 96, I think, that ... these documents will be received later that day and indeed it was received, and indeed it was forwarded to CSS through our internal mailing system and attentioned to Mojisola Sofodu. ... [B]efore the accounts were opened we had a conversation with Mojisola and Mrs. Ebi's Personal Assistant, Onyemelukwe Okoye, and he faxed some documents to them which satisfied their minimum requirements for opening the accounts. We then sent the pack when it came eventually later that day to them.

But under cross-examination, there was a slight but material variation in the narration. This time around, and in answer to the questions from the Prosecution, the 3rd Defendant testified that the faxed documents had been sent by **PW3** to him; not directly to the CSS, not to Mojisola Sofodu, and not that the fax was from Mr. Okoye. This was what he said:

Answer: I said in my evidence-in-chief that Mrs. Ebi supplied me the RC numbers of the five companies. I asked. And I said it was by fax. I said so. ... She dictated them, and then sent me a fax – two things that I said.

Question: Okay, she dictated them to you on phone?

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Answer: And sent a fax.

Over and beyond this contradictory account, there was another type of contradiction. This was that his witness, the former head of the bank's Internal Control Department, Mr. Fidelis Omachonu who testified as DW19, when looking at pages 5 to 9 of Exhibit P96, answered under cross-examination that they showed that the three accounts in question had indeed been "*placed on PND*". He did not doubt the fact. And I would imagine that he would be familiar with what he saw and read on those pages. He said if there were any issues with an account after it had been opened, that account would have that kind of restriction on it. This is unlike the 3rd Defendant who said the accounts in question had no issues about them and had not been so restricted by the bank. Indeed, in a posture contrary to that of every other witness who should know by virtue of the position they held in the bank – I refer specifically to PW4, PW8, DW7 and DW19 – the 3rd Defendant's tale was that such a restriction as a Post No Debit was a very serious matter; that it was of the type imposed by way of an Order of Court or at the instance of a law enforcement agency and therefore it could not simply be removed or bypassed by the bank just at the sheer whim of a senior officer of the bank. This posture of the 3rd Defendant of course flies in the face of the deferral policy, and the reason and purpose of it, about which most other bank officers (including the 1st Defendant) had testified. No doubt, there is a world of difference between a policy of the bank and the implementation of that policy, and a suspected criminal activity warranting a far more severe restriction; indeed, a total restriction. The 3rd Defendant ought not to have attempted to pull the wool over the court's eye!

I find it instructive that the 3rd Defendant did not confront PW3 on the matter of their alleged interaction on the 31st of December 2007 in the way that he has said those events occurred – events between him and her and/or between him and her Personal Assistant – when she was being cross-examined by him. PW3 had denied any such interaction having taken place at all, judging by her evidence that she knew of no such loan accounts. It seems to me strange and inexplicable that the 3rd Defendant did not think it necessary to take her up on

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this denial. I see that he did not seize the moment; take advantage of the opportunity, to cross-examine her on the matter of:

- i. her said telephone call to him with a request that he help her open bank accounts for her companies (he said she "owned" all three companies);
- ii. the said three-way call between him, her Personal Assistant and Mojisola Sofodu later that day to discuss what was required in order to open the accounts, and
- iii. her or her Personal Assistant's subsequent act of sending the account opening documents later in the day on the 31st of December 2007, whether by facsimile ("fax") or by physical delivery, whether of the minimum required documents or in full compliance, whether partly to him or fully to the CSS, to enable the accounts to be opened that day.

Such a grave omission, in my respectful view, goes against the grain, seeing how central the matter of the origination of the monies in issue is to this case, and how crucial the matter of his alleged involvement in engineering the flight of those funds from contrived loan accounts is to his defence case. He cannot feign ignorance of the importance of these matters in controversy, given what he knew already from his interview with the EFCC Investigators, what he knew from the contents of the Information papers (including the Proof of Evidence) that had been served on him ahead of his arraignment, and what he knew PW3 had already said in her evidence. I dare say that the failure to cross-examine the person who he claimed initiated the opening of the accounts (contrary to the Prosecution's case and the evidence that she knew nothing about them and he, rather, caused the accounts to be opened in a surreptitious way) can only mean that the 3rd Defendant's version of events, and his evidence on the circumstances behind his email, Exhibit P96, as inconsistent as that evidence is, is no more than a carefully designed afterthought. It means there was nothing to challenge her with as no such events with a Ms. Sofodu ever occurred in the first place. After all, these were not matters that came to light after PW3's time in the box. They were, rather, matters that he said occurred on

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the 31st of December 2007, four years before. And so I am of the considered view that this account of events is not true, and only came to be crafted at a time after PW3 had safely and conveniently given evidence. As he said himself to Prosecuting Counsel (perhaps unwittingly, perhaps unknowingly but certainly profoundly), he had had eight years to prepare his defence case!

As I said before, there is evidence that was not controverted to show that Futureview Securities Limited was not carrying on business as a securities trading company such as to warrant it being granted a loan and thus have a co-relating loan account for that type of business in December 2007. There is also evidence, as I said, that stands unchallenged – and indeed, has been corroborated by documents from the authentic source, the Corporate Affairs Commission – that PW3 was neither a Director nor a shareholder of Extra Oil Limited and Tradjek Nigeria Limited. Apart from the afore-mentioned Board resolutions that all lack integrity (be this the "P" and "D" series or the latter set that the 1st Defendant handed over to PW6 for PW3 to sign), there is no other document before the court to show that the faces behind the three companies (the persons who owned them and/or ran their affairs) took any steps, or submitted any documents, for the sake of opening any of the three accounts. None even from Futureview Securities Limited was shown to have been submitted to the bank.

In this regard, I note that the 3rd Defendant also failed to take steps towards the production of the facsimile message he said was sent to either him or Mojisola Sofodu, or the fuller documents he said were later received at the CSS department on the 31st of December 2007. Certainly, he had that option at his disposal to apply for a *subpoena* to be issued so that PW3 and PW1 could be confronted with evidence to debunk their claims of having no knowledge of the bank accounts. Given the nature of the case against him, there should ordinarily have been a strong desire to present that evidence to the court in order to back up his position and put a spanner in the works of PW3's strongly voiced evidence to the contrary with all the other evidence from the Prosecution that support it. After all, his position is based, predicated,

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dependent on documents he said were with the bank. As it is, all that there is in the face of the Prosecution's evidence are his bare and contradictory words that all the required documents were submitted to enable the loan accounts to be opened regularly that very day. The courts, however, have ruled time and again, and said that,

It is well established and ... based on common sense that a mere assertion or statement should not be accepted without proof thereof.

These were the words of Kalgo, JSC, in the case of Nathaniel Onwuka Ajero & Anor. v Bernard Ugorji & Ors. [1999] 10 NWLR (Pt. 621) 1, 19H.

I dare say that over and beyond the production of documents he has relied upon but which have not been brought forward, the justice delivery system allowed him another way out for the sake of awareness. This was the other opportunity to have either or both of Ms. Sofodu and Mr. Okoye summoned by the court to give evidence to boost the weight and value of his evidence on those events and occurrences about which he testified.

Clearly then, as the pop-up messages on the computer screens (the documents attached to Exhibit P96) show, those three accounts were indeed and in truth opened with "paper instructions", as was the purport of PW8's testimony backed up with his Statement, and the documents from Ms. Ekong. Contrary to what the 1st Defendant would have one believe when he said that that term, "paper instructions", means that account opening "papers" were submitted, the expression, in simple English, means the instructions (that is, the bare, unsupported directives contained in Exhibit P96) carried no more weight than the paper on which they were written. It means there was nothing tangible backing up those instructions; nothing provided in fulfilling account opening formalities. The pop-up messages, I find, corroborate PW4's earlier-quoted evidence that even though the computer would allow the account to be opened, an exception remains an exception and "*the computer will flag it*". He also said that a customer who failed to meet the requirements for opening an

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account may be asked to go and get all that is required before the account is "properly opened." (My emphasis) By reason of his duties as he has described them to be, I consider PW4 to be an authority on the bank's policies and procedures. And so, from all this, it is my considered view that the failure of the bank's Control measures to raise any issues in this regard (if indeed no issues were raised) will not lead to the automatic conclusion that the accounts were properly opened. That failure would lead me to conclude rather that the deferral system had been activated, thus suspending the requirement for account opening documents, but which documents never came.

There is one more thing regarding Exhibit P96. I see that its fourth page is an email about a request by the EFCC for the account opening package for PW3's three affiliated companies. That email had obviously been sent by an officer of the bank to his or her colleagues. It was sent on the 23rd of October 2009 and it reads as follows:

We have received an investigation notice from EFCC on the following account (sic):

1. *Extra Oil Nigeria Ltd ...*
2. *Tradjek Nigeria Ltd ...*
3. *Futureview Securities Ltd ...*

You are by this email requested to scan copies/photocopies of the account opening package before 10am on Monday, October 26, 2009 to the undersigned.

(Emphases supplied)

What was scanned is what follows as pages 5 to 9 of Exhibit P96. This is plain to see. They are pages of the computer screen (the "screen shots" PW8 had spoken about) depicting entries made on each account when it was opened. On each of those pages, a pop-up message was thrust upon the eye of the viewer. It reads:

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*POST NO DEBIT, ACC OPENED WITH PAPER
INSTRUCTION*

This was the pop-up message I earlier spoke about, which PW8 made mention of in his Statement and in respect of which PW4 testified. PW8 had said in Exhibit P139 that inputters must have "*ignored this message and went ahead or debit account*". (My emphasis on the word, "ignored".) In other words, the pop-up message does "pop up" any time there was access to the computer to view the accounts. But as is clear from these other pages of Exhibit P96, the message was still on the screen of all three companies almost two years later. Put differently, as at October 2009 when a directive was given to send those screen shots in compliance with the request of the EFCC, the "embargo" that is represented by the Post No Debit message, and which embargo had been placed since the 31st of December 2007, was yet to be lifted. What this means, in my considered view, is that the "paper instructions" never ever translated into true weight instructions as the Investigating Officers, PW10 and PW12, said was their finding; it means that no account opening documents were ever delivered.

And in terms of compliance with the EFCC's investigation notice, all that existed in terms of an "account opening package", all that could be delivered to the EFCC, was the entry on the computer as reflected on the computer screen.

The 3rd Defendant has said that the fact that cheque books were printed and that charges therefor and other charges and fees were debited to each account as reflected in the Statements of Account shows that there was no true Post No Debit ("PND") flag on them. I see, however, that these were automatic debits by the bank that went along with the act of opening an account; what PW4 had described as "*bank-induced debit transactions*", and what the 3rd Defendant described as one continuous "*process*" when testifying about ordering a cheque book to go with a new account. Indeed, I take judicial notice of this common practice of banks to make such automated debits as soon as bank accounts are opened. There is, of course, the fact as well that a PND, as the term suggests, is to hamper the operator from operating his or her account.

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The bank, in debiting its own charges, is not operating the account on the operator's behalf. It is merely getting its pay for services rendered irrespective of the status of the account. Again, I take judicial notice of this fact. In any event, with the system override that PW8 and DW7 (who both should know) spoke about – an override that went along with the act of deferring account-opening documents in order for that act of deferral to have true meaning, withdrawals ("debits") were made from the accounts.

The 3rd Defendant went on to say authoritatively that the cheque books PW8 ordered to be printed were indeed sent to the three companies. He said he knew that for certain. But without anything to back up his bare *ipse dixit* in this regard, without anything explaining how he knew this to be so, I regret that I cannot attach any weight to this statement from him. The only cheques before me that were issued by Mr. Ololo and PW3 were cheques drawn on accounts at other banks.

Still on the matter of knowledge or no of the loan accounts and/or the monies paid into them, the 1st Defendant, this time, had referred to transactions in the Statements of Account of the five companies as proof that they were aware of the existence of the accounts. He testified that the transactions show that the companies had been servicing the loans; making repayments on them. But he also agreed with cross-examining Counsel for the Prosecution that he had said earlier in his evidence-in-chief that these were "auto-repayments". He answered further that:

The automatic debit is generated by the system.

Indeed, what he had been reminded of was this evidence he gave during his examination-in-chief and when testifying on "loan repayments" with specific regard to Exhibit P101, the Statement of Account of Petosan Oil and Gas Company Limited, viz,

... So it's system-generated. Automatically generated on due dates. It's not manually generated.

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... automatic loan repayment is that whether the customer gives us money or not, on the due date of the loan, it must drop into the customer's current account. Now, if the customer is not fully funded, the relationship officers will approach the customer to fund the account. But the automatic loan repayment is a system-generated monthly repayment obligation that the customer, you know, owes the bank. It's another thing whether the customer has all the money to meet the loan repayment on that day but the principal thing is that that loan repayment will drop, and it's dropping on the 28th of every month.

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In other words, an electronically configured entry of payment had been set on the computer system to record payments of the "loans" at regular intervals. It was not that the companies had made actual, physical repayments themselves. Thus, the idea of them "servicing" the loans cannot be assumed; it cannot be deemed so, just from the mere reading of their Statements of Account.

Apart from this, PW3 had testified that when Mr. Charles Ojo, who she said was an emissary of the 1st Defendant and was an Executive Director at the bank, had come to plead with her in October 2009 to sign loan papers belatedly, Mr. Ojo, in trying to make her do so, had assured her that the bank itself had been servicing the contrived loans. She said he told her that "*everything was under control; that they have been servicing the debt and it's actually performing*". In one of her Statements, Exhibit **P185**, she had said,

Charles Ojo went further to state that Francis Atuche is still pleading for my accent (sic) to what they have done promising that he will service the accounts on our behalf. While trying to recover from that shock ... I asked to know how much they have booked on behalf our (sic) ... affiliated

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companies. He gave an indication that it might be up to N9 billion Naira. At that point I was ... totally weak and devastated. I braced up to obtain further information on what they have ... done. He informed me that they have been servicing the accounts internally and that they were performing and went on to suggest that if I accepted responsibility that they will ensure that the accounts are serviced by escrowing some funds for that purpose. I told him that they are crazy and demanded to see the full documentation of the so-called facilities in case there was any fraud.

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(The emphasis is mine)

The 1st Defendant had said instead, when giving evidence, that Mr. Ojo had gone to see her as a capital market expert to discuss the matter of selling the shares she had used to secure a previous loan at the capital market as a means of paying her debt. He said Mr. Ojo had not gone to plead with her to sign loan papers. But apart from the very graphic, detailed narration of her encounter with Mr. Ojo, apart from the gaping failure to cross-examine her on her conversation with him about which she had testified, apart from the corroborating evidence from PW6 who said Mr. Ojo had asked him too to join in pleading with her, there is the fact that it now stands proved that no loan agreements truly existed and that unsigned documents (Exhibits P58 to P75) had been presented to her to sign so that she may, as she said Mr. Ojo termed it, "*accept responsibility*". It is my finding from the much stronger evidence in the aggregate, that Mr. Ojo had indeed been sent by the 1st Defendant as his emissary to plead with her.

In the event, I accept PW3's evidence that the debts were being serviced internally through some engineered means.

Indeed, it would appear that there was a custom of "self-help" in attempting to redeem these equally self-created liabilities – "self" here referring to the

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practices of the 1st Defendant and his cohorts. Apart from the auto-repayments and other repayments unknown to the seeming borrowers, there was also the complete repayment of the particular "loan" that had been created in the name of Resolution Trust. When it was put to the 1st Defendant that another entity entirely which was not affiliated to Mr. Ololo had paid off all of that company's "debt", I see that he did not deny the assertion. He is, therefore, taken to have admitted it. What he did instead was to challenge the other assertion of cross-examining Counsel that the owner of that Good Samaritan company, a company named as "Rockson Engineering", was his personal friend. He said instead that the company was a valued customer of the bank. Contrary to the posture of learned Counsel for the 1st and 2nd Defendants, there is no evidence to support the contention that Resolution Trust, knowing of the existence of the loan, had paid it back by itself. It would, I believe, be reasonable to conclude that the only reason an outsider, a stranger to the debt and a person different from the debtor, would pay off a loan amounting to billions of naira would be because the alleged debtor never truly incurred any such liability in the first place. Nothing has been said or shown to the effect that Mr. Ololo, who had denied knowledge of that particular loan and loan account, had asked Rockson Engineering to pay back the loan for his company.

But the 3rd Defendant has said that the companies knew about the accounts also because the faces behind them – Mrs. Ebi (PW3) and Mr. Ololo – asked for his assistance in moving the money lodged in them as loans out of all five accounts at Bank PHB to their accounts at other banks. He testified that the funds transfer requests were initiated by Mr. Ololo during a telephone conversation with him on the 31st of December 2007 and by Mrs. Ebi when she too called him a couple of days later on the 2nd of January 2008.

It is not in doubt that funds transfers were made from the "loan" accounts of the three companies linked to PW3 to bank accounts operated by one of her companies, Futureview Financial Services Limited, in three other banks. These three other banks are First Bank of Nigeria, Intercontinental Bank and Oceanic Bank. It is also not in doubt that transfers were made from the Petosan account

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and from the Resolution Trust account at Bank PHB to Mr. Ololo's other companies' accounts at Zenith Bank and Oceanic Bank. The case of the Prosecution, and what PW3 and Mr. Ololo have said or stated, was that the 3rd Defendant had led them to believe that the monies being transferred to their accounts at other banks (and which funds they were therefore expecting to be deposited at those other banks) were monies from investors desirous of buying the bank's shares during the Public Offer. They knew nothing about loans, or loan accounts.

As I have made a finding that indeed there were no loans in the first place, and bearing in mind that payments for shares during the Offer were to be made through stockbroking firms publicised to all via the prospectus for the Offer (Exhibit D21), and seeing that PW3 and Mr. Ololo's companies were so listed in Exhibit D21, then the evidence from them is credible and does make sense, that they did in truth believe that the monies transferred to their respective companies' accounts at other banks were monies with which they were to purchase shares on behalf of investors who had routed their funds through Bank PHB and who came directly from Bank PHB. For this reason, I do not accept the evidence of the 3rd Defendant that they initiated the transfer of the money from accounts operated by them in the bank.

PW3 went on to say in her Statement, Exhibit P186,

Towards the end Offer (sic) Ugo Anyanwu called me to inform me that some of the funds have come in and ... provided the details of the inflow and outflow. All the funds transferred to Futureview were all returned through cheques as requested. ...

It is pertinent to note that during all of this communication and interaction I never for once suspected any fraud. I knew Ugo Anyanwu from his days in PWC when he led the team of auditors to audit Futureview accounts for ... several years. Ugo himself never at any time took me into confidence or

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mentioned their ulterior motives for the supposed concessions they gave.

{I see from the evidence that the "concessions" she spoke of relate to the request she said she had made that her company, Futureview Financial Services Limited, be compensated for losing out on being an issuing house whilst bearing liabilities as an underwriter to the Issue. She had said that this led to it being made a receiving agent for expected foreign investors' monies, with the attendant commission the company would receive on shares purchased through it on behalf of those foreign investors. The evidence is that this commission is fixed by law as 1% of the amount paid for shares, and with her company having made returns ("*returned through cheques*", in her words) in the total sum of N10.9 billion ostensibly on behalf of the claimed foreign investors (this was the total amount transferred from the bank, and the total amount of the supposed loans granted the three companies linked to her), Futureview Financial Services received from the bank the sum of about N109 million as its receiving agent fees. That, according to her, was the "oral deal" between her and the 1st Defendant which was fleshed out in further conversations with the 3rd Defendant at a time before the Offer opened in November 2007.}

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Going back to the issue of knowledge of the accounts and the 3rd Defendant's testimony about having received telephone instructions to transfer funds from them, it is also strange that Mr. Ololo would deliberately bypass his Account Officer, Ms. Eriyo (PW5) who, according to the assertions of learned Counsel to the 1st and 2nd Defendants when cross-examining PW5, Mr. Ololo had specifically requested that she be employed by Bank PHB to manage his companies' accounts at the bank, and instead of her, telephone the 3rd Defendant "from nowhere" in a manner of speaking (the 3rd Defendant being higher up in the hierarchy, as I said before, far removed from branch relationship business and customer service as he has said) to ask that the 3rd Defendant, instead, attend to transactions on those accounts on his behalf. Much more believable, and the more logical deduction from the evidence, in my humble estimation, is the fact

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that in furtherance of the oral agreement between Mr. Ololo and the 3rd Defendant (which Mr. Ololo had mentioned in his Statement) regarding sending investors' funds to Mr. Ololo's companies' accounts at other banks, and with the established fact that neither PW5 nor Mr. Ololo was aware of the existence of the Petosan loan, and the Resolution Trust loan and loan account, Mr. Ololo and the 3rd Defendant had a direct communication in order to work out the modalities for the transfer of the seeming investors' funds to those other banks. Then would it make sense to bypass PW5 since such matters concerning the Public Offer had a direct bearing not on her but on the 3rd Defendant; such matters had nothing to do with the ordinary, regular business of managing bank accounts. And then, also, would it make sense why PW5 was totally unaware of the contrived loan agreements.

The Defence has said that if, in truth, commission paid by the bank to PW3's company was for services rendered as a receiving agent of foreign investors' funds and not in the exercise of the borrowers' right of access to their loans and loan accounts, then PW3 would have made returns to the bank of the investors on whose behalf payment was made for shares, and the Prosecution should have produced that "docket" (as the 1st Defendant called it) to back up PW3's evidence. But I see that the evidence from PW3, and in her Statement, Exhibit P186, was this:

All the funds transferred to Futureview were all returned through cheques as requested. When we requested for the [backup] details of the investors he [referring to the 3rd Defendant] promised to provide the list subsequently. Due to the high tempo and frenzy of activities in the capital market at the time we failed to adequately follow up to obtain the List. Another effort was made on receipt of the Agency fee to obtain the list of investors and the filing document. Another promise to deliver the records were (sic) made but not fulfilled.

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She gave more explanations:

The payment made to us represented 1% of the funds mobilized in line with the approved commission rate. During the period it was also common for issuers to pay a premium to encourage Agents to route their subscriptions through their banks [,] and even paid their staff additional incentives for funds mobilized. This allows them the use of the float for [some time] before they would make full returns. They usually earn good income trading ... with the funds before allotment. Receiving a cheque from them therefore for payment of this commission was not strange.

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From what I have before me, I am of the view that PW3 gave the investigators a plausible explanation as to why her company was paid its commission at a time before they had rendered returns to the bank, and why she did not raise eyebrows regarding that premature payment. But beyond that, I dare say that the matter of who to believe rests on the determination of the vexed question as to the oral deal. If, indeed, there was such an oral agreement, then PW3's above-quoted statements would be even more credible because, as I deduce, a subterranean transfer of funds, designed to be conducted under the radar and via the camouflage of investors' purchase monies, in the circumstances of this case, would be the logical explanation for the absence of such a docket.

Finally on this point, I will readily dismiss the 3rd Defendant's laboured position that PW3 failed to raise dust about suspicious transactions in her company's accounts at other banks when the transfers were made. She was cross-examined on this, just as PW12 too was cross-examined about the EFCC's non-consideration of it in its investigation activity.

But then, because the funds were being expected, and because they were being expected for a perfectly legitimate purpose seemingly (for use in buying shares during an on-going Public Offer), I do not see how PW3 would consider the transfers to her stockbroking company's accounts to be suspicious. The

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forensic investigator, PW12, answered also that the transfers came by way of what he called "a RTGS ticket". He said that meant they were inter-bank transactions regulated by the Central Bank that would not, therefore, be considered suspicious by the receiving bank. He added, referring to a letter from Bank PHB to Oceanic Bank dated the 7th of January 2008 (Exhibit P145), that Bank PHB had followed up the transfers with letters intimating the receiving banks of the expected inflows. He also said all PW3 would see in her Statement of Account was that it was an inflow via "RTGS". She would not see more than that to know more than that. He said that there were "clear" rules on reporting suspicious transactions, and that it was a bank that could make such a report. From the description of his calling, his duties as an investigator of financial crimes, I have no reason to disbelieve PW12's testimony on this. That is why I said I have readily dismissed the Defendants' position that the reason why PW3 failed to make a report was because she knew the monies that had been transferred were loans for which she had applied.

And so, I find it proved that the loan agreements having been contrived, the seemingly loaned sums were then lodged in equally contrived accounts at the bank.

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II. COUNTS 11 to 22, 24 and 26

This, I believe, leads on nicely to a consideration of the events that followed after in the series of events.

By Counts 11 to 22, 24 and 26 of the Charge contained in the Information, the 1st and 3rd Defendants are accused of stealing the different sums of money said to be the property of the bank which were fraudulently described as loans and then converting the money to their own use to purchase the respective units of shares mentioned in each Count for the fourteen beneficiary companies who are the subject matter of each of those Counts.

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These Counts, as I just hinted, centre on the further steps that were taken after engineering the loans. They concern the Prosecution's allegation of the translation of stolen funds into shares bought in the name of the fourteen beneficiary companies. First, there is the funds transfer at the instance of the 3rd Defendant, and then, when the shares had been purchased, the allegation was made that the 1st Defendant personally collected the share certificates – and later, the dividend warrants, for him and the 2nd Defendant's benefit. The case of the Prosecution is that some of the dividend warrants he collected were paid into accounts at Mortgages PHB operated by him ("the Claremount/Claremont accounts"), whilst other warrants, upon being cleared internally by the bank, were invested in the name of a company, Land Partners Limited, whose majority shareholder is the 2nd Defendant.

With respect to these Counts, and regarding the elements of the offence of stealing, I consider it so (as I had found with the earlier Counts of stealing), that

- The monies used to purchase the shares were depositors' funds under the care and control of the bank such that the bank, in law, had proprietary rights over them, and
- The said sums of money fall within the definition of a thing that is capable of being stolen.

The more pertinent question then, I believe, is the question whether there was a fraudulent intent.

THE MATTER OF A FRAUDULENT INTENT

First, and on the issue of a taking or a conversion of property simpliciter, I believe it is clear that the monies in issue were used to buy shares for the beneficiary companies. The 3rd Defendant admitted as much when giving evidence. He testified during his examination-in-chief that their subscriptions came from the proceeds of the "loans" in issue. And as for the 1st Defendant, I see that he did not debunk the Prosecution's evidence on this score. His position, rather, was that the "customers" could do as they pleased with the

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monies "loaned" to them. And so, the evidence adduced by the Prosecution on this score was not challenged. For that reason, it is with respect to the *mens rea* of the offence that the case of the Prosecution will be more clinically examined in order to see if it succeeded in proving its assertions.

(a) The Funds Transfers

The case is that it was on the basis of oral agreements made between the 1st and 3rd Defendants and PW3 on the one hand, and the 1st and 3rd Defendants and Mr. Ololo on the other, that the sums in issue were transferred. As I have said before, the Prosecution has given evidence to the effect that both PW3 and Mr. Ololo were told (specifically, by the 3rd Defendant) that the sums to be transferred were from investors who wanted to buy shares during the Public Offer. PW3 stated in particular that the 3rd Defendant had told her the investors in question were foreign investors routing their purchase monies through the bank. As I have also said, both PW3 and Mr. Ololo owned securities trading and stockbroking outfits and were well-recognised in that field, as admitted by the 1st and 3rd Defendants, so that the evidence from the Prosecution regarding these oral agreements with them truly sounds credible.

The Prosecution also led evidence in order to prove that the funds transfers were at the behest of the 3rd Defendant, and through the emails from him (Exhibits **P97** and **P95**), to the bank's Treasury Department. The evidence is that the operating arm of Treasury (the Treasury Operations Department), would then give practical effect to the transfers by carrying out the actual postings. The emails were thus forwarded by the head of the Treasury Department to relevant officers at Treasury Operations ("TROPs") to "deal", in banking parlance – an expression the 3rd Defendant explained to the court. Indeed it is established that TROPs went ahead to deal. In other words, the transfers were made from the five "loan" accounts in the bank to the accounts of companies owned by PW3 and Mr. Ololo at other banks, just as the 3rd Defendant had instructed. Cheques were then drawn by PW3 and Mr. Ololo on those accounts at other

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banks in favour of the "Bank PHB Public Offer" and used to buy the bank's shares.

With PW3, it was just the one company to which money was transferred. It was to Futureview Financial Services Limited, and to its accounts at three other banks. With Mr. Ololo, transfers were made to the accounts of his companies shown to be Falcon Securities Limited, Resolution Securities Limited, Resolution Trust and Investment Company Limited, and Pine Petosan Limited, and specifically into their respective accounts at two other banks. I should add that the fact that these companies with accounts at other banks were owned and managed by PW3 or Mr. Ololo is not in doubt as the evidence to that effect stands without challenge.

I have found that the sums transferred were not loans ever granted. I have also found that the loan accounts were fictitious accounts. What this means is that, in reality, someone simply dipped his hands into the treasury and paid money to persons (companies) who had no relationship with the bank. One does not need rocket science to figure out this fact.

By way of a preface, I should explain that the case of the Prosecution is that the act of fraud was enacted in two stages with the money being first taken in a clandestine way under the guise of it being money that had been lent to legitimate customers, and then, secondly, it being handed over under yet another pretext as money from investors for whom PW3 and Mr. Ololo were to buy shares. Thus, one set of people (members of staff of the bank) would consider the transfers out to be legitimate transactions to be done in the course of their normal banking duties whilst another set (PW3/Mr. Ololo) would see the receipt of the funds as an equally legitimate act in the course of their own normal course of business.

And in order to prove this to be a case of deceiving the system; in order to show that it was a subterranean way of taking money out without raising eyebrows within the bank, the Prosecution led evidence in a bid to prove that the 3rd Defendant (acting under the thumb of the unseen 1st Defendant) again

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took advantage of the bank's deferral policy to bypass mandatory requirements from supposed customers – this time, their instruction to perform the funds transfers on their behalf. In other words, and according to the Prosecution, it was ordinarily very necessary for the money that was made out to belong to the bank's customers to be transferred only with those customers' written say-so. But since the customers here (the borrowers) were make-believe, the bank officers who were to carry out the transfers in compliance with the 3rd Defendant's emails had to be deceived into thinking that the required instructions would be submitted in due course. That was the bank's deferral policy again at work.

A certain Ms. Ifetayo Obi worked in the bank's Treasury Operations Department. From the evidence, she was the person who carried out those transfers to other banks. She gave evidence for the Prosecution as PW7, and in the course of this she said to the court that she had endorsed the words, "Outstanding customer's instruction" on the first of the emails, Exhibit P97. She testified as follows:

The first reaction was to seek for customer's instruction because all the customers indicated are the bank's customers and it was just a mail sent; no customers signed the instruction to transfer. ...

... For us to debit customer's account, normally, it is supposed to have customer's signed instruction.

Referring to her said endorsement, she continued,

... I actually noted it in writing, yes, because I brought it to the notice of my boss, because this kind of decision is beyond me. So I brought it to the notice of my Divisional Director who took it up from there.

She named her boss to be Kingsley Umadia and said further:

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He was the ... Divisional Director, Treasury Operations. ... He took the mail and said he will get back to me. I believe he took it up with the Chief Financial Officer. He came back a couple of minutes after with the same document but signed by the Chief Financial Officer who promised to make the instructions available; that we should go ahead and deal.

The Chief Financial Officer she was referring to is the 3rd Defendant. She said when she first received the email it had not been signed by him. She answered that the transfers amounted to an unusual transaction as they were made from customers' accounts without the customers' written instructions.

PW7 identified Exhibit P95 as the second instruction from the 3rd Defendant to transfer money from customers' accounts. Whilst Exhibit P97 was sent on the 2nd of January 2008, Exhibit P95 was sent on the 4th of January. She said Exhibit P95 contained the very same schedule of accounts that were to be debited as was attached to Exhibit P97. She continued,

It went through the same process. It was escalated, and it was shown to the Chief Financial Officer, and he signed it. ... It was escalated to Divisional Director ... [b]ecause there were no customers' instructions attached to these transfers. ... He took it up the way he handled the first tranche and the Chief Financial Officer signed it off for us to deal.

She identified the 3rd Defendant's signatures on both pages of Exhibit P95. She also said that as the Chief Financial Officer, the 3rd Defendant held an important position as the "head of the Financial Department of the bank" and "the one that controls that division". She said the transfers were done without customers' instructions and that being still employed at the bank's Treasury Operations Department, she was yet to see the customers' instructions.

PW7's evidence was of course tested under cross-examination. She said then that it was impossible for her to have retrieved Exhibit P97 after which she

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endorsed those words on it at the offices of the EFCC. She added that the original copy of the document contained her endorsement and that that copy, kept at the Internal Control Unit of the bank, could be retrieved and compared with the copy in evidence. She denied the further assertion that it was standard practice to sign and date endorsements. She was asked (this time by learned Counsel for the 3rd Defendant) about the document attached as the third page of Exhibit **P97**. This page was the table (or schedule) containing a list of six companies – the five “loan companies” and a sixth company, Falcon Securities Limited, which, from the evidence, belonged to Mr. Ololo. They had loan amounts written by their respective names. PW7 answered,

As I said earlier, I escalated to my boss. He took it up with ... Ugo Anyanwu. I don't know what they discussed because I wasn't there ... because they are top management. ... As it is, he came back with the document, signed as it is here, by Ugo Anyanwu. ... I printed out the mail from Treasury as it is. I gave it to him, escalated to him, "This is the mail I received. There is no customer's instructions". I left it at that because he said he was going to handle it. He came back with a bunch, gave it back to me, signed. You can't sign your signature on the mail; you can only sign through this means.

She was pressed on the matter. She answered again:

We received a mail with this schedule of funds to be transferred out of the bank. It did not state where we're taking the funds to. I escalated to my boss. He took it up. I don't know what they discussed ... I was not there. He came back with the mail and a schedule showing a customer's account, the proper account number, the balances there for us to deal. If they were not signed, we would not have dealt because it would have been a totally different document outside what he

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signed. Because he signed [the] two, that's why it became valid. His signature is on the two, it shows that it's valid.

(My emphases)

This was a graphic illustration of events and how they transpired, narrated by the person who saw the document before it was taken to the 3rd Defendant and the very same person who received it when it came back from the 3rd Defendant. She had identified the 3rd Defendant's signature on the document and instructively, the 3rd Defendant never denied the evidence that it was indeed his signature. Having "treated" the document (indeed she said she raised the query because she had read through it), she knew what was on it then, and she would know what changes may have been made to it after. It was not a question of her being told, or of her guessing what could have been. Indeed, the long and short of her account was that because of her observation, because of the endorsement she made, the 3rd Defendant made changes to the document – he signed next to his name and official details on the page that states the sender of the email, and he signed the third page that had been newly attached (the "bunch" as she called it). The 3rd Defendant, as I just said, never denied authorship of those signatures. I consider her evidence, having been expatiated upon by her during her cross-examination, to be very credible.

I should add that having come to a finding that the "customers" in question (that is, the five companies in issue in this case), were never true customers of the bank, it follows that there could never have been any instruction, written or otherwise, coming from them to debit their accounts and transfer the money elsewhere. To say otherwise would be for the court to embark on doublespeak or, put differently, for it to, in effect, set aside its own finding in this same judgment. In other words, for it to contradict itself! And so, again, I find PW7's evidence to be true by reason of a logical deduction, and based on the clear, already established facts before the court.

I also consider it to be true because she came across as a witness of truth. Whilst testifying on this matter of the funds transfers, she spoke of matters of

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which she had direct knowledge being an actual, active participant. She was assured and confident, and she stood up boldly to a gruelling cross-examination experience when, instead of buckling under pressure, she instead strengthened her evidence, making it even clearer and more cogent. Her demeanour also revealed her to be a witness of truth, in my considered view. I saw that she was passionate whenever her integrity was called to question by cross-examining Counsel, and it was obvious that she was particular about upholding that integrity.

To add to this, the 1st Defendant had said in passing and whilst testifying on the "Enterprise Risk architecture" of the bank that Kingsley Umadia had been posted to the Treasury Operations Department only in January 2008. What this means is that at the time the 3rd Defendant's emails were forwarded to PW7 on the 2nd and 4th of January 2008, Mr. Umadia was a very new boss and he was only just settling down in his seat; a "greenhorn" so to speak. It makes sense, then, for him to seek clarification from the 3rd Defendant with each email that the 3rd Defendant had sent, just as PW7 said he did, especially when one considers the fact that huge sums of money were at stake. There are, thus, many pointers to the truth of PW7's narration.

The 3rd Defendant, on the other hand, said the customers' instructions did come eventually. But he failed to compel the production of these vital pieces of evidence if truly they existed. Needless to say, his evidence of telephone conversations with PW3 and Mr. Ololo when he said they passed those instructions to him then stood without anything concrete to support it even though he said there was something concrete (documents) that supported that evidence. But there was another significant act of omission. This is that yet again, he failed to confront PW3 when he had the opportunity to do so about this other conversation of the 2nd of January 2008, two days after the first one, when, according to him, she again picked up the telephone to make a request. He failed to make any attempt to extract from her, evidence that she had called him to ask for his assistance in transferring all of the "loan" sums from all three accounts he said were operated by her. This omission over a matter of such

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great import to his case can only have been deliberate, and it was deliberate because he knew no such telephone conversation took place in the first place; certainly not in the way that he has recounted to the court.

What is more, the 3rd Defendant's evidence, as ever, lacked consistency. In one breadth, the bank's Treasurer, a certain Oby Onwuakpa, with whom he said he had discussed Mr. Ololo's request for funds transfers on the 31st of December 2007, told him to wait until the next year because the bank was preoccupied with end-of-year activities. He had said, "[I]t was a year-end. You know, we have a lot of activities in the year end". But in another breadth, and when repeating his evidence a few days later, he said the reason the funds transfers were delayed for Mr. Ololo was "because it's a year-end, 31st December 2007, so we needed to have as much liquidity as possible".

I should say that what is striking about his inconsistencies is the fact that they relate to issues about which he is (or he has said he is) a direct participant; they concern what he did, or what he was told (what he heard). Ordinarily, therefore, there should be no contradictions on such matters if one were truly sincere.

I am not oblivious of the evidence from him that those transfers passed through the bank's Control measures unscathed. He testified that the two emails, Exhibits **P97** and **P95**, had been brought back to him when the head of the bank's Internal Control Unit, Mr. Fidelis Omachonu (DW19), asked one of his officers stationed in TROPS to ascertain from him what the funds transfers were all about. He continued,

... he had thought because of the names of these companies that the recipients were third party beneficiaries of these transfers. So I explained to him that they are not; that they have the same CEO, the alter ego, Mrs. Ebi and Mr. Peter Ololo are the ones ... I mean, control all the companies in the group. And they were like, "Okay, so it's not a third party transaction?" I said, "Yes, of course. It's not." So they allowed it to go and they signed off on the deal slip ...

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So he then asked that I should sign these documents,
"these documents" now meaning P95 and P97. And this is
why it's important to sign these documents. The email system
of the bank is completely different from the banking
application of the bank. There is no interface between them.
So when you make a request through the email system, it
goes through all the departments, all the units, all the
individuals who are supposed to deal with that particular
request or instruction ... and anything that needs to be
resolved will be resolved on the body of the email. ...
Remember that emails don't have signatures? So it has to be
signed. You have to sign on top of it to validate that, ... "I
initiated it".

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(I have placed deliberate emphasis on part of the quoted text.)

But I find it quite contradictory for the 3rd Defendant to say in one breadth that there were no red flags, and then in another that Internal Control queried the transactions but with his explanations, allowed them to go on after directing him to take certain remedial measures. I see from his evidence that the Internal Control Unit specifically addressed their enquiry at him. No doubt, there had been a breach of mandatory requirements – the failure to obtain the customers' written instructions on actions being undertaken unilaterally on their "accounts". I see that the only cure for the breach was to engage the bank's deferral system. This is without contest. And in applying that cure, the bank's policy on deferrals not only had to be applied, it had to be properly and suitably applied. I also see that this was by the act of the 3rd Defendant signing the relevant parts of the emails. As his witness, DW19, later explained, more or less echoing PW7, his signatures thereupon acted as a remedy for the breach. PW7 had also explained that she was not authorised to employ the deferral system. She said without contradiction that it was only the Account Officer at the branch level or a top management officer that could do so. (Indeed, a witness of the 1st Defendant, a high net worth customer of the bank at the time, a Mr. Christian

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Imoka who was DW8, gave weight to her evidence when he testified that he would, whenever exigencies so dictate, give his Account Officer oral instructions by telephone on what to do with his account and then later regularise those steps the Account Officer had taken on his behalf.) Given all of this, I believe that the reasonable man would logically deduce that those signatures, newly added by the 3rd Defendant, not only served as a comfort to PW7 so that she thereupon went ahead to "deal" as she said, but they also acted as an override that kept the watch dogs, Internal Control, at bay.

In justifying his actions in initiating the funds transfers, the 3rd Defendant said that the "loan" accounts at the bank from where the monies were to come and the accounts at other banks to which they were to be lodged were "related-party" accounts. That, he said, was his explanation to the officer from Internal Control. He said this was because the companies involved at both ends of each of the transactions were related companies as they were owned and run by the same persons, and so the funds transfers were not high risk transactions. PW7 had said, contrary to this, that accounts are related only if the signatories to them are the same. For the reason that the operator of an account is recognised to be that person whose signature and photograph are on the mandate card (as made clear to the court by a number of bankers – from other banks for that matter – who gave evidence on the purport and import of mandate cards, and testified as DW10, DW13, DW14 and DW15), then PW7's version of what a related-party account is, is much more convincing, and it is supported by the evidence of other professionals in the field.

The word "mandate" of course tells the story on its own, even without the evidence of those other bankers. It ties in signatures – not names, not affiliations, not relationships – to the operation of an account. Indeed, two different people may bear the same name in an organisation! It is their visual appearance and their signature that identifies them separately. In so saying, I take judicial notice of the fact that a signature, just like a finger print, is a mark of identification. Indeed, it is much more significant as a mark of identification in officialdom. I also take notice of the plain, ordinary meaning of the word,

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"mandate". In other words, it is that signature, when recognised, that "compels" action.

I believe that the 3rd Defendant, being the experienced banker that he is, knows all this too well. What it was, was that he instigated the funds transfers knowing fully well that there were no signatories to the phoney accounts the bank had created as there were no mandate cards in existence (save for the Petosan account which was real), and not caring that there were no signatories to those accounts because there were other reasons behind the transfers. And with specific regard to the Petosan account, the idea of confirming signatures was always futile because there could not have been any "mandate" to carry out a transaction as regards an unknown "loan" amount.

But what was worse, the Statements of Account show there was an incident of a transfer to completely unrelated accounts. The combination of Exhibits P105 and D127A evince a transfer of N2, 868, 750, 000.00k from Mrs. Ebi's Futureview Securities Limited's purported loan account at the bank to the account of Mr. Ololo's Falcon Securities Limited at Oceanic Bank. (I should explain that Exhibit D127A is from Ecobank Nigeria Limited because Oceanic Bank International Plc. was later acquired by Ecobank as is the evidence before me.)

The long and short of all this is that the 3rd Defendant was not truthful in his explanations to the Internal Control Unit when, in the course of their review, he was asked to explain the nature of the transactions. They were not related-party transactions as he claimed them to be as there were no common signatories evincing anything of the sort. They were also not related-party transactions but third party transactions because transfers were made to completely unrelated entities.

But I must say that the 3rd Defendant, yet, gave contrary evidence on this matter of related-party or third party transfers. On the same day (the 20th of June 2019) he made conflicting statements. At one point he said,

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The Internal Control didn't also raise an objection because ... simply because it's a third party transaction and there is a deferral arrangement on such things. And the Treasurer can understand; that's why she forwarded the instruction to her subordinates to deal with.

Whilst still testifying that day (both pieces of evidence were during his examination-in-chief for that matter), he then turned around to say as follows:

Mr. Fidelis Omachonu who I said was the Head of Internal Control at the time at the Head Office, also was involved in this and he called me [incidentally, it was no longer Mr. Omochonu's resident officer at TROPS that called him] and I explained it and he knew ... [The 3rd Defendant's Counsel interjects] Yeah, he called me. And I explained it and he understood that these are not third party transactions.

The many contradictions certainly do not help the 3rd Defendant's case.

Finally on this matter of funds transfers, and because she was a more credible witness, I accept PW7's version of events that the schedule of customers' "accounts" that were to be debited (the third page of Exhibit **P97**) came to be attached after the email had journeyed back to the 3rd Defendant, and **after** she had made an issue about the absence of customers' instructions. The 3rd Defendant had said the schedule had come from PW7's department. But the very fact that he signed at the bottom of it, in my respectful view, is sufficient proof that it was acknowledged by him to be his. From the positioning and date of his signature, it is clear to me that it was meant to relate to the schedule, and to authenticate it for the purpose of the transfers. In so saying, I reiterate that the 3rd Defendant always knew about the existence of the fictitious "loan" agreements and loan accounts. As I said before, he had given directives on the second page of Exhibit **P96** on what was to be done with the money that was to be disbursed as "loans" into some of those accounts. The purpose of the newly attached schedule to Exhibit **P97**, I believe therefore, containing "loan"

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amounts of which he was always aware, was to justify the transfers to the querying officer at TROPS (PW7) and to give her assurance to carry out those transfers on behalf of the "customers" listed alongside the "loan" amounts.

For all these reasons, the evidence of the Prosecution stood strong and unshaken. Clearly, the deferral system had been employed by the 3rd Defendant, as PW7 has said it was, in order to ensure that the monies left the bank.

Regarding the Prosecution's case of another pretext – the one that enabled PW3 and Mr. Ololo to accept the monies transferred into their companies' accounts at other banks, I had, much earlier, quoted from the evidence adduced by the Prosecution in this regard. This is the evidence given by PW3, and by the Investigating Officers, PW10 and PW12, on the matter of oral agreements with PW3 and Mr. Ololo to act as Receiving Agents for investors, foreign or otherwise. The two officers had said their findings and conclusions were based on their investigative activity including interviews with PW3 and Mr. Ololo and other relevant persons, as shown in the Statements made to them that are before the court.

But the 3rd Defendant has said that PW3 knew, as at the 2nd of January 2008 when she called to ask for his assistance in making funds transfers, that the GDR component of the Public Offer (by which foreign investors were to buy shares) had been dropped. He said it was therefore "*a pure lie*" for her to write about an oral deal by which money coming from such foreign investors would be channelled through her, as she did in her Statement, Exhibit **P186**. He said there was no need to compensate her; to give her an extra impetus, as she was already participating as a receiving agent. He relied on the prospectus to the Offer (Exhibit **D21**) as proof that the GDR component had indeed been cancelled.

But contrary to what he said, Exhibit **D21** did make reference to the GDR component as if it was still very much in the picture. It referred to the GDR at its pages 3, 7 and 8. And just as PW3 had said in her Statement, as at the time that prospectus was issued (it is dated the 13th of November 2007); there were only

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four Issuing Houses as opposed to the original six, with Mrs. Ebi's company, Futureview Financial Services Limited, not being among the four. (I should add that it is not in dispute that six were proposed by the bank but the regulatory authority, the Nigerian Stock Exchange, made the bank reduce the number to four.) Again as PW3 said, her company was listed as an Underwriter. And so it becomes clear that the Quotations Meeting PW3 wrote about in her Statement was held at a time before the prospectus, Exhibit D21, was published. I see that instead of the foreign investors' element having been dropped as at the time that prospectus was issued in November 2007 as the 3rd Defendant claims, the newspaper publication, Exhibit D99, shows it was not until the 8th of January 2008 that the bank gave notice that it had been cancelled. What this means is that at the time of that Quotations Meeting, during the time the Offer opened in November 2007, and up till the time of the funds transfers on the 2nd and 4th of January 2008 (including the time PW3 thereafter issued cheques on behalf of supposed foreign investors on the 7th of January 2008), the foreign investors element was made out by the bank to still be very much in the works. In other words, Exhibit D21 has not been helpful to the 3rd Defendant. It has instead backed up PW3's explanations.

This gives weight to PW3's side of the story. It gives strength to her evidence of an oral agreement along the lines she has made out because the 3rd Defendant's attempt to cast reasonable doubt on that evidence failed abysmally, even from a consideration of documents and publications issued by the bank itself. Those documents served to corroborate her testimony instead. It is therefore reasonable to conclude that PW3 was deceived into believing the foreign investors' story. It is all the more reasonable to believe PW3's explanation about the genesis of the oral deal – that is, her explanation that the agreement came about because at a time before the 13th of November 2007 when Exhibit D21 was published, her company had been dropped as an issuing house (which would have earned them appreciable financial gain) but then still remained an underwriter (a position by which it was to undertake liabilities on behalf of the bank). Her statement then of seeking compensation

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for this is not just plausible but truly credible. I therefore believe her when she said that she had approached the 1st Defendant at the sidelines of that Quotation Meeting at the Stock Exchange, and that the 1st Defendant asked her to work out details on the compensation with the 3rd Defendant – a person with whom she was very familiar and with whom (as the 3rd Defendant said) she had already been carrying out transactions with the bank.

On this matter of an oral agreement, the 1st Defendant, in a bid to refute PW3's evidence of having spoken to him on the sidelines of the Quotations Meeting preparatory to the opening of the Public Offer, and at which meeting she said an agreement was made the details of which he directed her to work out with the 3rd Defendant, said instead that he met her for the first time on the 8th of October 2009 (two years later) when he went to see her with a view to obtaining documents with which he could pay off her debt to the bank.

But in contrast to what he has said so as to distance himself from PW3, there are the very instructive words from the Chief Credit Officer of the bank, Ms. Ulasi (PW9), in her Statement, Exhibit 175, that the 1st Defendant had told her (this conversation would have been at about October/November 2007 when the credit proposals were being crafted for the "loan companies") that he had met with the customer (that is, PW3) for whom the loans in the name of the three companies were to be advanced, and more than that, that he had reached an agreement with that customer along the lines contained in those proposals so that PW9 should simply "*regularise the credit proposals*". PW9 explained in that Statement that the 1st Defendant was one of the bank's "market-facing" officers, and that he was in a position to make commitments on behalf of the bank when relating with customers. This is independent evidence from another person – a person other than PW3 and the 1st Defendant – confirming PW3's evidence before the court that she had met with the 1st Defendant at that much earlier time. (But I should add that the explanations from PW3 and PW9 about the topic of discussions would obviously differ for the reasons I have given earlier. Members of staff of the bank were told about "loans" in order to get them to take certain official actions whilst people on the

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outside (PW3 and Mr. Ololo) were told about a Receiving Agent deal in order to get their buy-in as well.)

Because the evidence from PW9 amounts to independent, corroborating evidence, because she was a credible witness, and because she had no personal stake in the matters about which she spoke, I consider that statement by her to be of probative value. It shows, in my respectful view, that the 1st Defendant was far from truthful when he said he only met PW3 for the first time in 2009. He had, in fact and in truth, met with her in the year 2007 and agreed to an arrangement with her, and which arrangement resulted in those funds transfers. His attempt in the witness box to distance himself from the "oral deal" is no more than an attempt to exculpate himself from liability.

The Defence made a hue and a cry about PW3 having made quick profit from part of the sums transferred to her company, Futureview Financial Services Limited, at Oceanic Bank. They referred to the bundle of documents comprised in Exhibit **P207**. One of those documents, referred to by a witness, a Mr. David Funsho Odetoyinbo who was DW10, as a "placement slip", had been received in evidence through the Prosecution as Exhibit **P147**. The documents show that, indeed, on the 4th of January 2008, PW3's company invested money transferred to it from Bank PHB, the sum of N2, 390, 625, 000.00k, via a call deposit which, upon maturity four days later, earned it income as the larger sum of N2, 391, 931, 352.46k was paid back into the company's account. A witness from Ecobank Nigeria Plc. (as I said, Ecobank had acquired Oceanic Bank), the above-mentioned DW10, confirmed this to be so from the said exhibits, and from the Statement of Account of Futureview Financial Services at Oceanic Bank.

What I see is that PW3 seized the moment (and Mr. Ololo as well, judging by the Statements of Accounts of his companies at other banks that are before me) and used the opportunity to make money from the money kept in her temporary care. In my considered view, that action she took does not take away from the fact that she believed that the money came from the bank's

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foreign investors. It does not undermine the Prosecution's case for the reason that it will not lead to the automatic conclusion that she knew that those funds came from a loan granted to any of the three companies affiliated to her. Nor can it lead to the conclusion that she had thereby acquired ownership of the sums transferred. It cannot as it has been clearly established from the evidence that she believed the money had been transferred for a specific, particular purpose in accordance with the supposed mandate of those who seemingly owned the money (the foreign investors) and who wanted it put to their own use. And of course, PW3 considered herself to have fulfilled that seeming mandate of the foreign investors, and in so doing she acknowledged the fact she had been made to believe – that the money in her hands was never hers to do with as she pleased but always belonged to someone else to do with as that other person pleased; that she was no more than a mere agent carrying out a service. She did this when she complied with the 3rd Defendant's instructions to issue a cheque in that same invested amount (N2, 390, 625, 000.00k) in favour of the bank's Public Offer. I do not think that an assertion of her exercising a proprietary right or interest in the money in such circumstances can validly be maintained.

And so, all that will be deduced from her action in placing the money on call for a few days is the fact that her company, Futureview Financial Services Limited, acknowledged receipt of the money when it was transferred into its Oceanic Bank account. Indeed, all it does is to suggest that she is a seasoned finance practitioner, ready to make use of an opportunity to do a quick turnaround. And so this matter of her temporary use of the money, with respect, is no more than a distraction from the real issues at stake in this criminal case against the Defendants. As the Investigating Officer, PW12, said when cross-examined by the 3rd Defendant on this, it was the exact sum of money transferred by the bank, the same sum of N2, 390, 625, 000.00k, that, a few days later, left that same account of Futureview Financial Services at Oceanic Bank and "*went back to buy shares in Bank PHB*" in compliance with the 1st and 3rd Defendants' bidding.

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As for the assertion of learned Counsel for the 3rd Defendant in his final address that part of the money transferred to Futureview Financial Services Limited's account at another bank was used to purchase shares for yet another company affiliated with Mrs. Ebi – a company named as "Integrated Services", thus showing that she used the money as she, personally, liked, I regret that without any evidence at all that backs up that bare assertion, I cannot attribute any weight to it.

With regard to the allegation of an oral agreement with Mr. Ololo, the finding of the court that he made no requests for the "loans" in issue, the finding that those loans were a hoax, the admitted fact that he was a major player in the securities market, all compound to lead to the irresistible conclusion that he too was made use of as a means of channelling money out of the bank under the guise of his companies purchasing shares for certain favoured investors that came directly through the bank. As the evidence reveals (and I will say more on this anon) those same funds were indeed used to purchase shares for certain beneficiaries through cheques issued by him in favour of the Public Offer. Just like PW3, he had said to the Investigating Officers that it was the 3rd Defendant with whom he made the agreement. He said the 3rd Defendant had approached him in that regard. It stands to reason that he would then have given the 3rd Defendant the necessary information with which the 3rd Defendant directed the funds transfers to his accounts at other banks – be this during a telephone conversation or otherwise. And so the findings of the investigating team as it relates to Mr. Ololo's involvement are accepted by me as the evidence from them is consistent and interlocking, and therefore strong and cogent.

To conclude on this, I find that the false loan agreements led to the creation of false loan accounts that were seemingly operated by persons (unsuspecting persons) far removed from the Defendants. Those two persons, Mrs Ebi and Mr. Ololo, were made to appear to be the ones who instigated the transfer of the monies out of the bank in an apparently perfectly legitimate manner, having apparently taken possession of the money, and having apparently been empowered to spend it because, again on the face of it, their companies were

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the beneficiaries of loans granted them by the bank. Hence the oft-repeated expression of the 1st and 3rd Defendant that the five loan companies had "acquired ownership" of the monies, and could "do with the money as they pleased" – because, seemingly, they were enjoying loan facilities granted them by the bank. And no wonder the 3rd Defendant's insistence that Mrs. Ebi "owned" Extra Oil and Tradjek Nigeria Limited, and that she had admitted to being the owner of them, in order to justify his act of roping in those two companies (for whom a request for the preferential allotment of shares had only been made through him) into his behind-the-scene action of causing accounts to be opened in their names. The transcripts of evidence in this case show that no such admission was made by her. They reveal, rather, her constant denial of that assertion that she was the owner of the two companies.

From the evidence, the following funds movement from the bank becomes evident, viz,

From the Futureview Securities Limited "account"

1. On the 2nd of January 2008 the total sum of N2, 390, 625, 000.00 was transferred to the Intercontinental Bank account of Futureview Financial Services Limited.
2. On the 7th of January 2008 the further sum of N2, 868, 750,000.00 was transferred to the Oceanic Bank account of Falcon Securities Limited.

From the Extra Oil Limited "account"

1. On the 2nd of January 2008 the total sum of N1, 912, 500, 000.00 was transferred to the First Bank of Nigeria Plc. account of Futureview Financial Services Limited.
2. On the 4th of January 2008 another sum of N1, 912, 500,000.00 was transferred to the Oceanic Bank account of Futureview Financial Services Limited.

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From the Tradjek Nigeria Limited "account"

1. On the 2nd of January 2008 the total sum of N2, 390, 625, 000.00 was transferred to the Oceanic Bank account of Futureview Financial Services Limited.
2. On the 7th of January 2008 another sum of N2, 390, 625,000.00 was transferred to the First Bank of Nigeria Plc. account of Futureview Financial Services Limited.

From the Petosan Oil and Gas Company Limited "loan"

1. On the 2nd of January 2008 the total sum of N1, 912, 500, 000.00 was transferred to the Zenith Bank account of Pine Petosan Limited.
2. On the 4th of January 2008 the further sum of N1, 965, 753,050.00 was transferred to a Zenith Bank account. This account had the number "2960004100" as stated in Exhibit P95.

From the Resolution Trust and Investment Company Limited "account"

On the 2nd of January 2008 the total sum of N2, 390, 625, 000.00 was transferred to the same company's account at Zenith Bank.

And so, under the guise of loan facilities for which loan accounts were created, those sums of money were taken from the coffers of the bank, first lodged (I will not now use the word, "disbursed") in accounts that were specially designed to be temporary receptacles for them, and then very quickly (within a space of two to seven days from the creation of the accounts) moved out of the bank. In other words, the accounts acted as a conduit pipe to channel out money from the vaults of the bank.

I must make especial mention of the loan account created for Tradjek Nigeria Limited. The relevant Statement of Account, Exhibit P103, shows that apart from the supposed loan sum of N3, 500, 000, 000.00k, another sum of N988, 904, 109.59k, and then N987, 293, 921.70k, were paid into this account on the 7th of

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January 2008. When giving his evidence-in-chief, the 1st Defendant said the "customer" had "ordered" those subsequent funds. He said,

The customer ordered further transfer[s] of money into their account on the 7th of January 2008.

Of course, there was nothing to back up this empty and bare statement. But more than this, there could have been no such "order" (or "request") from the "customer" as Tradjèk Nigeria Limited was totally oblivious of the existence of the supposed loan account that had been created behind its back. Clearly, and when additional funds were required, more money was taken from the coffers of the bank and lodged in that account.

The last act in the staged play as far as Mrs. Ebi and Mr. Ololo were concerned was their making payment for the shares bought for this special breed of "investors", using the transferred sums.

(b) The Payments for Shares

As I said, Mrs. Ebi (PW3) and Mr. Ololo had paid for the shares bought for companies that form the subject matter of the Counts presently under consideration. It is clear they did so using all of the money that was transferred from the supposed loan accounts to their respective companies' accounts at other banks. And as I also said before, they did so by issuing cheques in favour of the Bank PHB Public Offer. This has been admitted by the 3rd Defendant, albeit holding on to a false narrative when making the admission as there were in truth no loans, and as the loan accounts had a deliberate, underhand purpose. This is the 3rd Defendant's evidence in that regard:

*The **subscriptions**, obviously, from extensive evidence in this case, **were made from proceeds of loans**. ... [T]he cheques that were used for these subscriptions came from the [other] bank accounts of the companies of Mrs. Ebi and Mr. Peter*

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Ololo. ... the money was transferred to the [other banks] accounts and the customers ... now issued cheques to subscribe to these IPOs ... I mean the shares in the bank's IPO.

(I have deliberately highlighted the more relevant parts of this piece of evidence. For the sake of clarity, I should say that the "IPO" he was referring to was the "Initial Public Offer", the event of 2007/2008 that is central to this case.)

Even though no such loans were ever truly granted so that they were not "proceeds of loans", the point is that it is undisputed that the monies that were transferred to other banks at his instance were the monies then used to pay for the shares that were bought for the beneficiary companies.

The 1st Defendant, under cross-examination by the Prosecution, and when asked specifically about the monies channelled through the three companies affiliated to PW3 (which came to the total sum of N10.9 billion), had also said:

All the shares were purchased by Futureview. All the entire N10.9 billion - -

...What I know is that Futureview received all the monies and bought shares. So it was Futureview shares in the Offer that we are talking about. ... Futureview was the one who bought shares during the Public Offer.

But in saying this; in saying that it is undisputed that all of the money transferred from the "loan accounts" to PW3 and Mr. Ololo's companies' accounts at other banks was used to buy the shares in issue in this case, I must distinguish the matter of the payment for shares bought for AFCO Associates Limited, the company the 1st and 2nd Defendants admitted that they jointly own. I do so because the 1st Defendant has denied the Prosecution's case that its shares were paid for from the supposed loan sums. His case, and evidence, is that

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they were paid for from money due to him from the bank as a reward for the success of the Public Offer; money that came about as his share of the "incentive" that motivated all members of staff to go all out and market the bank's shares in order that the Offer may turn out successful.

And so, in truth, apart from the matter of AFCO Associates Limited, the Defendants do not dispute the evidence that it was the monies transferred to other banks at the behest of the 3rd Defendant and through his emails, Exhibits P97 and P95, that were used to pay for the shares of the beneficiary companies. That evidence stands without anything to the contrary.

It is again clear that the payments were based on applications for shares that had been made on behalf of the beneficiary companies. This, I believe, is common sense. The evidence is that their application forms were individually filled by the 3rd Defendant, the very person who had ensured the fund transfers in the first place. The evidence, further, is that shares of the quantity applied for during the Public Offer were indeed bought for all fourteen companies. The Investigating Officer, PW10, gave evidence in this regard using, amongst others, the Statements of Account issued by the Registrar to the Offer, First Registrars Nigeria Limited ("First Registrars"), and which reflected their shareholdings in the bank.

There are before the court as Exhibits P40 to P50 application forms with which shares were bought for eleven of the fourteen beneficiary companies. The application forms of three of them – Trenton Trade Limited, Consolidated Business Support Limited and Noelle Investment Limited – are not before me. The 3rd Defendant agreed that he had filled all the forms that are Exhibits P40 to P50, and that his unique staff identification number given him by the bank was on each of them. He said he did not however sign all eleven – be this with his regular signature or the abbreviated form of it as are reflected in one or the other of the forms. There were four that he said he did not sign but were signed instead by any one of the bank's officers working in his team. He identified those four to be Exhibits P40, P44, P48 and P49. The evidence from him that he

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did not sign all the forms was echoed by one of those officers, a Mr. Gbemiga Oladele, who testified as DW17. They both said that other members of the 3rd Defendant's team signed on his behalf whenever they noticed the 3rd Defendant's inadvertence in that regard. In any event, the 3rd Defendant admitted authorship of all the forms, and agreed that they were filled by him for the sake of their use in buying shares for each stated company.

Also before the court are bank documents – cheques, payment slips and Statements of Account – that show how payment was made on the basis of the application of the beneficiary companies. Again there are the earlier-mentioned Statements of Account from First Registrars Nigeria Limited that show the allotments that were subsequently made and dividend warrants that were issued by them on the basis of those allotments. The evidence of PW10 and, as it happened, some Defence witnesses when under cross-examination by the Prosecution, then show the link between the payments, with cheques issued by PW3 or Mr. Ololo, and the beneficiaries of those payments.

The 3rd Defendant has denied any deliberate engineering of the transfer of the monies to PW3 and Mr. Ololo's companies for their use in paying for those shares with the application forms he had filled. He has said in response that the application forms were only eleven out of a much larger number of application forms (more than a hundred and fifty, he said) that were filled by him and his team under the role assigned to him as a member of the bank's "Transaction Monitoring Committee". (He sometimes referred to it as the "Transaction Management Committee".) He said the task of that committee, which he described to be a five-member committee made up of senior officers of the bank who had a key role to play, was to coordinate the Public Offer from within the bank, and that part of his duty was to monitor applications for shares of a value of N1 billion and above. What this means is that he, or members of his team who worked with him in carrying out this assigned duty, had either filled, or had attended to, the application forms of the three other companies (Trenton Trade Limited, Consolidated Business Support Limited and Noelle Investment Limited) whose forms are not before me. I say so because those companies,

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from a perusal of the Statement of Account he said his team meticulously prepared to reflect the exact payments made by the subscribing public (this is a 48-page document in the spool of Statements of Account that is Exhibit **P110A**), were beneficiaries of shares of a value above N1 billion and thus fell under his special purview as the evidence from him has revealed.

And so, the court will look to see if indeed application forms were deliberately filled for all fourteen beneficiary companies in furtherance of the alleged scheme of fraud, or whether they were innocently filled by the 3rd Defendant in fulfilling the task given to him.

The 3rd Defendant had spoken about a particular account, a dedicated account which served as a record of all payments made for shares during the Public Offer. He identified this account to be part of the spool that is Exhibit **P110A** to which I have just made reference. That particular 48-page section states the names of the persons or companies that bought shares, the details of the payments they made, and the amount they paid. It is the part entitled, "Bank PHB IPO Shares". The 3rd Defendant said that he, as a member of the Transaction Monitoring Committee, had the special task of keeping that record – that Statement of Account – and that members of staff comprised in his team ensured the accurate recording of the same.

From that spool, and from the cheques issued by PW3 and Mr. Ololo, from the deposit slips evidencing payment at Bank PHB and for the Bank PHB Public Offer account, from the many bank Statements of Account before me, and of course from Exhibits **P97** and **P95**, the following payment tracks testified upon and explained by PW10 and some witnesses from the banks concerned who had been summoned by way of *subpoenae*, become clear, viz,

i. **GHAZALI YAKUBU INVESTMENT LIMITED**

Its application (Exhibit **P44**) for 168, 750, 000 units of shares at a cost of N2, 868, 750, 000.00 was paid for via Falcon Securities Limited's Oceanic Bank cheque No. 959 (with the serial number 10283909) in that amount. The cheque (Exhibit

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P169) was paid in at Bank PHB via the deposit slip, Exhibit P131. Falcon Securities Limited's Statement of Account at Ecobank Nigeria Limited (the bank that took over Oceanic Bank), Exhibit P127A, reflects the transfer of this amount from Bank PHB to Falcon Securities Limited, and the ensuing payment out, via the said cheque No. 959, in favour of the Public Offer. Futureview Financial Services Limited's "loan" account (Exhibit P105) reflects the transfer of the said amount to Falcon Securities in the first place. Exhibit P110A at its page 39 of 48 confirms this payment via Falcon Securities Limited's Oceanic Bank cheque No. 959.

ii. **AFCO ASSOCIATES LIMITED**

Its application (Exhibit P41) for 168, 750, 000 units of shares at a cost of N2, 868, 750, 000.00 was paid for via Resolution Securities Limited's Zenith Bank cheque No. 185 in that amount. The cheque is before me as Exhibit P158. It has "AFCO Associate Ltd" and a telephone number identified to be the official direct line of the 3rd Defendant written at the back of it. Resolution Securities Limited's Statement of Account at Zenith Bank, Exhibits P157 and D134C, reflects the transfer of this amount from Bank PHB, and the ensuing payment out, via the said cheque No. 185, in favour of the Public Offer. Exhibit P97 reflects the instruction to make the transfer of the said amount from the bank (as the source of the funds) to Resolution Securities' said account. A witness from Zenith Bank who testified as DW13, Mr. Olorunfemi Jeje, confirmed to the court that the payment was indeed from Resolution Securities' account to Bank PHB's Public Offer. Exhibit P110A at its page 32 of 48 confirms this payment by Resolution Securities Limited with its said Zenith Bank cheque No. 185 for the benefit of AFCO Associates Limited.

Although the company's name was wrongly spelt as "AFED Associates Limited" in Exhibit P110A, I see firstly that this error in the spelling of the names of the beneficiary companies is common in the exhibit. I also see an undeniable link between that payment and AFCO Associates Limited. I shall say more on this shortly.

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iii. **ARABIAN PROBITY MANAGEMENT LIMITED**

Its application (Exhibit P43) for 140, 625, 000 units of shares at a cost of N2, 390, 625, 000.00 was paid for via Futureview Financial Services Limited's First Bank cheque No. 10181834 in that amount. The cheque (Exhibit P167) was paid in at Bank PHB via the deposit slip, Exhibit P130, which had the cheque serial number stated in it. Futureview Financial Services Limited's Statement of Account at First Bank, Exhibits P165 and D136A, reflects the transfer of this amount from Bank PHB on the 7th of January 2008, and the ensuing payment out, via the said cheque No. 10181834 to the Public Offer. Tradjek Nigeria Limited's "loan" account (Exhibit P103) reflects the transfer of the said sum to Futureview Financial Services Limited's First Bank account in the first place. Exhibit P110A at its page 39 of 48 confirms payment for Arabian Probity's shares via a First Bank cheque. A witness from First Bank, Ms. Bukola Ark, who testified as DW15, confirmed the validity of the altered cheque, Exhibit P167, because the alteration had signatures by it. She also confirmed the link between the entry for Arabian Probity Management in Exhibit P110A and the payments to the Bank PHB Public Offer in that company's favour via Exhibits P167 and P130.

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iv. **CLAREMOUNT ASSET MANAGEMENT COMPANY LIMITED**

Its application (Exhibit P46) for 225, 000, 000 units of shares at a cost of N3, 825, 000, 000.00 was paid for via Falcon Securities Limited's Zenith Bank cheque No. 5997 in that amount. The cheque is before me as Exhibit P161. It was paid in at Bank PHB with the deposit slip, Exhibit P127, which recorded the cheque's serial number instead. Falcon Securities Limited's Statement of Account at Zenith Bank, Exhibits P162 and D134D, reflects the transfer of this amount from Bank PHB, and the ensuing payment out, via the said cheque No. 5997, in favour of the Public Offer. Exhibit P95 reflects the instruction to make the transfer of the said amount from the bank (as the source of the funds) to Falcon Securities' said account at Zenith Bank. The second page of the email shows how the monies to be transferred in accordance with the 3rd Defendant's

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instructions on the first page were computed. Written by hand is the computation that is relevant to this company. It states:

DR

Falcon 1, 859, 246, 950

Petosan 1, 965, 753, 050

3, 825, 000, 000.

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Exhibit **P101** confirms the transfer of the sum of N1, 965, 753, 050.00 from the Petosan account at Bank PHB, being part of the false loan granted Petosan, in order to make up that sum of N3, 825, 000,000.00 that was transferred to Falcon Securities' account at Zenith Bank. Exhibit **P110A** at its page 35 of 48 confirms this payment by Falcon Securities Limited, with its said Zenith Bank cheque No. 5997 for the benefit of Claremount Asset Management Limited.

v. COMMERCIAL TRADING AND SERVICES LIMITED

Its application (Exhibit **P42**) for 112, 500, 000 units of shares at a cost of N1, 912, 500, 000.00 was paid for via Pine Petosan Limited's Zenith Bank cheque No. 724 in that amount. The cheque (Exhibit **P159**) was drawn in favour of the "Bank PHB PLC – PUBLIC OFFER". Pine Petosan Limited's Statement of Account at Zenith Bank (Exhibits **P153** and **D134A**) reflects the transfer of this amount from Bank PHB to the Pine Petosan account on the 2nd of January 2008, and the ensuing payment out, via the said cheque No. 724, in favour of the Public Offer. The Statement of Account of Petosan Oil and Gas Company Limited at Bank PHB, Exhibit **P101**, also reflects the transfer of the said amount (in two instalments) to Pine Petosan in the first place. Exhibit **P110A** at its page 32 of 48 confirms this payment that was made with Pine Petosan Limited's Zenith Bank cheque No. 724 in favour of Commercial Trading and Services Limited.

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vi. **CONSOLIDATED BUSINESS SUPPORT LIMITED**

It was when a banker from Access Bank Plc., a Mr. Ikechukwu Onyemem, under *subpoena* as DW14, identified an Intercontinental Bank Plc. cheque that was received in evidence through him as Exhibit D131 that the instrument used in making payment on behalf of this company became clear. That cheque was tendered during DW14's cross-examination by the Prosecution. (Access Bank, incidentally, had acquired the defunct Intercontinental Bank.) The Investigating Officer, PW10, when testifying much earlier, had referred to the wrong cheque. The cheque he had referred to (which was in the same amount as Exhibit D131, and drawn in favour of the same Bank PHB Public Offer) was a Zenith Bank cheque belonging to Resolution Trust and Investment Company Limited, Exhibit P160. At the back of Exhibit P160 was written the name, "Consolidated Business Support Ltd", and the office direct telephone number of the 3rd Defendant. Evidently, that error by whoever wrote the name of Consolidated Business Support Limited at the back of Exhibit P160 had misled the investigating team. The relevant cheque, as the banker came to reveal, was Exhibit D131.

DW14, under cross-examination by the Prosecution, and with the Statement of Account also tendered through him as ordered by the *subpoena* (this Statement was Exhibit D129A), confirmed the receipt by Futureview Financial Services Limited of the sum of N2, 390, 625, 000.00 in its Intercontinental Bank account on the 2nd of January 2008. The money had been transferred from Bank PHB. He confirmed the payment out from that account of the same sum of N2, 390, 625, 000.00 with Futureview Financial Services Limited's cheque No 1097 in favour of the Public Offer a few days later. That was the cheque tendered through him, Exhibit D131. He agreed that the cheque described in page 32 of 48 of Exhibit P110A to be for payment of the sum of N2, 390, 625, 000.00 for the benefit of Consolidated Business Support Limited – an Intercontinental Bank cheque No. 1097 – fit the description of Exhibit D131. From the Statement of Account of Tradjek Nigeria Limited at Bank PHB (Exhibit P105) it is clear that the money (broken up into two equal instalments) had been transferred to

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Futureview Financial Services' account at Intercontinental Bank and then used to pay for the shares subscribed to by Consolidated Business Support Limited.

vii. NOELLE INVESTMENT LIMITED

The application form of Noelle Investment Limited is not before me but page 35 of 48 of Exhibit **P110A** shows that an Oceanic Bank cheque No. 972 was used to pay the sum of N1, 912, 500, 000.00 on its behalf for shares purchased during the Public Offer. PW10 testified that this was one of the two cheques on Exhibit **P148**. The cheque number, amount, and the bank were the same as the information contained in Exhibit **P110A**. The cheque had been drawn on the account of Futureview Financial Services Limited at Oceanic Bank. Also before me as Exhibit **P128** is the deposit slip by which payment was made at Bank PHB. The serial number of the cheque was quoted on the deposit slip. The Oceanic Bank Statement of Account of Futureview Financial Services Limited, Exhibit **P150**, reflects the receipt of the said sum of N1, 912, 500, 000.00 by the company on the 4th of January 2008, and the withdrawal of the same amount with a cheque No. 972 payable to Bank PHB a few days later. It is clear from the Statement of Account of Extra Oil Limited at Bank PHB (Exhibit **P107**) that that supposed loan account was the source of the funds with which shares had been purchased for Noelle Investment Limited. It shows that on the 4th of January 2008, the sum of N1, 912, 500, 000.00 had been transferred to Futureview Financial Service Limited's Oceanic Bank account.

viii. SENTRON TRADING LIMITED

From its application form, Exhibit **P47**, 112, 500, 000 units of shares of a value of N1, 912, 500, 000.00 had been applied for on this company's behalf. There is a deposit slip, Exhibit **P132**, which shows the payment of that amount of money for it with an Oceanic Bank cheque. The payment was made into the "Bank PHB Plc. Public Offer" account. The cheque in question is stated in page 40 of 48 of Exhibit **P110** to be an Oceanic Bank cheque No. "216". But beyond this, there is nothing that tells who it was that made this payment.

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ix. **TRENTON TRADE LIMITED**

Trenton Trade Limited's application form is not before the court. But from the other documents in evidence, a payment of the sum of N1, 912, 500, 000.00 was made on its behalf for the purchase of the bank's shares during the Public Offer. Page 32 of 48 of Exhibit **P110A** shows this to be by a First Bank cheque No. 10181837 in that amount. The cheque that was described, which happens to have been drawn on the account of Futureview Financial Services Limited at First Bank, is before me as Exhibit **P166**. The Statement of Account of Futureview Financial Services Limited at First Bank is also before me as Exhibits **P165** and **D136A**. It shows that the said sum of N1, 912, 500, 000.00 was transferred to the account from Bank PHB on the 2nd of January 2008, and, with cheque No. "10181837" the same amount was transferred out of the account on the 7th of January 2008. The earlier-mentioned Ms. Ark from First Bank (DW15) agreed under cross-examination that the payment was indeed in favour of Trenton Trade Limited as described in Exhibit **P110A**. She answered that Trenton Trade Limited was not an operator of the First Bank account from where payment was made, nor had it made payment into that account in the first place. From Exhibit **P107**, which is the "loan" account of Extra Oil Limited at Bank PHB, it is clear that the money (in two equal instalments) had been transferred from the bank to Futureview Financial Services Limited at First Bank on the 2nd of January 2008.

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x. **CLAREVILLE ("CLEARVILLE") BUSINESS SUPPORT LIMITED**

The company's shares application form is Exhibit **P40**. By it, it applied for 140, 625, 000 units of shares during the bank's Public Offer. At the price of N17 per share (as is the undisputed evidence before me) this translates into the handsome sum of N2, 390, 625, 000.00k. Page 32 of 48 of Exhibit **P110A** shows that a payment in that sum of N2, 390, 625, 000.00k was made on the company's behalf with an Oceanic Bank cheque numbered "983". The cheque is before me. It is one of the two in Exhibit **P148**, and it is drawn on the account of Futureview Financial Services Limited at Oceanic Bank. The Statement of

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Account concerning that account is also before me as Exhibit P150. It reveals a transfer of the said sum of money from Bank PHB on the 2nd of January 2008, and its exit via cheque number 983 issued in favour of the Public Offer on the 7th of January 2008. I see from the Statement of Account of Tradjek Nigeria Limited at Bank PHB (Exhibit P103) that that sum of money had been transferred to Futureview Financial Services Limited's account at Oceanic Bank in the first place on the 2nd of January 2008 – and this in two equal instalments of N1, 195, 312, 500.00k.

xi. STAMFORD GLOBAL CONCEPTS LIMITED

There is evidence from the application form, Exhibit P49, the deposit slip, Exhibit P129, and from the bank's IPO Shares Statement of Account (page 40 of 48 of Exhibit P110A) that the company had, purchased for it, 225, 000,000 units of the bank's shares at the cost of N3, 825, 000,000.00k. Payment is stated to have been by way of an Oceanic Bank cheque numbered "293". Other than this, there is nothing that reveals the source of the money.

xii. GUESSTRADE SERVICES LIMITED

Its application (Exhibit P45) for 140, 625, 000 units of shares at a cost of N2, 390, 625, 000.00 was paid for via Resolution Trust and Investment Company Limited's Zenith Bank cheque No. 155 in that amount. The cheque (Exhibit P160, erroneously stating "Consolidated Business Support Ltd" at the back of it), was paid in at Bank PHB for the sake of the Public Offer. I say so because Resolution Trust and Investment Company Limited's Statement of Account at Zenith Bank, Exhibits P155 and D134B, reflects the transfer of this amount from Bank PHB on the 2nd of January 2008, and the ensuing payment out, via the said cheque No. 155 to the Public Offer on the 7th of January. Resolution Trust and Investment Company Limited's "loan" account, which is the first three pages of the spool, Exhibit P110A (and specifically, "Page 1 of 3"), reflects the transfer of the said amount to its account at Zenith Bank on the 2nd of January 2008. This was done via two debits of the sum of N1, 195, 312, 500.00k. "Page 32 of 48" of the same spool confirms the payment made on behalf of Guesstrade Services

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Limited with a Zenith Bank cheque "155" – that is, via Exhibit P160 – into the IPO Shares account.

xiii. MONTRAX INVESTICO

There is an application form, Exhibit P48, showing that the company had asked for 112, 500, 000 units of shares at a cost of N1, 912, 500, 000.00k. There is a deposit slip, Exhibit P133, showing that payment in that amount was indeed made on its behalf to the Bank PHB Plc. Public Offer. Exhibit P110A, at page 40 of 48, reflects this payment. It was done with a GTB cheque No. 1032. ("GTB" stands for "Guaranty Trust Bank" in our banking world. I take judicial notice of this.) There is no evidence about the source of the funds with which that payment was made.

xiv. FELIMON ENTERPRISES LIMITED

The company applied for 225, 000, 000 units of shares at a cost of N3, 825, 000, 000.00k as reflected on the form, Exhibit P50. Payment in that amount was made to the Public Offer as disclosed in the deposit slip, Exhibit P126. Again, page 40 of 48 of Exhibit P110A records this payment. It shows that the company's shares were bought with a Guaranty Trust Bank cheque numbered "140". Just as with Montrax Investico, nothing more is clear; nothing is known as regards the origin of the funds.

And so, from the individual tracks, it is clearly established that money taken from the bank, routed through the five loan accounts into accounts at other banks, and then routed back to pay into the bank's Public Offer account, was what was used to pay for the subscription of most of these companies that I have termed "beneficiary companies".

The fact that shares in the stated amount were bought for each of these companies was made evident by PW10, using, for that purpose, the Statements of Account of each company's shareholdings that was prepared by the

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Registrar to the Offer and which came to be attached to each application form. First Registrar's Statements of Account are also before me as Exhibits P2 to P38, and P53 to P57. The evidence is also as reflected in the document entitled "Bank PHB Register of Members as at August 31 2009 – Top 1000 Shareholders", Exhibit P171. That document, as PW10 also explained when he was cross-examined, was a comprehensive list of shares owned by the persons and companies named in it before and after the 2007/2008 Public Offer including the beneficiary companies.

As I said before, the 1st Defendant denied the case of, and evidence from, the Prosecution that the shares purchased for AFCO Associates Limited was from the pool of monies made out as loans and routed through either of PW3 or Mr. Ololo. He had said instead that he had paid the sum of N2, 868, 750, 000.00 for the 168, 750, 000 units the company bought during the Offer from the bonus he received as a result of the success of the Offer. He said,

... instead of raising eighty-five billion which was what we went to the market to raise, we were successful to the extent of two hundred and twenty-eight billion, either five hundred or six hundred million naira worth of shares that were sold. So the incentive promised staff kicked in at the moment that we had exceeded N85 billion. ... I was covered by the incentive. I'm to get ehm, 2.28% of the 5% or thereabouts. ... [T]he incentive ... for the whole staff will come [to] 10.5 billion, and 2.8% of total sum raised will be five billion, two hundred and twelve million naira. So that was what was due to me. ...

Sometime in ehm, 15th of February 2008, the Company Secretary ... sent an internal memo to me advising that in line with the approvals of the Board, that the incentive has kicked in and that I should find attached the basis of that incentive So I reviewed it and then endorsed the ... concurrent to the Vice President or Divisional Director, Human Capital to ... take

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that as authority to pay all staff incentive in line with the sweetener given to the Management and the staff for raising the IPO even beyond the eighty-five billion naira. ...

Once ... the funding for the shares had been concluded, and my incentive of five billion, two hundred and twelve million had also been calculated, I now wrote a letter to ... Divisional Director, Human Capital Management to use my incentive to pay for AFCO Associates Limited's 168, 750, 000 units of shares for two billion, eight hundred and eighty-six million, seven hundred and fifty thousand naira, and also to pay for The Financial Company Limited. And where there is a shortfall ... to use that shortfall, from the dividend paid to me in 2007, around October-November 2007, to use part of that dividend paid to AFCO Associates, to make [up] the difference.

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- He said the 3rd Defendant, at a Management meeting at which he had announced his intention to buy shares, had rushed to fill an application form for AFCO Associates Limited so as to get the reward for bringing in the company as a subscriber during the Offer. He said other members of staff had done likewise at that meeting and so he could not tell whether it was the form the 3rd Defendant had filled – that is, Exhibit P41, that was the actual one used in buying AFCO Associates' shares or whether it was any of the other forms filled by other members of staff.

Neither the internal memorandum from the Company Secretary that the 1st Defendant spoke about nor his letter to the Divisional Director of the bank's Human Capital Management Department was received in evidence. The copies of them tendered as secondary evidence were rejected by the court when upholding the objection of the Prosecution to their admissibility in evidence. But a certain Mr Ezech-Osuji, a former member of staff of the bank, testified on his behalf as DW12. DW12 said he was the Deputy Head of the bank's Human Capital Management Department at the material time. He

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testified about the staff incentive the 1st Defendant spoke about and corroborated his evidence that he (the 1st Defendant) was entitled to N5.2 billion as his share of that bonus. He said the 1st Defendant had sent an internal memorandum to his boss, the head of the department, directing that AFCO Associates' shares be paid for from that entitlement.

DW12 said they complied with the instruction so that one of his subordinates, who he named as Uche Nnadi, filled an application form for AFCO Associates Limited with which that internal payment was made. He said the payment was not in cash but by electronic means which he (DW12) inputted in the computer system upon being authorised by his immediate boss. He was categorical that Exhibit **P41** was not the application form that was used for AFCO Associates Limited and that the cheque, Exhibit **P158**, was not the method by which payment was made for its shares.

An officer from First Registrars had testified as the second witness for the Prosecution, PW2. He was a Mr. Rauf Bello. He said, when under cross-examination by the 1st and 2nd Defendants, that,

Registrars ... collect and collate all the application forms.
So that is the function of the Registrar, Sir – to process all
application forms of the company.

He added,

... [E]ven the receiving agents who collected application
forms and money from investors, they will remit their returns
– the application forms and a cheque for the amount
subscribed – to the Registrars. Registrars in turn will collate
all these monies and send it to the receiving bank.

(The emphases are deliberate)

This was a witness testifying on the practice in his place of work. I am of the considered view that he testified free of any bias; of any interest to protect.

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Indeed, he was a witness of the court, having been summoned by way of a *subpoena*. He had only come to testify on First Registrars' role in the Public Offer and to tender relevant documents in that regard. He also gave this piece of evidence during the test of cross-examination, and so he could not have been coached to make the explanation he gave. It came freely from him when demanded of him. And what was more, his evidence was never controverted.

DW12, on the other hand, showed a clear bias. His evidence, unlike that of PW2, came to be weakened when being cross-examined by the Prosecution. It turned out then that he had a grouse against his former employer, the bank, which had forced him to resign at a time after the 1st Defendant had left the bank, and it also became clear as his cross-examination continued that he had only come to help out the 1st Defendant. Instructively, he agreed that the money with which he claimed payment had been made for AFCO Associates' shares under an internal arrangement within the bank would have been taken from somewhere and posted elsewhere; that an account would have been debited with that sum of N5.2 billion and another account credited with the amount. He answered that the account that was debited was an account in the bank but when probed further, he said he did not have the Statement of Account of that account. Neither did he have the application form his colleague, Uche Nnadi, had filled. The 1st Defendant agreed as well (earlier, under cross-examination by the Prosecution) that there should ordinarily be documents in the bank reflecting this trail of payments made for the AFCO Associates Limited's shares under the incentive scheme he spoke about.

It was PW2 of First Registrars who had certified Exhibit P41 as a true copy of the application form that was in the custody of the Registrar to the Offer. From his evidence, I have no doubt in my mind that it was that particular application form, filled by the 3rd Defendant, with which AFCO Associates Limited's application for shares was processed by the Registrar. The cheque, Exhibit P158, tallied with the application, just as AFCO Associates Limited was identified on the back of that cheque as the person for whom payment was made in compliance with the requirements of the prospectus, Exhibit D21.

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DW12, then, came to court with a manufactured tale. Indeed, his demeanour was always a dead giveaway. He was very touchy, and quite rude and aggressive under cross-examination, exposing himself as being very much on the defensive. And the reason for that defensive posture was not farfetched – it was because he had told many lies and had been caught out in the process.

It is not true, after all, that AFCO Associates Limited's shares, the 168, 750, 000 units that were purchased for it during the 2007/2008 Public Offer, were paid for from some reward to which the 1st Defendant was entitled. I dare say that the 1st Defendant's attempt to distance his company – a company that undeniably belonged to him and the 2nd Defendant – from the cluster of companies that had benefited from funds transfer instructions issued by the 3rd Defendant via the email, Exhibit P97, has not succeeded. The money certainly came from the vaults of the bank. It was not paid on the basis of some entitlement.

Mrs. Ebi, when asked by cross-examining Counsel for the 1st and 2nd Defendants if she "[made] ... sales to those investors", had answered,

I did not make them directly. ... But I made them through Ugo.

"Ugo" is, of course, the 3rd Defendant. This evidence, I find, has been proved to be true of not just her, but of Mr. Peter Ololo as well. Only that the payments were not for just any "investors". They were rather for companies, Nigerian companies, the Prosecution says are all linked to the 1st Defendant. In other words, certain companies had been singled out for special, "preferential" treatment. (My apologies for the pun on the word "preferential".) Application forms were filled on their behalf by the 3rd Defendant, and money was purposely set aside and routed out from the bank in order to buy the specified number of shares contained in those applications. It was, no doubt, a deliberate scheme of events.

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And then, after having made use of the two of them to fulfil the task and the role carved out for them, the 1st and 3rd Defendants continued on their mission, with PW3 and Mr. Ololo now dropping out of the picture.

(c) The Fourteen Beneficiary Companies

By way of a preface, I should explain that here, I use the word "beneficiary" within a particular context – and that is the context of describing the companies that are the subject matter of the Counts presently under consideration. This is because of the finding I have just made that there is nothing by way of proven evidence that links four of them to the funds transfers initiated via Exhibits **P97** and **P95**. Those four are Sentron Trading Limited, Stamford Global Concepts Limited, Montrax Investico and Felimon Enterprises Limited.

As I said, the 3rd Defendant had filled the application forms of eleven of the fourteen beneficiary companies. As I also said, judging by his evidence on his duties as a member of the Transaction Monitoring Committee, he (or someone working under him) must have filled the forms of the remaining three. The case of the Prosecution is that those companies were used by the 1st and 2nd Defendants to acquire a huge volume of shares of the bank by subterfuge and with money stolen from the bank.

In order to draw the link, it was put to the 1st Defendant by the Prosecution during cross-examination that in filling the forms, the 3rd Defendant had used the very same address for a number of them. This address was Plot 1397 Tiamiyu Savage Street, Victoria Island, Lagos, the address of Platinum Capital Limited. The beneficiary companies for whom Platinum Capital Limited's address served as their address were Clareville Business Support Limited, Arabian Probity Management Limited, Ghazali Yakubu Investment Limited, Guesstrade Services Limited, Sentron Trading Limited, Montrax Investico, Stamford Global Concepts Limited and Felimon Enterprises Limited. Platinum Capital Limited, as the evidence from the 1st Defendant shows (his Statement to the EFCC, Exhibit

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P176), was set up as a subsidiary of the former Platinum Bank Limited at the time when the 1st Defendant was the Managing Director of Platinum Bank. It is also clear from his evidence-in-chief that it continued to remain closely associated with Bank PHB Plc. after Platinum Bank had transformed into Bank PHB.

The 1st Defendant gave an explanation for the use of Platinum Capital Limited's address for those companies during his cross-examination by the Prosecution. He said it was because Platinum Capital was the stockbroking outfit that served their purpose during the Public Offer.

But judging from the evidence presented by the Defence itself, it seems to me to be too much of a coincidence that companies that were totally unknown to the Defendants and had no link with the Defendants (or in the case of Ghazali Yakubu Investment Limited, a company it is said the 2nd Defendant had no recollection about her involvement in, and which involvement anyway is said to be completely nominal) would then have application forms filled for them by the 3rd Defendant using, as their registered address, the address of a company founded and promoted by the 1st Defendant, and giving as their telephone numbers, the direct office line of the 3rd Defendant. In so saying, I am reminded of the 3rd Defendant's testimony that apart from AFCC Associates Limited which he recognised to belong to the 1st Defendant, the beneficiary companies were like strangers who simply walked in from the outside, as it were, seeking a preferential allotment of shares and when the bank had made a public announcement that applications for preferential allotments were now open and would be handled by The Corporate Centre which he headed.

I find it difficult to believe that these companies that are independent of, and divorced from, the Defendants would have had to depend on some other entity different from them but affiliated to the 1st Defendant, Platinum Capital Limited, for their address. This is all the more unbelievable given the fact that the companies who the 3rd Defendant said had either written or sent email requests or delivered application forms already filled by them, would (as logic dictates)

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have done so using some identifying mark of authenticity that would disclose their own address and other contact details such as letter-headed stationery as is the normal practice. By reason of the implausibility of it all, the more logical explanation, in my humble estimation, is that Platinum Capital's address was filled in for them by deliberate design, and for the sake of convenience because of an in-house connection.

And what is more, these companies for whom the 1st Defendant has said Platinum Capital Limited acted as stockbrokers (apart from the four whose source of funds the Prosecution failed to make apparent) are the companies which, from the clear evidence, had other stockbroking companies employed for them – the stockbroking companies of PW3 and Mr. Ololo. It was those other stockbrokers, not Platinum Capital Limited, who paid for their shares. The 1st Defendant's explanation cannot therefore be the truth.

I will stress the point. A company's address is part of its identity. This is why that address is registered along with other important information when the company is incorporated. I do not see how total strangers as these beneficiary companies are said to be would be given the address of an affiliate company of the bank for no justifiable reason. I believe that the reasonable man would think instead that those beneficiary companies would have made known their address in order for them to be contacted by the Registrar to the Offer on the matter of the outcome of their respective applications for shares. I would imagine, as the 3rd Defendant also testified, that they would have been required to give relevant, truthful information to enable the Registrar carry out a verification of their existence or identity when registering their shares. As the 3rd Defendant had explained,

... when it gets to the point of verifying the ownership of these ["these" being Exhibits P40 to P50], the Registrars will look at the incorporation papers of the company to determine who owns the shares.

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Indeed, as PW2 said under cross-examination, it is part of the duty of the Registrar to despatch share certificates to shareholders. So these companies, being far removed from the Defendants, should ordinarily have submitted their own particulars. But they were instead given Platinum Capital's address and the 3rd Defendant's telephone numbers.

(Incidentally, the above-quoted evidence from the 3rd Defendant would explain how he came about the Certificates of Incorporation of the three companies affiliated to Mrs. Ebi for whom he directed that accounts be opened. I take judicial notice of the fact that those certificates state a company's registration number. Mrs. Ebi had testified that she had submitted the names of those three companies to the 3rd Defendant only for the purpose of a preferential allotment of shares. As has now become evident, their registration numbers were instead surreptitiously passed on to Mr. Alex Ojukwu (PW8) via the 3rd Defendant's email, Exhibit P96, for use in opening bank accounts. I would add that the 3rd Defendant never denied Mrs. Ebi's claim that she had sought preferential allotments for those three companies.)

But back to the matter presently at hand, I believe it reasonable to conclude that Platinum Capital Limited's address was used by the 3rd Defendant for the beneficiary companies because most of them exist only on paper, and more importantly, because of their link to the 1st Defendant and so as to keep them within easy reach.

Still on the case of a link, the Prosecution, when cross-examining the 1st Defendant, made apparent the fact that the beneficiary companies include a company, Consolidated Business Support Services Limited, which shares the same address – 14B, Anifowoshe Street, Victoria Island, Lagos – with another company that was formed and established by the 1st Defendant. This other company is named as Finacorp Building Society. The 1st Defendant had given extensive testimony about it when introducing himself to the court. Documents adduced in evidence by the Prosecution (First Registrars' Statement of Account, Exhibit P14, and the list of the top one thousand shareholders of the bank,

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Exhibit P171) also show that other companies of which the 1st Defendant or 2nd Defendant admittedly have a personal interest – named to be The Financial Company Limited, Venture Resources Limited and Land Partners Limited – also share this same address, No. 14B, Anifowoshe Street. In other words, Consolidated Business Support Services Limited is housed in the same building as are four companies that undeniably belong to the 1st or 2nd Defendants.

Still on a common denominator in the form of addresses, I see from incorporation papers that are in evidence that the address, "5, Maitama Sule Street, Ikoyi, Lagos" and "11, Raymond Njoku Street, Ikoyi, Lagos", cut across subscribers and Directors of some other beneficiary companies, and indeed the law firm that incorporated some of them, in such a way as to make it clear that they were incorporated for the use and benefit of the same person. The companies I speak of are Commercial Trading and Services Limited, Clareville Business Support Limited, Trenton Trade Limited and Stamford Global Concept Limited.

And then there are companies – Sentron Trading Limited and Trenton Trade Limited – that have no addresses at all; no existing information save for their incorporation numbers and date of incorporation (the same date of the 6th of February 2001), as made evident by the Company Search Report of the Corporate Affairs Commission that relate to them, Exhibits P85 and P90, respectively.

Finally on this, the evidence (Exhibit P87) discloses the fact that the address of Noelle Investment Limited – 27, Sanusi Fafunwa Street, Victoria Island, Lagos, also served as the address Ghazali Yakubu Investment Limited whilst documents pertaining to Ghazali Yakubu Investment Limited at the Corporate Affairs Commission (Exhibit P78) states the address of its Directors to be Plot 1397 Tiamiyu Savage Street, Victoria Island, Lagos.

Certainly, the evident bond between these companies tells a story.

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Share certificates were issued for each of the companies on the basis of the applications made in their names. Mr. Rauf Bello, the witness from First Registrars Nigeria Limited (PW2), made this clear when testifying on the documents he had produced in evidence. Those documents include First Registrars' Statements of Account of their shareholdings as attached to the application forms, and as produced as separate documents on their own and marked as Exhibits P2 to P38, and P53 to P57. The Investigating Officer, PW10, as I said, had given this evidence as well.

The Prosecution gave evidence through the Investigating Officers that the 1st Defendant personally collected the share certificates of all fourteen companies. Before them, PW2 had produced a handwritten register, Exhibit P52, before the court. He said it was a share certificate collection schedule. It shows that the bank's Company Secretary's office had collected the certificates of the persons and companies stated in it from First Registrars. He explained what each column of the register signified. He said,

The first column on Exhibit P52 indicates the shareholders' names, the second column indicates the account number of the shareholders, the third column indicates the certificate number – I mean the share certificate. The fourth column represents the number of shares on the share certificate. The fifth column shows the name of the person who signed for the share certificates – that's the Bank PHB share certificates. The sixth column is the address of the person who signed for the collection.

Apart from this register, the Investigating Officers testified on the statements the bank's Company Secretary, a certain Mr. Chris Ezeafulukwe, made to them when they interviewed him. This is embodied in the said Company Secretary's Statement before the court, Exhibit P196. In it, he said to the officers that the share certificates as well as dividend warrants of the fourteen companies amongst others,

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... were given to the MD/CEO of the Bank, Mr. Francis Atuche, just as some other certificates and warrants were given to some other staff of the Bank. ... The MD/CEO asked for the certificates and I do not know why he asked for them as the certificate[s] belong to the companies listed above. Under normal practice any staff including the MD can collect certificates for shareholders. The MD/CEO Francis Atuche, did not acknowledge receipt of the certificates in writing as the certificates were given to him in his office. ... I am sure that I handed the certificates over to him – Francis Atuche. I do not have any personal relationship with these companies.

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The 1st Defendant has denied the assertion that he has a personal interest in those share certificates. He testified instead that they had been called for and handed over to him because "the senior management" of the bank had embarked on an audit of "large value share certificates to ensure that the control in the bank will not change after the completion of the Offer". He said a threshold of "twenty to twenty-five million units of shares" was set so that any certificate that had units above that threshold would form part of this audit exercise. He said that after the audit had been completed, the share certificates were returned to the Company Secretary. His examination-in-chief continued as follows:

Question: Now how ... What were the criteria applied in the screening? You said you did participate?

Answer: Yes.

Question: And other Directors all participated?

Answer: Yes.

Question: Were any of the share certificates given to you for screening?

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Answer: Some were given to me, some were given to other Executive Directors. ... So it was a process of ensuring that all put together, we are satisfied that we will not see where one person will come and give ... [come] one morning and say, "I give you guys red card". The Directors were nervous enough not to allow that happen. And that was the whole essence of the screening.

(My emphasis)

He was asked again,

The ones that were given to you to screen, what did you do with them?

He answered,

I brought them also to the meeting room. After we had all screened, I collected those that relate to me and I signed for them. Those that don't relate to me, they were returned to the Company Secretary and they were distributed through the normal channel.

On another day, and whilst continuing his evidence-in-chief, he said,

The share certificate did not come to me as a person. The share certificate was reviewed by management and Board to identify anyone whose investment might become significant. And what we called significant investment is 5% and above because the holders of 5% are entitled to a Board seat and that might change the strategy, the governance, of the bank. So for that reason we were concerned about knowing if anyone had increased their holding so that we don't meet the 5%.

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But bearing in mind how important this issue of a screening exercise aimed at checkmating a possible loss of control of the bank was to his defence case, the mind boggles as to why his first witness, Professor Utomi, who was the Vice Chairman of the Board of Directors of the bank, was completely silent about it. After all, the 1st Defendant had said, "[t]he Directors were nervous enough not to allow that happen". I think that it would be reasonable to believe that the 1st Defendant would have seized the opportunity of DW1 being in the box to obtain evidence that would have served as corroborating evidence from him since DW1 was one of those Directors, and knowing as he (the 1st Defendant) did that the Prosecution had already given weighty evidence to prove its case of him having collected the share certificates and kept them for himself. One would have thought that DW1 too would have testified about that decision to conduct a screening exercise so as to prevent a hostile takeover of the Board, and would have testified as to the fact that such an exercise was indeed conducted if, in truth, there was ever any such screening exercise in the first place. In my considered view, the absence of any such corroborating evidence in circumstances where it was available and not out of reach does not help to give value to the 1st Defendant's *ipse dixit*.

It also seems strange that the 1st Defendant, who said the certificates were returned to the Company Secretary afterwards – a crucial issue, did not cause a *subpoena* to issue for the register or despatch book that must exist (bearing in mind the usual practice in established, record-keeping offices such as a bank), and which would have shown the movement of the certificates from his office back to the Company Secretary's office as he said occurred. Neither did he call the Company Secretary (or anyone else in the Company Secretary's office) to testify in that wise. In other words, the 1st Defendant had the opportunity to give credence to his explanation but did not do so.

In view of the enormity of the issue to his case, and given the opportunities at his disposal, the failure of the 1st Defendant to back up his empty and bare statement that the certificates were handed back to the Company Secretary with evidence that supports it makes it far more probable than not, in my

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respectful view, that they were not returned. Instead of any such supporting evidence, the 1st Defendant gave a very different explanation years earlier and in one of his Statements to the EFCC. In the one that was marked as Exhibit **P180**, he did not write about a screening exercise aimed at quelling the nerves of members of the Board of Directors of the bank. His explanation instead was as follows:

The share certificates of some of the companies may have been delivered to me for their respective owners. The Company Secretary is ... most likely have delivered some of the share certificates to me. I have those that relate to me while the others are no longer in my possession; they have been delivered to the companies. I remember receiving the dividends for the companies and they have been paid to the companies.

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(The emphases are mine)

He had, in writing this, been referred to a number of companies that included the beneficiary companies.

I see from another of his Statements, Exhibit **P176**, that he had named the companies in which he had a personal or family interest to be The Financial Company Limited, Venture Resources Limited, AFCC Associates Limited and Oakwood Asset Management Company Limited. And when giving evidence, he had denied having any interest in any of the fourteen beneficiary companies save for AFCC Associates Limited. But then in Exhibit **P180** he wrote about collecting their share certificates for the sole purpose of him delivering them to their owners. He did not then give any explanation about some screening exercise. He wrote that he did collect the certificates and that they were indeed delivered to their owners. He did not return them to the Company Secretary after a screening exercise.

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There is another problem with this evidence about a screening exercise. The 1st Defendant had said the reason for it was to prevent a hostile takeover. He had said they wanted to "ensure" (that was the word he used) that the Board's control of the bank would not change. He said as well, "*We were managing what threshold will lead to a 5% ownership, post the transaction*". But then one wonders as to the utility of such an exercise at the post-allotment stage when share certificates had already been issued to those investors who may have crossed the "threshold" the 1st Defendant spoke of; investors who, therefore, could no longer be stopped from mounting any such takeover bid if they so wished! I say this, bearing in mind the well-settled position of the law that a share certificate amounts to proof of ownership of the shares of the company stated in the document. This, of course, is different from the pre-allotment stage the 3rd Defendant spoke about when he said that applications for the preferential allotment of shares of a value of N1 billion and above were to be sifted out by him and sent to the Board of Directors for them to consider for this very same reason of preventing a hostile takeover. A post-allotment vetting exercise as described by the 1st Defendant seems to me to be such an exercise in futility that extremely busy executive officers would not have the time and the inclination to embark upon. For this reason too, I consider the 1st Defendant's explanation to be untenable.

And so, I do not accept the 1st Defendant's latter-day explanation about only collecting the certificates for a Board screening exercise for all of the reasons I have given. I consider it to be a contrived tale that DW1 would not have corroborated.

Regarding the case of a link between the beneficiary companies and the 1st and 2nd Defendants, I see that there is, on one hand, an interconnection of the companies in the manner I earlier mentioned to show a common ownership. Beyond this, the Prosecution gave evidence of another type of link – one between one of them and the 2nd Defendant. The company concerned is Ghazali Yakubu Investments Limited which according to the 1st Defendant was promoted and actively run by a certain Mr. Victor Udeh. The evidence reveals

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Mr. Udeh to be a minority shareholder (owning ten per cent of the company) whilst the 2nd Defendant (with eighty per cent ownership) and a Ms. Grace Atuche who the 1st Defendant described to be his father's distant relative (with the remaining ten per cent) were, together, the overwhelming majority shareholders. Yet the minority shareholder, who ran the company exclusively and indeed, established it for himself as the 1st Defendant also said, had the bank pay for the company's shares through the long-winded process of fabricated loan agreements granted other extraneous companies, and had the share certificate collected personally by the 1st Defendant. I see that this certificate was collected by the 1st Defendant even though Mr. Udeh was fully and solely in charge of the company and even though the 2nd Defendant had no recollection at all of the existence of the company, as the 1st Defendant also said. Indeed, the 2nd Defendant, in her Statement, Exhibit **P183**, denied knowledge of the company completely when questioned by the investigating team about it. And what is more, this company, divorced as it is from the 1st and 2nd Defendants as they have said, yet had its registered address at Plot 1397 Tihamiyu Savage Street, Victoria Island, Lagos, which is the address of Platinum Capital Limited. Mr. Udeh (whose firm, I see, carried out the incorporation process) did not have it registered at his own address. Its documents at the Corporate Affairs Commission (Exhibit **P78**) also show, as I had said earlier, that it later moved from that first address to 27, Sanusi Fafunwa Street, Victoria Island, Lagos, which (coincidentally?) is the registered address of another beneficiary company, Noelle Investment Limited. And just by the way, the 2nd Defendant explained to the investigating team in another of her Statements, Exhibit **P182**, that she was engaged in the Christmas decorations business; a business that will, then, be relevant to ... "noel"!

It seems to me to be too much of a coincidence that the very companies that are the subject matter of application forms filled by the 3rd Defendant are the very companies whose share certificates were collected by the 1st Defendant, and they are the same companies (save for the four earlier-mentioned whose source of funds has not been made evident) for whom PW3 and Mr. Ololo

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undoubtedly paid their subscriptions using monies routed from the bank under the guise of fake loan arrangements that were approved by the 1st Defendant.

In my considered view, the evidence stands without having been successfully dented that the 1st Defendant kept the share certificates of those fourteen companies after they had been collected by him. This is because his attempt to debunk the evidence of the Prosecution that ties him, and the actions of him and the 3rd Defendant, to those companies – this attempt being his evidence about a screening exercise – has not been successful as it did not meet the standard of proof (proof on a balance of probabilities) that was set by law for him to scale. That evidence has been shown to have little value, even by his own words in Exhibit P180. It is my finding that he kept those certificates, and that he did so because of him and the 2nd Defendant's nexus to the companies that seemingly owned the certificates.

Finally on the matter of the relationship between the 1st and 2nd Defendants and the beneficiary companies, the case of the Prosecution is that the 1st Defendant collected their dividend warrants as well.

The Prosecution led evidence to show that dividend warrants belonging to twenty companies had been delivered to the bank's Company Secretary, and that those of the fourteen beneficiary companies were handed over by the Company Secretary to the 1st Defendant. PW2 had answered, under cross-examination by the 1st and 2nd Defendants, that just as with share certificates,

The Company Secretary requested and collected the warrant of those shareholders concerned.

Indeed, the bank's Company Secretary, in his Statement, Exhibit P196, had told the investigating team that he had handed over dividend warrants to the 1st Defendant as well. The 1st Defendant, in turn, and in Exhibit P180, had stated thus:

I remember receiving the dividends for the companies and they have been paid to the companies.

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(The emphasis is mine)

The 1st Defendant explained that he had received the warrants from the Company Secretary.

There is before me, marked Exhibit P39, a document entitled "Dividend Warrant Collection Schedule". It was prepared by First Registrars Nigeria Limited and was received in evidence through PW2. PW2 had explained that it reflected the dividend warrants collected by the bank's Company Secretary. The dividend warrants of twenty companies are stated to have been collected. From the evidence given by PW2 and the documents that support his testimony (in this regard, Exhibits P2 to P50 and P53 to P57), I see that they include dividend warrants issued in favour of the fourteen beneficiary companies being payments to them for shares bought for them during the bank's 2007/2008 Public Offer.

The reason behind the requirement that investors state their postal address and other forms of identification on their application forms is so that the Registrar may deliver their dividend warrants (just like their share certificates) to their stated address. I say so because the evidence from PW2 makes it clear that it was First Registrars who issued the share certificates and dividend warrants for shareholders contained in its register of shareholders, and in accordance with their shareholdings as reflected in the Registrar's Statements of Account. PW2 had explained that the application forms and payments are handed over to the Registrar to the Offer by the receiving agents. The 3rd Defendant too had explained that it was important for First Registrars to verify the information contained in those application forms in order for it to carry out its duties. Indeed, it is clear from the dividend warrants before me that it was First Registrars that issued and signed them. It was First Registrars then, because it was the issuer, that was ordinarily to deliver them to their rightful owners at the address given in their application forms as their (the owners') own address. Clearly from Exhibit P39, this was done through the Company Secretary instead as he had asked for those of the fourteen beneficiary companies in issue herein.

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I had deliberately highlighted a certain word (the word, "to") in the 1st Defendant's statement that I just quoted. I did so to emphasise the fact that the 1st Defendant had said to the Investigating Officers that the dividend warrants that belong to companies not related to him but collected by him were paid to those companies. He did not say they had been "paid in" at the bank, or any of the subsidiary or affiliated companies of the bank, as a means of making quick returns through such deposits. That was his latter-day evidence to the court. He had said instead in his Statement that the warrants were paid to those beneficiary companies being that they belonged to the companies.

Indeed, it seems strange – and again, most improbable – that "investors" properly so called would allow another to benefit from their investment. Investments are a business venture, business undertaking, and not an act of charity. I take judicial notice of this truism. It seems unlikely that after having put money down, made a sacrifice to buy shares with a view to making financial gain; in order to earn money, they would then prefer to sit back and allow that money to lie fallow in the hands of another, and in such a way that that "other" takes away from the benefit that ought to have accrued to them wholly and completely. It seems unlikely that they would, by themselves, cut short their expected and I dare say, "much anticipated", gain. It seems unlikely that they would willingly divert their profit to another person to feed on – unless, of course, they had no idea of that diversion, or, they did not care about the diversion. It seems unlikely that they would by themselves develop a *nonchalant* attitude to their investment, choosing to delay the gain they had worked towards, or, choosing to reduce that gain to themselves, by leaving their warrants in the hands of someone else not related to them, as the 1st Defendant has said. It goes against the grain of an investment, and the orientation behind making one.

The more reasonable, more logical explanation, in my respectful view, would be that the dividend warrants were, in fact and in truth, "paid to" the owners thereof as the 1st Defendant had said at the outset.

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(d) Dividend Warrants and the Claremount/Claremont Accounts

This leads on to a consideration of the last leg of the journey in the case built up by the Prosecution regarding a fraudulent intent – the payment of those dividend warrants into accounts at certain banking institutions. One of the institutions in question is a subsidiary of Bank PHB and a mortgage bank called Mortgages PHB Limited ("Mortgages PHB"). Mortgages PHB used to be known as Finacorp Building Society Limited ("Finacorp"). The evidence on this is clear. The 1st Defendant had said that he founded Finacorp and was its pioneer Managing Director, and that it transformed into Mortgages PHB after the merger between his erstwhile bank, Platinum Bank Limited, and Habib Nigeria Bank Limited.

A second place at which another set of dividend warrants ended up, from the undisputed evidence, was an internal account, said to be a suspense account, maintained by the bank's Treasury Operations Department.

I see that the fact of the payment of dividend warrants relevant to this case, and being the monetary gain from the shares purchased in the name of all fourteen companies during the Public Offer, into bank accounts at those two places (Mortgages PHB and TROPS) has not been denied by the Defendants. Indeed, there are documents to this effect, and as the saying goes, "documents speak for themselves". On their own, they expose the trail. What has been denied rather – and this, by the 1st and 2nd Defendants, is the assertion that the cash derived from dividend warrants paid to companies other than AFCO Associates Limited were paid over to them and used by them for their own personal benefit. Ownership and control of AFCO Associates Limited, of course, has never been denied by them.

As for the 3rd Defendant, there is no case, and no evidence, against him on the matter of reaping reward from any of the shares purchased for the beneficiary companies with the funds transfers that he initiated. The evidence from the

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Prosecution rather was that he was rewarded in a different way – with a promotion to higher office by the 1st Defendant.

The case and evidence of the Prosecution is that apart from other accounts he maintained there, the 1st Defendant had, in particular, two accounts at Mortgages PHB that are relevant to the matter of dividend warrants. I see that one was a current account in the name of "Claremont Nigeria Limited" and the other was a fixed deposit account in the name of "Claremont Management Services Limited". I also see that it was into the current account that dividend warrants were paid. Reading through the respective Statements of Account, Exhibit **P210** for Claremont Management Services (the fixed deposit account) and Exhibit **P211** for Claremont Nigeria Limited (the current account), it is clear to me that the two accounts are inter-related and belonged to the same person even though they were in different names. Money was sometimes transferred from the fixed deposit account to the current account in order to make payments out of the current account, and money was also transferred from the current account to the fixed deposit account with payments sometimes made directly from that fixed deposit account. I will refer to the two accounts in a collective manner when necessary as "the Claremont/Claremont accounts".

The Managing Director of Mortgages PHB at the material time, a Mr. Solomon Bolaji Ogunsola, testified for the Prosecution as PW11. He had also made a Statement to the EFCC, Exhibit **P244**. In the Statement, he wrote as follows:

Mr. Francis Atuche, the former MD/CEO of Bank PHB who was formerly the MD/CEO of Mortgages PHB (formerly Finacorp Building Society Ltd) have (sic) a legacy accounts with Mortgages PHB. The accounts include personal current and savings accounts and an account in the name of Claremont Investment Ltd of which he is the sole signatory. Account opening documentation on these accounts (all opened as far back as the inception of the company, 1993) are not complete. Request for regularisation have not been

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yielded to. The accounts are mainly transacted by payment of instruments (cheques and dividend warrants). I have provided copies of statement of the accounts and photocopies of most of the instruments (mainly dividends) paid into the account by the account owner. I also have attached various email instructions with which the accounts are transacted

When in the witness box, he said that he had mistakenly referred to the "Claremont Nigeria Limited" account as the "Claremont Investment Limited" account in his Statement. In other words, he had meant to write "Claremont Nigeria Limited" when he wrote "Claremont Investment Limited". He also confirmed the existence of the account in the name, "Claremont Management Services Limited", testifying that it was another one that belonged to the 1st Defendant. And under cross-examination by the 1st and 2nd Defendants, he answered that a "Claremont Investment Limited" account did exist as well at the mortgage bank. The last mentioned account does not concern us here.

He testified that the two accounts relevant to this case were operated by the 1st Defendant in an indirect manner and "principally", as he said, through his secretary, a Ms. Charity Okonmah. His evidence was that Ms. Okonmah would send instructions on the 1st Defendant's behalf via emails to the Head of Operations of the mortgage bank or to the Account Officer, a Mr. Sunday Eni, copying him (PW11) and the 1st Defendant. According to him, members of staff of Mortgages PHB knew that the accounts belonged to the 1st Defendant. His evidence was that it was an open secret. He said the name "Claremont" was a "household name" in the mortgage bank, and was commonly referred to as "the MD's account". He said the "MD" that was being referred to was the 1st Defendant and not himself, the then Managing Director of the mortgage bank. He said the instruments paid into the account – the dividend warrants and cheques he had spoken to the EFCC about – were usually brought over by Mr. Eni and then paid in by their Operations officer.

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The witness said that when some payments started flooding in (Exhibit P211, the Claremont Nigeria Limited account, shows this was during the period September to December 2008) he became uncomfortable with the fact that there were no account opening documents at all to support the account and to reflect the identity of the owner in clear terms. He said even though there was a banking reference form that had the 1st Defendant's name and the name "Claremont" written beside it, and also had his passport photograph attached to it (this form is before me as Exhibit P243), he considered it to be "insufficient" for the continued operation of the account. He said for that reason he wrote to ask for the necessary documents with which to regularise the account, including the provision of "*Two independent and satisfactory references*". This was his letter, Exhibit P230. It was addressed to the Managing Director of Claremont Nigeria Limited, giving as that person's address the head office address of Bank PHB. The letter was for the specific attention of the 1st Defendant. PW11 said he received no reply to the letter and so he followed it up with a reminder, Exhibit P231, but still there was silence on the 1st Defendant's part. The witness said that at the time when he called for the file on the account, he discovered that past Managing Directors of Mortgages PHB had written from as far back as the year 2002 to ask that the account be properly regularised but with them receiving no reply just as was the case with his subsequent letters. PW11 explained how payment instructions were honoured by Mortgages PHB. He testified as follows:

... Claremont Nigeria Limited is an account with Mortgages PHB, and this account, from the record I had ..., had been in existence way back early 2000 because I could see comments of some former Managing Directors on the file. And yes that the account is run in the bank as a call account. A call account is an account that does not have a cheque book to it. So it's not run by way of the owner of the account writing a cheque on it. Mostly transactions are conducted on the account by way of written instruction. And when I joined

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the bank, when I joined Mortgages PHB, the vibe in the bank is that, "This is the MD's account".

He testified that whenever they received payment instructions, they, in turn, would issue "instruments" in compliance with the instructions. The evidence from him shows that the "instruments" he was referring to were Manager's Cheques issued on the account of Mortgages PHB at Bank PHB. Indeed, he identified them to be so. He said he and the Head of Operations of the mortgage bank, a Mr. Andy Izomor, were joint signatories to the Mortgages PHB account from which account those Manager's Cheques (referred to also as "drafts") had been issued. It is evident on the face of the drafts that the account in question was maintained at Bank PHB. I also see from the many emails before me – the emails to which PW11 had made reference as having been sent most of the time by the 1st Defendant's secretary, Ms. Charity Okonmah – that they had been drawn in favour of persons to whom payments were instructed to be made by the operator of the Claremount/Claremont accounts via those emails.

As I said, the Manager's Cheques were drawn on an account held by Mortgages PHB at Bank PHB. This is clear not just because they had the "Bank PHB" logo imprinted on them, but also because under cross-examination, PW11 had testified that because Mortgages PHB was not a "clearing bank" it had to go through a bank that was a member of the clearing house in order to fulfil payment requests. He said for that reason it maintained a "clearing account" at Bank PHB. When asked by learned Counsel for the 1st and 2nd Defendants for the name of that clearing account, he answered that it would be in the name of Mortgages PHB. When asked a second time, he said,

I said such account will always be in the name of the institution that opened the account, and in this case, Mortgages PHB.

The question was asked again. He said,

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*I think it is "Mortgages PHB"; in the name of Mortgages PHB ...
And if it is not in "Mortgages PHB", probably it is in the former
name of Mortgages PHB which was "Finacorp". But I think it is
"Mortgages PHB".*

He said specifically that the account in respect of which Manager's Cheques were drawn in order to honour payment requests on the Claremount/Claremont accounts was this clearing account held in the name of Mortgages PHB at Bank PHB. As I said before, he had explained that he and the Head of Operations of Mortgages PHB were joint signatories to that account held by the mortgage bank at its parent bank. He had further explained in his evidence-in-chief that it was money belonging to Mortgages PHB that was kept in this account.

When he was re-examined, PW11 explained that the Claremount/Claremont accounts were not clearing accounts that belonged to Mortgages PHB, held by Mortgages PHB at Bank PHB as he appeared to have said when responding to questions under cross-examination. He said instead that they were accounts held at Mortgages PHB and not at the parent bank. He backed up his explanation with the further testimony that their Statements of Account (Exhibits **P210** and **P211**) are documents that emanated from Mortgages PHB. From his evidence, taken together with the narrations in the said Statements of Account, it is clear that the amount on each Manager's Cheque was deducted from the relevant Claremount or Claremont account such that Mortgages PHB (by the means of its Manager's Cheques and because it was not a "clearing bank") acted in an intermediate capacity in the route to payment.

It is clear to me that the witness made a distinction between the account of the customer of Mortgages PHB held at Mortgages PHB and the account of Mortgages PHB held at Bank PHB by which Mortgages PHB honoured this customer's requests. It honoured the requests by issuing Manager's Cheques in favour of the payee, and which cheques were cleared by Bank PHB. I do not, therefore, agree with the 1st and 2nd Defendants that the Claremount/Claremont

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accounts belonged to Mortgages PHB and were clearing accounts of Mortgages PHB. Indeed, PW11 had made evident the fact that the operator of the Claremount/Claremont accounts was a completely different person, divorced from the mortgage bank, who was required to submit account opening documents (including documents of identification), and who on several occasions had been asked by the mortgage bank to provide those documents. He said knowing who that person was – his boss, the Group Managing Director, it would have been suicidal (the expression he used was it amounting to “employment suicide”) for him to insist on compliance with the due process before honouring instructions to make payments from those accounts to third party beneficiaries. The witness said that in contrast to the Claremount/Claremont accounts, the Mortgages PHB account at Bank PHB had him and a colleague – persons from within the mortgage bank – as the co-signatories. In other words, whilst the Claremount/Claremont accounts were external accounts of a customer, with instructions coming to the mortgage bank from the outside, the clearing account belonged to Mortgages PHB was operated by it internally through its officers.

Thus, from the unchallenged evidence of PW11, the Claremont Nigeria Limited account was not an account that was operated with the use of cheques. The mortgage bank, Mortgages PHB, was not empowered to clear payment instruments. In order to make payment on the Claremont Nigeria Limited account, therefore, written instructions were given by the customer to the bank at which the account was held – Mortgages PHB. But to honour such instructions, payments were processed through a clearing bank. That clearing bank was Bank PHB. And so through a rather convoluted process akin to a camouflage, the customer and operator of the Claremount/Claremont accounts would issue instructions to Mortgages PHB to make payment to a stated beneficiary of his, and to do this, Mortgages PHB, which had an account at Bank PHB, would then issue a cheque, a Manager's Cheque, in favour of the customer's beneficiary. That way, the beneficiary would receive payment once Mortgages PHB's cheque had cleared. It stands to reason that the Manager's

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Cheque would have been drawn on an account held by the issuer, Mortgages PHB, at the clearing bank – Bank PHB.

The Manager's Cheques in issue in this case are before me as Exhibits P227, and P245 to P261. Looking at them, and reading the inscriptions on them, it is clear that they were not drawn on accounts held by either of Claremont Nigeria Limited or Claremount Management Services Limited at Bank PHB. They were indeed drawn on an account held in the name of Mortgages PHB at Bank PHB as PW11 had said. I find, in the circumstance, that PW11 also spoke the truth when he said the Claremont/Claremount accounts were not "clearing accounts". They were accounts of a customer of Mortgages PHB held at Mortgages PHB. Mortgages PHB had its account existing separately and differently.

I had referred to a body of documents that pertain to the operation of the Claremount/Claremont accounts. They were produced at the instance of the Prosecution. They are the email instructions, issued for the most part by Charity Okonmah (these are Exhibits P212 to P226, P228 and P229), the Manager's Cheques issued by Mortgages PHB in compliance with those customer instructions (as I said, Exhibits P227, and P245 to P261), and the earlier mentioned Statements of Account of the two accounts (Exhibits P210 and P211). There are also some letters (Exhibits P232 to P239) from Mortgages PHB to its customer, the operator of the Claremount/Claremont accounts, and specifically relating to the money invested in the fixed deposit account held in the name of Claremount Management Services Limited.

I must make mention of a particular email, Exhibit P262, which was tendered through PW11 when he was being cross-examined by learned Counsel for the 1st and 2nd Defendants. From the then unfolding cross-examination process, it is clear that it was tendered to show that other people and not just Charity Okonmah issued instructions on the Claremount/Claremont accounts; it was tendered to help disabuse the mind of the court of the notion that the Claremount/Claremont accounts were personal to the 1st Defendant.

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Exhibit P262 was written by the Head of Operations of Mortgages PHB, Andy Izomor, to one Akpan Udeme. It was sent on the 21st of May 2009. It is entitled "Request for Funds Transfer", and it reads as follows:

*Kindly use this as an instruction to debit our account
1040000077 and effect transfers to the following accounts:*

- a) =N=21,450,975.00 – CACHEZ TURNKEY PROJECTS –
BANK PHE A/C NO. 3510200135
- b) =N=7.7MILLION – OYIANA FELIX EMENA – BANK PHB
A/C NO. 031250000002.

Thank you.

(The emphasis is mine)

I see that this same email is attached to an earlier email, Exhibit P225. Exhibit P225 (the front page) had been sent by Charity Okonmah to Andy Izomor (and copied to the 1st Defendant) on the 20th of May 2009. By Exhibit P225, Charity Okonmah had given the instruction to Andy Izomor to make two funds transfers. The transfers were to the same persons and in the same amount as reflected in Exhibit P262. It is clear that by his email, Exhibit P262, that Andy Izomor was acting in compliance with Charity Okonmah's instructions of the day before.

I believe that the primary recipient of Andy Izomor's email, the said Akpan Udeme, was an officer of Bank PHB. I say so because by his email, Andy Izomor was asking Mr. Udeme to make transfers from "our account" to accounts belonging to the intended payees at the same Bank PHB. In other words, it was an in-house transfer as far as Bank PHB was concerned.

One of those transfers was recorded as a debit on Exhibit P210, the Statement of Account of Claremount Management Services Limited. This was the one in favour of Cachez Turnkey Projects. What this means is that Charity Okonmah's instruction was for a payment from one of the Claremount/Claremont accounts

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to Cachez Turnkey Projects. And instead of the usual practice of issuing a Manager's Cheque in favour of the person to be paid, Mortgages PHB decided to make payment a different way – by instructing an internal funds transfer from its account to that person. I believe it reasonable to conclude that it was because Cachez Turnkey Projects also had a bank account with Bank PHB that Mortgages PHB considered this to be a more expedient way of complying with Charity Okonmah's instructions.

Clearly, it was Charity Okonmah that gave instructions for payment to be made in the operation of the account. Andy Izomor's email, Exhibit P262, was in compliance with that instruction. I find then that Exhibit P262 does not take away from the Prosecution's case of Charity Okonmah issuing instructions on behalf of the 1st Defendant on a very regular basis. Rather than this, the two emails (Exhibits P225 and P262) make more glaring the fact that payments out of the Claremount/Claremont accounts was indeed a convoluted process, with the money first passing through Mortgages PHB as if Mortgages PHB was to act as a smokescreen. It also reinforces the finding that the Claremount/Claremont accounts were not held at Bank PHB, otherwise logic dictates that there would have been a direct, internal funds transfer from one customer, Claremount Management Services Limited, to another, Cachez Turnkey Projects.

The lady, Charity Okonmah, is indeed central to the operation of these Claremount/Claremont accounts. Without doubt, it was she that issued most of the email instructions directing their operation. PW11 had described her to be the main actor in this regard. But he always made it clear that the emails were not exclusively from her. And the evidence supports his assertion that there was another person who issued instructions similar to hers. He described this other person to be the 1st Defendant's Assistant Secretary. And indeed there was a lady, named as Rosemary Igere, who sent one or two email instructions, and who had also worked in the 1st Defendant's office as the 1st Defendant later confirmed.

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The case of the Prosecution is that Ms. Okonmah was the 1st Defendant's personal secretary and that she sent the email instructions to the mortgage bank on behalf of the 1st Defendant and under instruction from him. PW11 had said in response to learned Counsel for the 1st and 2nd Defendants that he knew the 1st Defendant to be the operator of the accounts because "*the originator of the emails worked directly with him and takes instructions from him*". He had given unchallenged evidence that he worked in the parent bank for a while before being made the Managing Director of the mortgage bank. The Investigating Officer, PW12, testified that he had interviewed Ms. Okonmah. He said:

... And instructions come from the MD's office through his secretary, one Charity Okonmah who is now Charity Ejiofor.

... [S]he made Statement, My Lord: She said that the account belongs to Mr. Francis Atuche and being the secretary, whenever he needs money from the account or he needs a draft to be raised from the account, he passed the instruction.

When under cross-examination, PW12 then made mention of Ms. Rosemary Igere. He said again:

We have also, in the course of this investigation, come across the Personal Secretary and the Assistant Personal Secretary to the MD who at many points in time issued out these instructions on his behalf. We have interviewed them

He answered, when referred to an email directing a debit from "the MD's account" (Exhibit P216), that Ms. Igere had told him during his interview of her that she acted in compliance with the instructions of the 1st Defendant when she wrote it to Mr. Sunday Okolie of the mortgage bank.

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Thus, there is strong, direct evidence in support of the case that both women worked for the 1st Defendant and took instructions from him regarding the operation of these accounts.

The 1st Defendant has denied the assertion that either of Ms. Okonmah or Ms. Igere worked directly under him. He said Ms. Okonmah was an Administrative Secretary and that her primary responsibility (he said her "core role") was to provide support for the bank's Non-Executive Directors and its major shareholders. He said she worked in his "outer office". He said it was his Personal Assistant that worked directly with him, not a secretary, carrying out his "administrative personal work". He testified further that he had the habit of sending his emails by himself, although this Personal Assistant sometimes sent emails on his behalf whilst Ms. Okonmah seldom did. He denied any connection with the Claremount/Claremont accounts in his personal capacity. As I said before, his case and evidence was that they belonged to Mortgages PHB and served as clearing accounts for the mortgage bank. He also described them to be "trading accounts" of the mortgage bank. But more than this, his evidence was that some of the dividend warrants of their (Bank PHB's) investors were collected from First Registrars and paid to its subsidiary, Mortgages PHB, as a deliberate strategy to maintain financial liquidity. He said that as the value of the warrants amounted to a huge amount of money, the bank would want to keep them for as long as it could in order to make money off them until such time as the owners of the warrants came forward to lay claim on them.

I have already dismissed this last piece of evidence as most improbable. I did so when considering the matter of the link between the beneficiary companies and him and the 2nd Defendant. As I said before, I will not, on the bare *ipse dixit* of the 1st Defendant, accept his evidence that investors – faceless ones at that – who, apparently, had paid billions of naira in order to make financial gain (as is the aim when one makes an investment), and who had been made out to be independent persons unknown to him and the 2nd Defendant, or were beyond their control, would sit back and allow that gain to lie fallow in the hands of

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another (the bank), reaping fruit in the hands of that other, when it was them, and not this "other" that is distant from them, that made the financial sacrifice in that huge amount.

I have also found to be inconsistent with the truth the 1st Defendant's further assertion that the Claremount/Claremont accounts belonged to Mortgages PHB. Those accounts were not "clearing accounts" of the mortgage bank as he had stated them to be. One wonders as to the standing (or temerity) of Ms. Okonmah or Ms. Igere of faraway Bank PHB, from faraway Bank PHB, to give instructions on the operation of those accounts if truly they belonged to Mortgages PHB itself.

I shall, therefore, now consider the 1st Defendant's other piece of evidence – the evidence that none of the email instructions was sent at his direction or on his behalf. Intrinsic in this is the denial of a personal, self-serving link between him and the controversial accounts.

Regarding the evidence that Ms. Okonmah was not his secretary and did not work directly under him, I see that some of her email instructions – Exhibits **P213** and **P228** particularly – pointedly referred to the account in respect of which she was giving instructions as "*the MD's account*". First of all, the documents before me show a direct link between those instructions and the debit transactions reflected in the relevant Statement of Account such as to prove conclusively that the instructions were to debit the particular Claremount/Claremont account that was concerned, and to prove that that instruction was indeed carried out. For the email, Exhibit **P213**, this was the Claremount Management Services Limited account as revealed by the Statement of Account, Exhibit **P210**, and for the email, Exhibit **P228**, it was the Claremont Nigeria Limited account as Exhibit **P211** shows. In other words, the emails all relate to, and concern, the operation of the Claremount/Claremont accounts.

Secondly (and I have only just alluded to this), it would be a very strange thing to do (indeed, a fantastic thing to do) for someone sitting in her office at Bank

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PHB, acting in her capacity as a "PA" in the Office of the Managing Director of Bank PHB (as is stated in some other of her emails), to dish out instructions to officers of another entity to which she is not affiliated – that is, Mortgages PHB, directing the transfer of hundreds of millions of naira from accounts held at Mortgages PHB to third party beneficiaries. As the 1st Defendant was made to answer repeatedly when under cross-examination by the Prosecution, there was only one "MD" at Bank PHB at the material time, and that person was known to be him, and was him. He agreed that he was the only "MD" whose office was at the bank's head office. Looking at copies of the "Annual Reports and Accounts" of different years during his time in office (Exhibits D79, D80 and D81), which included the accounts of the entire group of companies, he admitted that he had signed the accounts of the larger entity that is the Group and not just those of the commercial bank alone, under the designation of "MD" and not as "GMD". The only logical and reasonable conclusion, therefore, from all of the evidence, is that Ms. Okonmah, when writing about the "*the MD's account*" was referring to her own boss, the MD of Bank PHB where she worked, who happened to be the 1st Defendant. (And I should add that contrary to the 1st Defendant's testimony that the letters "PA" may stand for "Public Assistant", I take judicial notice of the fact that in the office environment they commonly denote the employee that is a "Personal Assistant".)

Thirdly, these accounts were accounts into which dividend warrants that have been proved successfully to have been collected by the 1st Defendant by himself in his personal capacity were deposited. He admitted as much in one of his Statements to the EFCC. I shall say more on the tracing by the investigating team of those particular dividend warrants to their final destination when I come to consider the extra-judicial Statements made by officers of Mortgages PHB with direct responsibility for the Claremount/Claremont accounts to them.

There are several other emails from Ms. Okonmah by which she authorised payments by way of bank drafts that were to be issued by Mortgages PHB in favour of specified beneficiaries. Those payments, ultimately, were debited from either of the Claremount/Claremont accounts as their respective Statements of

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Account disclose. And from the volume of Manager's Cheques before me, the payments were made, and the debits done, in direct compliance with Ms. Okonmah's many requests.

PW12 testified that he had also interviewed a certain Mr. Sunday Okolie and the afore-mentioned Mr. Sunday Eni. PW11, the then Managing Director of Mortgages PHB, had told the court that Mr. Eni was the Account Officer of the Claremount/Claremont accounts. I see that Mr. Sunday Okolie, to whom copies of the many emailed instructions on the accounts had been sent, was the Relationship Officer of the accounts. This is clear from the letters written by the mortgage bank to Claremount Management Services Limited (Exhibits P232 to P239) that had been co-signed by him. The officer, PW12, said that from the interviews, and from the documents that came to be placed before the court, the investigating team came to a finding that the 1st Defendant was the face behind the Claremount/Claremont accounts; that he was the operator of those accounts, that they were his personal accounts, and that the monies paid in as dividend warrants were paid in for him and on his behalf.

The extra-judicial Statements of Sunday Okolie and Sunday Eni, as I said, are before me. They are Exhibits P263 and P197, respectively. In Exhibit P263, Mr. Okolie had said to the Investigating Officers as follows:

I received a phone call from my M/D (Bolaji Oginsola) to submit files of Claremont Management accounts to the EFCC officers, sitting at Bank PHB H/O 3rd Floor, and to the best of my knowledge, from the documentation on account Claremont Management Ltd, the account is operated on the instruction of Mr. Francis Atuche, via instruction to my M/D Mr. Bolaji Ogunsola or the account officer Mr Sunny Eni and that the following dividend warrants [were deposited] into the same account ... deposited into account Claremont Mgt Services Ltd with Mortgages PHB Ltd and that the drawings on this account [were] made at the instruction of the M/D (Mr

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*Francis Atuche on the instruction of my M/D Mr Bolaji
Ogunsola or the Account Officer to me.)*

He went on to list the particulars of some of the dividend warrants reflected in Exhibit P39 (the "Dividend Warrant Collection Schedule") which I see from Exhibit P211 had been paid into the Claremont Nigeria Limited account.

Mr. Sunday Eni, in his account to the investigating team, wrote:

The only thing done on that account was just to pay in dividend warrant into the account and if there is an instruction from the account holder to transfer money to him by raising draft which was purely the function of those in operations. The owner of the account is Francis Atuche.

He went on, just like Sunday Okolie, to give details of each dividend warrant in Exhibit P39 that was paid in. He concluded thus:

The above mentioned dividend account which instrument was raised on them was instructions from the account holder in the person of Francis Atuche.

Indeed, reading through the two Statements of Account, Exhibits P210 and P211, the description, "dividend account" fits the bill far better than the untrue evidence of a "clearing account". The payments into the accounts were the very dividend warrants (many of them) that are in issue in this case.

Given the unchallenged case of the Prosecution that Sunday Eni was the Account Officer, and Sunday Okolie was the Relationship Manager, of the Claremount/Claremont accounts, together with the equally undisputed evidence that those two men were employees of the mortgage bank at the material time, I do not see that the testimony of the 1st Defendant that those two accounts belonged to Mortgages PHB and were held by Mortgages PHB at Bank PHB can be maintained. It cannot be so, nor does it make sense, that these "customer-facing" or "market-facing" personnel (using the terminology in

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the bank) would be employees of the customer (Mortgages PHB) itself, or for that customer (Mortgages PHB) to be "relating with" (or promoting good relations with) itself.

But the 1st Defendant, when testifying, had said that he was not given the opportunity to cross-examine both men – Sunday Okolie and Sunday Eni – on the content of their Statements. (Indeed, he had said the same about the extra-judicial Statement of the Company Secretary, Mr. Chris Ezeafulukwe.) This was because none of them ever entered the witness box to testify during the course of trial. But I had, before, made mention of the position of the law that their Statements were properly admitted in evidence as proof of what the Investigating Officers did in carrying out their duties, and evidence of how they arrived at their findings. See also the case of Federal Republic of Nigeria v Murtala Adamu (2018) LPELR-46024 (CA) at page 36, in which Abiru, JCA, held thus:

*The eighth prosecution witness, Nabil Ahmed Tahir, testified that he was a staff of the Economic and Financial Crimes Commission and that he was the team lead of the Economic Governance Unit 1 and that his team was designated to investigate the allegations against the Respondent. The records of appeal show that **he gave evidence of the activities of his team in the course of the investigation and of their findings from the documents obtained and the oral and written statements made by the witnesses and the Respondent in the course of interviews and of their conclusions [therefrom]. The law is that such evidence is not, and cannot be, classified as hearsay evidence and it is direct and positive evidence and it is admissible***

(The emphases are mine)

In other words, the evidence of PW10 and PW12 on these Statements is part of the evidence those officers gave of their work. This is so because their findings

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and conclusions were based also on those Statements so that the reasoning, and reasons, behind those findings and conclusions are properly open to scrutiny in assessing and determining the strength of the case that the Prosecution presented. PW12, under cross-examination by the 1st and 2nd Defendants, said as much. He denied the assertion that their findings and conclusions were as good as the facts upon which they were built and said instead that they were based on investigations they had conducted on those facts. He said such investigations that led to their findings and conclusions included their "study" of the Statements made by witnesses and suspects.

The Investigating Officers, PW10 and PW12, were cross-examined extensively by Defence Counsel. What this means, in my humble view, is that they had, thus, opened themselves up to scrutiny in terms of the entirety of the evidence adduced by them and through them. It means that in testing their evidence-in-chief – evidence of what they did, what they saw, what they heard, and what they were told – during this cross-examination process, Defence Counsel was equally testing the veracity of the Statements made to them in the course of that investigation activity. It means that Defence Counsel was testing the soundness and correctness of their findings and conclusion based, amongst other things, on those interviews and Statements. It would, in my respectful view have been a different thing entirely (and this is where the fine line is drawn) if the three men (Messrs. Ezeafulukwe, Okolie and Eni) had given evidence for the Prosecution at trial but then the Defence was denied the opportunity to cross-examine them. Then would the 1st and 2nd Defendants' rights have been denied them.

In support of PW12's findings and conclusion that the Claremount/Claremont accounts belonged to the 1st Defendant and were operated by him clandestinely, there are many other documents – over and beyond the extra-judicial Statements of Sunday Okolie and Sunday Eni – that are before the court. I have said that there were instructions by email directing that payments be made from either account to certain named beneficiaries, and that those instructions were carried out as shown by the payments (Manager's Cheques

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or direct internal transfers) reflected in the respective Statements of Account. I have also referred to letters from the mortgage bank to notify the operator of the Claremount Management Services Limited about the rollover of that fixed deposit investment and about other transactions carried out on the fixed deposit account. All these documents form a link. They are inter-related and go back to those email instructions that were sent by the Office of the Managing Director of Bank PHB, or were received by that Office. They fortify the oral evidence of both PW11 and PW12 that the operator of the account was the 1st Defendant himself.

The evidence is undisputed that the 1st Defendant had always declared a personal interest in Oakwood Asset Management Company Limited on the ground that it was a company that belonged to his late father. Indeed, the incorporation papers of that other company, Exhibit **P84**, show that it is owned by members of the Atuche Family. Just as with the dividend warrants from shares held by companies that indisputably belonged to the 1st Defendant and/or the 2nd Defendant – that is, AFCO Associates Limited and Ghazali Yakubu Investment Limited – the dividend warrants of this company to which he is personally affiliated were paid into the Claremount/Claremont accounts. This nexus, in my considered view, serves to augment and give added weight to other evidence from the Prosecution linking him in an exclusively personal manner to those accounts.

I should add here that it matters not that the money with which shares were bought for AFCO Associates Limited was not found to have been successfully traced to any of the supposed loan accounts of the five "loan companies" at Bank PHB; the accounts from which money used to buy the shares in issue in this case originated. What matters for the present purpose is that dividend warrants accruing from those shares were paid into the Claremont Nigeria Limited bank account thus showing a personal link between the 1st Defendant and that account, and thereby giving weight to the case that he owns and operates the account along with its related fixed deposit account (the Claremount Management Services Limited account.)

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Another personal link is as regards a mortgage repayment he admitted (under cross-examination) that he had made. Now that it is certain, (because it is, in humility, my finding) that the Claremount/Claremont accounts are not "clearing accounts" but rather "dividend accounts", it also becomes clear that the 1st Defendant was using money in that "dividend account" to repay a debt (a mortgage) that was due from him in his personal capacity.

There is some measure of controversy surrounding a payment of the sum of N20 million from the Claremount Management Services Limited account to the law-firm, *Punuka Attorneys & Solicitors*. Perhaps because that law firm was engaged by the 1st and 2nd Defendants to act in their defence in this cause so that, on the face of it, it again portrays a personal link between the 1st Defendant and the two accounts. From Exhibit P210, it is clear that the payment was made on the 7th of September 2009. And from the email, Exhibit P216, it is also clear that it was made upon the instruction of Ms. Rosemary Igere. The email reads as follows:

Kindly use this as an instruction to debit the MD's account with the sum of N20 Million only.

And do a draft in favour of Punuka Attorneys and Solicitors.

(The emphasis is mine)

The email, sent to Sunday Okolie, had a copy forwarded to the 1st Defendant. It was not copied to PW11, the only other possible "MD", him being the Managing Director of Mortgages PHB at the time. Rosemary Igere, on her electronic business card appearing on the email, is described to work in the "MD's office" at Bank PHB. No doubt, the "MD" she was referring to in her mail, and whose account was to be debited, and who was copied with the mail, was the 1st Defendant. No doubt she was acting on the instruction of the 1st Defendant since "*the MD's account*" did not belong to her.

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There was an immediate reply that same day by Sunday Okolie. In his reply to Ms. Igere, and which was also sent to the 1st Defendant, to PW11, and to Andy Izomor, Sunday Okolie wrote thus:

Please Note: Deposit account Claremont (sic) MGT Services Ltd has being (sic) debited with MC 22751 =20million (sic) only in favour of Punuka Attorneys & Solicitors.

As I said, this payment is reflected on Exhibit P210.

The 1st Defendant, in his attempt to distance himself from that payment, said it had nothing at all to do with him because the head of the firm, Mr. Anthony Idigbe, SAN, was no more than a social acquaintance at that point in time. He said he had no other relationship with him other than that. But under cross-examination by learned Counsel for the Prosecution, he was made to agree that as at the 7th of September 2009, the date of the instruction to make that payment,

- o the CBN and NDIC had conducted a joint examination (described to be a "stress test") of all banking institutions in the country;
- o as a result of this stress test, the CBN, in August 2009, had taken over the affairs of five banks and ousted their Executive Management team from office;
- o the erstwhile Managing Directors of those five banks had been arrested by the EFCC and were under criminal investigation;
- o the CBN/NDIC investigation of Bank PHB was on-going;
- o he was in the country, having cut short his holiday in order to attend to the pressing matters at hand;
- o the CBN had conducted an "exit meeting" with Bank PHB following upon the stress test, and which final discussions had been held on the 3rd of September 2009 and not the 13th of September 2009 as he had said during his examination-in-chief.

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The 1st Defendant had testified about the CBN and NDIC making additional probing enquiries from the bank at this time of the exit meeting, them not being satisfied with the outcome of their examination of the bank. He spoke freely (during his examination-in-chief) of the bank regulators having a negative perception of the bank that he was eager to correct when he was invited to a meeting with the CBN and NDIC at Abuja. From his evidence, it was clear that the bank was under pressure and was not sitting comfortably, in a manner of speaking, in terms of its relationship with the two regulatory bodies. Indeed, it had failed their stress test. By reason of all of these surrounding facts and circumstances, I am drawn to the irresistible conclusion that as at the date of that instruction from Ms. Igere – the email, Exhibit P216, and knowing the fate of his colleagues in the industry, the 1st Defendant was getting ready for his own possible comeuppance. And so he had taken the preparatory step of engaging the services of a law firm, *Punuka Attorneys & Solicitors*, for himself. From his evidence, that email was sent a few days after his trip of the 2nd of October 2009 to Abuja where he had also been told by the CBN that the EFCC had been called in to investigate the affairs of the bank.

In any event, all of the other pieces of evidence that link him to the account make manifest the fact that it was him paying for the services of the said law firm for whatever reason that payment was required. Curiously, transactions on two accounts that had been very actively run since the dividend warrant payments started streaming in (the Claremount/Claremont accounts), came to an abrupt end after the arrest of Managing Directors of other similarly scrutinised banks, save for this payment to the law firm.

There was an email instruction of the 10th of June 2008 which is not narrated in either of Exhibits P210 or P211 because they reflect transactions of a later period in time. This email, sent by Sunday Okolie, is Exhibit P214. It reads thus:

*PLS USE THIS AS OUR INSTRUCTION TO TRF THE SUM OF
=N=9M=ONLY FROM OUR A/C 023 TO A/C ATUCHE
ELISABETH BANKPHB.*

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Copies of the email were sent to PW11, to Sunday Eni, Charity Okonmah and the 1st Defendant, amongst others. PW11, when giving evidence, testified in respect of it. Under cross-examination, he said that the primary recipients of the email, a Veronica Mago and an Ifeyinwa Iwuanyanwu, were members of staff of Bank PHB to whom the request was being made to transfer funds to the 2nd Defendant. He said they were Account Officers at the parent bank and managers of the 2nd Defendant's account there. He linked that payment with the Claremont Nigeria Limited account.

From the content of the email and the persons to whom it was sent, I believe that just as was the style adopted with Exhibit P262, the primary recipients were being asked to make a direct, internal transfer because the beneficiary, the 2nd Defendant, also had an account at Bank PHB. The requirement of issuing a Manager's Cheque was not necessary in those particular circumstances.

As I said, a copy of this email, as was the pattern, was sent to the 1st Defendant, Sunday Okolie and Sunday Eni (also referred to as "Sunny" Eni), members of staff of the mortgage bank, were the persons managing the Claremount/Claremont accounts. Along the journey of the convoluted process of payment via two banks – the mortgage bank and the main bank, the money itself, from the unchallenged evidence of PW11, came ultimately from the Claremont Nigeria Limited account. The 1st Defendant testified that he had no hand in the running of the affairs of the mortgage bank save for his overarching responsibilities as a member of its Board of Directors. For this reason, his interest in the Claremount/Claremont accounts such as would warrant the culture of him being sent copies of emails and letters on transactions concerning those two accounts must be a peculiar one, and it must have been based on a relationship that existed on another level. I do not think any junior officer (as administrative staff would be) would dare to send correspondence to the Managing Director of the bank and the Group just for the mere fun of it, and according to his or her fancy. From all of the surrounding evidence, Exhibit P214, in my humble estimation, serves to give extra weight to the testimony of the Investigating Officer, PW12, that those accounts belonged to the 1st

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Defendant and were personal to him. Payment was being made from the Claremont Nigeria Limited account to the 2nd Defendant.

In order to strengthen its case of a personal link between the 1st Defendant and the two accounts, a document that had a signature endorsed on it and which the 1st Defendant first said "looked like" his signature but immediately turned around to say did not look like his signature – a memorandum dated the 20th of September 2008 and written under the auspices of a foundation set up in memory of his father, the "Obi Malechi Atuche Foundation" – was received in evidence during his cross-examination as Exhibit D118. I should say that even though he turned around to deny that signature to be his, from a comparison of it with the signature on his extra-judicial Statements that are also before me, I am convinced that the signature on Exhibit D118 is truly his.

By his said endorsement on Exhibit D118, the 1st Defendant gave his approval to a request that certain payments totalling the sum of N6, 407, 284.92k be made to a firm named as "Arch-Metrics Associates" for construction works. His approval was given on the 22nd of September 2008. I see from Exhibit P210 that the sum of "N6, 407, 284.97k" was deducted from the Claremont Management Services Limited account on the 25th of September 2008 as payment to Arch-Metrics Associates. In my respectful view, and even with the five kobo discrepancy, there are enough matching details between the amount authorised for payment and the amount paid such as to lead to the reasonable conclusion that that particular payment, this time around, was made on the very direct instruction of the 1st Defendant. But as ever, and in a manner that reflects the requirement for the customer's instructions, Charity Okonmah followed up the 1st Defendant's approval as endorsed on Exhibit D118 with an email. This was her email of the 24th of September 2008 to Sunny Eni, Exhibit P226, in which she wrote as follows:

Kindly use this as an instruction to issue draft of N6, 407, 284.97k in favour of Arch-Metrics Associates as per the MD's instruction.

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The 1st Defendant had been cross-examined thus on that email and the approval on Exhibit D118 that led to it, viz,

Question: I suggest that the instrument in P226, you approved it and signed it. The authority to issue that instrument; you agreed, and you approved it as Chairman of Obi Malechi Atuche Foundation.

Answer: Fundamentally, I'm not Chairman. It's possible I did but I'm not Chairman.

Question: The authority to issue the instrument was approved by you?

Answer: It's possible I approved it.

Question: In fact, you signed it.

Answer: It's possible I signed it.

It was most certainly his signature on that "authority", Exhibit D118.

Thus, the combination of the two documents, Exhibits D118 and P266, not only fortify the case that Ms. Okonmah was not on a frolic of her own whenever she sent her many email instructions to Mortgages PHB, but more directly, they serve as testament to the fact that the source of those actions of hers, her "principal" in the realms of the law on delegated authority, was the 1st Defendant. The 1st Defendant's "hand", speaking literally and metaphorically, came to be seen for once via Exhibit D118.

There is as well the matter of the reference form, Exhibit P243, and the controversies surrounding it. It states the name of the account to which it relates as "*Francis Atuche (Claremont)*". As I said, it had a passport photograph of the 1st Defendant attached to it. PW11 had said that it had been filled by an officer of the mortgage bank many years before and when it was still known as "Finacorp". According to the 1st Defendant when testifying under cross-

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examination, that officer was Sunday Eni. He said he knew this from comparing the handwriting on Exhibit P243 with that on Mr. Eni's Statement.

In order to debunk any suggestion that it was authentic, the 1st and 2nd Defendants caused to be adduced in evidence other banking reference forms that had been issued by the mortgage bank at about the same time and earlier times (these are Exhibits D15 to D19), with which to compare it. But PW11 had always considered Exhibit P243 to be inadequate anyway. This is evident from his testimony and from the letter he wrote seeking proper documentation with which to regularise the Claremont Nigeria Limited account, Exhibit P230. He had told the court that "*there was no nexus between the reference form ... and the account*". He said that was why he had asked for "two independent and satisfactory references" in his letter after studying the file on the account. From all that is before me concerning this reference form, I am of the view that its usefulness or relevance is merely that it boosts the case of the Prosecution that there was a link between the 1st Defendant and the said account (because of the existence of a reference form in the file that ties him personally to that account), not that Exhibit P243 serves to prove that the 1st Defendant had satisfied the requirement of providing a good and proper referee for the sake of opening the account. In other words, it has corroborative effect; not that it amounts to conclusive proof by itself.

The 1st Defendant said that he believed that all the documents PW11 was asking for by his letter, Exhibit P230, were always in the file at the mortgage file. He said if it were not so, the Central Bank would have instructed the mortgage institution to close the account. But for the reason that this piece of evidence is predicated on a supposition – the supposition that the Central Bank would have taken certain steps because of certain beliefs nurtured by him – I regret that I cannot take cognisance of it. The evidence must be ignored by me as there could have been a thousand and one possibilities.

PW12, when under cross-examination by the 1st and 2nd Defendants, recounted a part of his interview with PW11. He said,

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... [W]e interviewed the bank MD [that is, MD of Mortgages PHB] who we believe is in the best position to know who owns which account ... Mr. Bolaji Ogunsola. ...

... He told me, "If Mr. Francis Atuche could say that he's not the owner of this account or he doesn't run this account, it's as good as him saying he was not the MD of Bank PHB".

PW11 has said more or less the same thing to the court. He should know, having been the Managing Director of the mortgage bank at which those accounts were kept. I find that the overwhelming evidence before me – the credible evidence, that is, supports his testimony, and supports the findings of the investigation team, that the Claremount/Claremont accounts belonged to the 1st Defendant.

The 1st Defendant was asked a most pertinent question by learned Counsel for the Prosecution – the question whether all of Mortgages PHB's transactions were cleared through the Claremount/Claremont accounts at Bank PHB since it was his evidence that those accounts were "clearing accounts". He answered that he did not know. Of course, Exhibits P210 to P211 show that it was not so. They show that the transactions in both accounts were personal to him and had absolutely nothing to do with the management, and the running of the business, of Mortgages PHB.

I accept the evidence of PW11, not just because he was the Managing Director of the mortgage bank but also because he has been shown to have been a credible witness, that Mortgages PHB had no other business, earned no other tangible income, than what it derived from the Claremount/Claremont accounts. PW11 said he had discussed with the 1st Defendant the worrisome fact that its health was based purely on the health of those accounts. It would seem that Mortgages PHB had translated into the personal and exclusive bank of the 1st Defendant!

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(e) Dividend Warrants and the Treasury Operations' suspense account

No doubt, other dividend warrants were paid into the Treasury Operations Department's suspense account. No doubt, the monetary value of some of the warrants paid into that suspense account was invested in Commercial Papers in the name of the company, Land Partners Limited ("Land Partners"). No doubt, Land Partners was, thus, made out to be the beneficiary of the sums invested. And no doubt, the 2nd Defendant (with a seventy per cent ownership) as well as the 1st Defendant's sister, Ms. Veronica Okonji (with twenty per cent of the shareholding) controlled the company and had an overwhelming beneficial interest in it. All of these are established facts. They are established because they are the admission of the 1st Defendant. Particularly, he did not deny the assertions of cross-examining Counsel for the Prosecution that the 2nd Defendant and his sister had controlling shares in Land Partners. What he said in his bid to clarify was that it was his wife's very close friend and a Non-Executive Director of the bank, Ms. Ifeyinwa Osime, who was the promoter of that company and the initiator of its intended business in real property. But as it happened, Land Partners did not engage in any business at all. The 1st Defendant, also under cross-examination, made this fact known for sure. It stands to reason, therefore, that it was a shell company that came in handy, serving the purpose of being a useful tool for holding on to money derived from some of the shares bought for the beneficiary companies.

Exhibit P99A is the Statement of Account of the TROPS suspense account. It does reflect the deposit of dividend warrants into that internal account of the bank in the name of Land Partners, albeit wrongly spelt as "Hand Partners". Exhibit P98 is a bundle of email correspondence within the Treasury Operations Department of the bank regarding what was done with the dividend warrants paid into this suspense account. By one of the emails in Exhibit P98 – that written by a certain Kemi Ojelabi of the bank's Treasury Department – it is shown that the sum of N804, 768, 606.51k, was invested in the name of Land Partners Limited in December 2008. Exhibit P99A reflects the deposit of dividend warrants in the very same manner as the monies totalling the said

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sum of N804, 768, 606.51k was listed out by Ms. Ojelabi in her email. The payment of the money, as dividend warrants, into the TROPS suspense account was confirmed by PW7. She did so in her Statement, Exhibit P138, to the EFCC.

At trial, PW7, who, from the evidence, was the Acting Head of the TROPS Department at the time she made her Statements, testified that she had been made to trace the payment of dividend warrants into the TROPS account in order to answer the enquiries of the investigating team. She later explained (under cross-examination by the 1st and 2nd Defendants), that the Investigating Officers had shown her dividend warrants that constituted the proceeds of each credit that was recorded in Exhibit P99A. In other words, each payment into the TROPS suspense account under the name of Land Partners as owner was matched by one of the dividend warrants shown to her by the EFCC.

PW7 testified, using Exhibit P98, that the Commercial Paper investment was part-liquidated from time to time, with payments made by way of Manager's Cheques to Platinum Capital Limited (shown in the evidence to have been renamed as "PHB Capital"), and to certain persons including the 2nd Defendant, the 1st Defendant's elder sister and part-owner of Land Partners, Ms. Veronica Okonji, and to Ms. Kemi Ojelabi. Copies of the Manager's Cheques that were drawn in favour of these beneficiaries are before me in a bundle as Exhibit P134.

It is clear that Land Partners, stated in the bank's books to be the "owner" of the dividend warrants that were paid into the bank's internal account, was not the owner of the shares from which those warrants were derived. It was not one of the beneficiary companies whose warrants the 1st Defendant had collected from the Registrar to the Offer as reflected on Exhibit P39. Neither are the ultimate beneficiaries of the part-liquidated investment that was booked in the name of Land Partners any of those beneficiary companies for whom the shares had been purchased in the first place. It is clear, rather, that the profit from the shares ended up in the hands of other people entirely, after first

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passing through the conduit of Land Partners. Neither of the 1st or 2nd Defendants has given any explanation for this oddity. When he was asked by cross-examining Counsel why it was that Land Partners came to take the place of the owner(s) of the shares and had the proceeds of those shares invested for it instead of being invested for them, the 1st Defendant had no answer to give. He said instead that the bank's Treasurer, Ms. Oby Onwuakpa, would be in a better position to tell since she gave the directive to book the monies as Commercial Paper investments in the name of Land Partners. But for the reason that the company in whose name the investment was made is owned by members of the family of her boss, the 1st Defendant, it is clear to me that Ms. Onwuakpa was not acting as she pleased. It could not have been her, the Treasurer of the bank, who decided by herself and as she pleased to dish out millions of naira to the 1st Defendant's wife, his sister, the person named in one of the Manager's Cheques as "Patrick S. Atuche", or to one Marian Okonmah who the 1st Defendant said (under cross-examination) he "thinks" was a member of his wife's family. When he was queried as to who Marian Okonmah could be, he had answered in an abstract manner that his wife's cousin had married into the Okonmah Family.

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Kemi Ojelabi, as is clear from the emails in Exhibit P98, was the anchor woman for what was to be done with the dividend warrants that landed in the TROPS account. She could not have been acting for the owners of those warrants when, unknown to them (as is the purport of the evidence from the 1st Defendant), the bank decided to invest their earnings so as to make a quick profit by the side. The payment of N4 million to her could not have been at their instance.

The logical deduction from all this, then, is that Ms. Onwuakpa, and Ms. Ojelabi, in approving or directing the series of transactions with that batch of dividend warrants that landed in the TROPS account, acted rather under instructions from the 1st and/or 2nd Defendant. But certainly the evidence has come to show that the 1st Defendant had a consistent pattern, a habit, of staying behind the curtain whilst pulling the strings of the puppets on the stage!

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For it is clear that the investment of monies in the name of another entity entirely (Land Partners), a stranger to the shares purchase scheme, a company unrelated to the bank but certainly affiliated to him, flies in the face of the explanation of the 1st Defendant that the bank held on to dividend warrants temporarily so that it could retain financial liquidity. If that were so, it would have been the bank earning profit from this Commercial Paper investment. It would not have diverted that profit from somebody else's money (as the shares/warrants were made out to be) further away from those supposed shareholders and into the pockets of yet another set of people to whom payments were made.

The long and short of it is that the monies that left the bank under the guise of loans in January 2008 ended up being paid to the persons for whom the Manager's Cheques comprised in Exhibit **P134** were issued a year after that. They were paid over behind the back of the avowed but faceless owners of the shares. PW7 had said without contradiction, and regarding the instruction to book the dividend as a Commercial Paper investment and the other directives on how the money was to be spent, that she saw no customer instructions related to the emails in Exhibit **P98**. She had said that even though the Treasury Operations Department is a back-end office and not a customer-facing one, the personnel in that department are to act **on the basis** of customer instructions. Indeed, in one of the emails in Exhibit **P98**, an officer of the bank, one Duru Edozie, had written to Ms. Ojelabi, saying,

Please we need customer's instruction to execute this request.

But Ms. Ojelabi had replied immediately,

Take this as customer's instruction. Direct all queries on this to me.

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This, no doubt, corroborates PW7's evidence. It shows that the bank, contrary to the events here, was not to spend other people's money just as it pleased. Unless, of course, those "other persons" did not, in reality, exist.

Sub-paragraphs (d) and (e) In Sum

To sum up on the matter of the payment of dividend warrants into personal accounts held at Mortgages PHB and into the Treasury Operations Department's suspense account, and going back to the actions that set into motion the entire chain of events that form the subject matter of this case, the Supreme Court (per Rhodes-Vivour, JSC) had held as follows in the case of Wahabi Adejobi v The State, supra:

According to the 2nd appellant, she signed the vouchers brought to her by the 1st appellant without checking them. This may very well amount to Negligence, Carelessness, but collecting the sum of N900, 000 from the 1st appellant shows that the act of signing is no longer negligence but a deliberate act with clear motive.

(My emphasis)

The 1st Defendant has claimed repeatedly that he relied on the competence and integrity of members of staff working under him when, without reading the actual credit files, he went about signing credit approval memoranda and availment tickets by which billions of naira left the coffers of the bank. But the evidence has come to show that his actions were not as simple or innocuous as that. The monies routed out by those means and just because of all those sign-offs by him came back in, and eventually ended up either in his personal accounts at the mortgage bank albeit bearing pseudonyms, or, as an investment in the name of a company that belonged largely to his wife and sister.

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I find the words of the Honourable Mr. Justice Niki Tobi most instructive here. In the case of Felicia Akinbisade v The State [2006] 17 NWLR (Pt. 1007) 184 at 203, a decision of the Supreme Court, His Lordship said as follows:

There is overwhelming evidence that the appellant operated the fraudulent account. How could she have done this without knowledge of the existence of the account? I entirely agree with the learned trial Judge that if the appellant did not open the account personally, she must have aided, counselled or procured someone to open the account ... Where there is a very strong connecting link between the accused and the document to the extent that the circumstances zero on the commission of the offence by the accused, the court is entitled to draw the inference circumstantially that the accused was the author of the document and therefore the author of the crime. It is because our adjectival law realises that it is not in all cases that direct evidence of an eye witness is possible that the law has carved out a niche to assimilate or accommodate circumstances surrounding the commission of an offence; a position which leads to the admission or admissibility of circumstantial evidence.

The appellant was most miserly with the true position and refused to tell the truth when she was shown exhibit S and said ... "I do not know anything about it". The truth is that she knew so much about exhibit S. It was convenient for her to deny knowledge of the exhibit and so she denied. Unfortunately for her, the evidence before the learned trial Judge hooked her in the crime and in a most outrageous way.

Here, there is "a very strong connecting link" between the 1st Defendant and the Claremount/Claremont accounts on one hand, and the monies invested in the name of Land Partners Limited on the other. From the manner of funding of the shares purchased for the beneficiary companies to the use of the end-product

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of those shares – cash from the dividend warrants, the accusing hands “zero” in on the 1st Defendant. That, in my considered view, allows me to draw the necessary inference that he was the operator of those accounts and the face behind the investment in favour of Land Partners.

(f) “System Overrides”

Finally on this case of a fraudulent intent to steal, I find compelling, the extracts of the report of the bank’s auditors, KPMG Professional Services (“KPMG”), as contained in the minutes of the Board meeting reflected in Exhibit **D12**. The meeting was held on the 25th of August 2010, a time after the intervention of the Central Bank and the appointment of a new Executive Management team to run the affairs of the bank. The firm, KPMG, was said by the one-time head of the bank’s Internal Control Unit, Mr. Omachonu (DW19), to be one of the bank’s auditors. He said the bank had two auditing firms providing it with service, and that they were PWC and KPMG. Judging by his office, I believe DW19 was in a good position to give authoritative evidence in this regard. Indeed, he repeated what he said when the question was asked of him again by cross-examining Counsel for the 1st Defendant who, it seemed, would have loved to elicit a different reply.

In the account before me in Exhibit **D12** (particularly, paragraph 7.1 of the exhibit), KPMG Professional Services, in giving a report on the huge deficit in the books of the bank after an apparent review of the books, told of acts of concealment in financial reporting “*resulting in a complete loss of trail of the original transactions*”. In attendance at the meeting was a Mr. Jason Kazilimani from KPMG who gave the bank’s Directors explanations on this report. The minutes then recounted further deliberations on the acts of concealment that KPMG had uncovered. Paragraph 7.3.3 of the same reads as follows:

Furthermore, the Board tried to find out from him [“him” being Mr. Kazilimani] if the auditing of the Bank by its external

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auditors should not have revealed some of these anomalies.

Mr. Kazilimani answered in the affirmative but was quick to add that some of the entries were carefully concealed such that normal routine audit could not have revealed them.

On the period covered by their review, he stated they were looking at September 2009 backwards.

(The emphasis is mine.)

This, to me, amounts to cogent explanation for the failure of even the bank's internal auditors to pick up the trail! It would explain why PW4 said he saw nothing by himself and why nothing was reported; it would explain the failure of the audit department to be put on inquiry such that PW4 would tell the court (if, in truth, he did as learned Counsel for the 1st Defendant contended in his final address) that the bank was not looking for its money. It would also explain why bank examiners from the CBN or NDIC did not detect any fraud when sifting through the bank's loan books. Of course, "fraud", by definition, is a deliberate act of deceit akin to the "careful concealment" about which the exhibit speaks. And I should add that the Defence had the opportunity to present evidence that was contrary to this piece of evidence in Exhibit D12.

The 3rd Defendant, going by his description as the Chief Financial Officer of the bank, and which job description he detailed to the court by himself, would certainly be aware of any loans in the books of the bank amounting to billions of naira. He had also explained that such loans were classified as deficits, not assets. Under cross-examination, he said his work of financial control involved scrutinising the financial health of the bank, and he agreed that he was primarily responsible for managing financial risks in order to maintain a healthy mix. I believe, therefore, that he would have had to take those loans into account in his consideration of the bank's financial standing, and in his financial reporting obligations. He cannot possibly feign ignorance of them, nor can he pretend not to know the import of them. And so the fact of the absence of anything at all that shows that those loans had actually been secured such as

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to protect the interests of the bank and mitigate against potentially insurmountable financial loss, is extremely damning as it makes even stronger the case of a fraudulent intent; it exposes knowledge of the fact that there were no such liabilities that truly needed to be secured in the first place. From their respective job descriptions, I am of the considered view that such matters fall well within the purview and oversight responsibilities of the 1st and 3rd Defendants given the huge amount of money involved, and the impact of that huge amount on the financial standing or health of the bank. As the 1st Defendant has said, the person in charge of Risk Management reports directly to him, just as the 3rd Defendant reports directly to him as well. I find then that this is not a case of mere professional negligence or carelessness or heedlessness, as Defence Counsel would want it to be seen by the court. It is a veritable pointer to a fraudulent intent because of the "fact" (not just the "opportunity") of knowledge at the disposal of the 1st and 3rd Defendants. But instead of evidence to shore up the Defence position that the loan agreements were true, and were well and truly secured as appears to be so on paper, the Investigating Officer, PW12, has said – and this, without any concrete evidence to prove him wrong, that the files handed over to the team were practically empty, containing nothing more than the artfully prepared credit approval documents, availment tickets and Statements of Account. Those were the files given to all risk appraisers and bank examiners to see.

In paragraph 7.3.2 of the minutes of meeting, Exhibit D12, there is a powerful indictment of the 3rd Defendant by his professional colleagues. That subparagraph reads as follows:

Furthermore, the Board sought to know what KPMG referred to in their report as "other balances held in bank". Mr. Kazilimani explained that they were balances in the Bank relating to money used to buy shares, which shares could not be traced to the Bank or any stockbroker. In response to questions relating to when the shares were bought, he stated that some were bought before, during and after the Bank's

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IPO stated. The Board also sought to know how the transactions were narrated for control purposes. Mr. Kazilimani stated that in some instances transfer instructions from the former Chief Financial Officer of the Bank, Mr. Ugo Anyanwu, overrode control. He stated that collusion could not also be ruled out.

(The "IPO stated" is the Public Offer in issue in this case.)

I recall, here, the words of PW3 in her extra-judicial Statement, Exhibit P186, that her repeated request for the names of the investors for whom shares were bought through her stockbroking company were not answered. She was not cross-examined on this despite the fact that the Statement in question was known to the Defendants.

I found the 3rd Defendant's reaction to this account in Exhibit D12 when giving his evidence-in-chief to have been lame. The damning report about him by the auditing firm is, instead, convincing as it aligns with the facts that have come to be established before the court through a different type of scrutiny – the forensic study of the men of the EFCC. The 3rd Defendant always knew that the loans were not real.

And what is more, as DW1, a former member of the Board of Directors, answered under cross-examination, the Board ratified the "loans" in issue at their meeting of July 2008 (the minutes of this meeting are in Exhibit D2) acting on the assumption that the loans were genuine. He agreed with the assertion of learned Counsel for the Prosecution that if money was taken out but not returned, that constitutes a bogus loan. He also agreed that the Board would not have ratified the loans in issue had they known that they were bogus.

I am clear in my mind from all of the evidence laid bare that not only did the 1st and 3rd Defendants override controls, they abused those controls. They did so when necessary steps to regularise false bank accounts and fraudulent transfers, and which acts of regularisation, by the deferral policy of the bank

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were to be done in a most timely manner, were left completely in abeyance. The two men overrode controls when the 1st Defendant went about approving credit requests or recommendations beyond the threshold approved for him and the Management Credit Committee so that those sign-offs by him were always *ultra vires*, him lacking the power or authority to undertake those acts. They overrode controls by the 1st Defendant signing availment tickets when there were no deferral forms (or other written communication) attached to the tickets to justify the omission of the "borrower" to fulfil conditions precedent to drawdown that he himself (by signing the credit approval memoranda) had stipulated. Indeed, the demeanour of the then head of the Internal Control Unit when in the witness box as DW19 was most revealing when being probed and tested under cross-examination by the Prosecution. He portrayed the image of a person who lacked confidence in what he was saying; he appeared uncomfortable and kept darting furtive looks at the dock as if looking for help from the Defendants.

The Defendants overrode controls in the concealment of transactions in the bank's financial books such that the bank's auditors, internal and external, and the bank's regulators (the CBN and NDIC) completely missed the boat when reviewing those records. The ignorant ratification of the "loans" by the Board of Directors was, in my respectful view, an exercise in futility – the bird had already flown; the horse had bolted from the stables! Indeed, it was of no moment when it comes to this particular inquiry on criminal liability based as it is on its own peculiar forensic study. Them (the Defendants) harping on, whilst giving evidence, about "no red flags" and "no exemption reports" can only be because acts of fraud, acts of deceit, are in themselves, and by their very nature, deliberately geared towards a cover up; they are aimed at circumventing such things as would lead to red flags being hoisted or exemption reports being made. That, in truth, is the definition of the word, to "deceive". Indeed, there could have been no work for the Risk Management Department or the Loan Monitoring Unit to perform – no risk to be "managed", no such loans to be

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"monitored" – when the monies in question took immediate flight out of the five accounts even before one could say "Jack Robinson"!

It is, to me, telling that the person who was awaiting account opening documents – that is, PW8, was posted ("banished", to use PW12's expression) to a new department the very next (working) day after the 3rd Defendant's promise to hand over those documents to him. PW8 had said so in his Statement to the investigating team. It is equally telling that the person overseeing the department that carried out the funds transfers, Mr. Kingsley Umadia of Treasury Operations, had been newly posted to that department at the very beginning of January 2008. This is the evidence before me; the evidence from the 1st Defendant during his examination-in-chief. It means that Mr. Umadia was only just settling down to work at the time those transfers out of the bank were carried out. It would not then be surprising that Mr. Umadia would seek further clarification, and approval, from none other than the 3rd Defendant, the person who had given the directives in the first place, and who therefore would know more about the transactions than would Mr. Umadia.

In all of these circumstances, and through the use and abuse of the bank's deferral policy and system, the normal Control measures were either bypassed or were rendered completely impotent by the actions of the 1st and 3rd Defendants.

Also telling is PW9's statement that she went about treating all the credit approval memoranda because of the 1st Defendant's "directive" (her choice of words in her Statement, Exhibit P173), and because of his further instructions that the credit proposals be "regularised" by her (again, her choice of words as reflected in Exhibit P175) – and this, because agreements had already been made with the companies in question in the manner reflected in the credit approval memoranda. She added that she had "*no reasons to doubt the Managing Director, who is the bank's Chief Executive*", and that not being a market-facing officer, she was, in the ordinary discharge of her duties, "compelled to rely on the information provided by the Market Facing including

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Executive Directors and Managing Directors who meet with customers." (My emphasis.) In other words, the 1st Defendant took advantage of his position to direct her (this was done verbally as she also said) to "regularise" credit proposals he said had been prepared to align with agreements he had made with the supposed borrowers in circumstances in which she could not by herself confirm this to be so. Having determined that the loans were a hoax, this, then, is a case of an abuse of position – an abuse that arose from a fraudulent intent.

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THE CASE OF STEALING AGAINST THE 2ND DEFENDANT

I will now give particular regard to the case of stealing made out against the 2nd Defendant. It is as contained in Counts 25 and 27 of the Charge, and it is in respect of beneficiary companies which, from the proven evidence, are partly owned by her. The companies are Ghazali Yakubu Investment Limited, the subject matter of Count 25, and AFCO Associates Limited, the subject matter of Count 27. Each Count alleges that she stole the sum of N2, 868, 750, 000.00k through those companies and through the means of the same series of transactions that were engineered and implemented by the 1st and 3rd Defendants and other persons used by them.

I consider it to be certain, because of what I had said before, that the first two elements of the offence of stealing stand proved. The thing that was stolen, the respective sums of N2, 868, 750, 000.00k in each Count, is something capable of being stolen, and that thing had an owner – the bank, as the custodian of depositors' funds placed under its care. In a trust relationship, the law recognises that a trustee has proprietary rights over property entrusted to his care. See again, Wahabi Adejobi v The State, *supra*, on this concept as it relates to Banking. And so, it is with regard to the *mens rea* of the offence, the matter of a fraudulent intent, that the court will give critical appraisal with respect to the case against the 2nd Defendant.

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No doubt, the 2nd Defendant benefitted from the proceeds of the crime; she had sums of money paid to her from the stolen money that eventually translated into dividend warrants. In a roundabout way, she was given a share of the monies stolen from the bank. I say so because the evidence has come to reveal the fact that money was paid to her from the Claremount account, and from the part-liquidation of the investment of the monetary value of other dividend warrants, and which investment was done in the name of the company, Land Partners Limited. It is clear, the evidence from the Investigating Officer, PW12, is undisputed, that she owns the controlling interest in Land Partners Limited. But specifically, and beyond the matter of Land Partners, it was because of her undoubted part-ownership of the two companies that form the subject matter of these two Counts – that is, AFCO Associates Limited and Ghazali Yakubu Investment Limited, that she was called upon to answer to the Counts. The case is that she derived benefit from ill-gotten money masqueraded as profit from shares – illegitimately bought shares – held in the name of those two companies.

But I dare say that the fact of her part-ownership of the two companies in question and the fact of her having derived gain from the proceeds of the crime in issue in this case, will not, without more, translate into a guilty mind. It must be proved that she **knew** about the commission of the offence using those two companies to siphon depositors' funds out of the bank even if she was not an officer of the bank. That would make her a willing participant even if she was not an active participant.

Now that all has come to be laid bare, I do not see that the Prosecution ultimately succeeded in proving that she knew about the scheme of fraud that led to the use of money stolen from the bank to buy shares for her companies. Nor does the evidence prove successfully that she participated in that scheme in the first place. There is no evidence that shows that she took a decision that the two companies in question should serve as vehicles through which shares in the bank would come to be owned by her in a surreptitious manner. In other words, I now see, after all is said and done, that there is no act of fraud or

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dishonesty, overt or covert, that has been linked to her. All that is clear is that, on paper, she is a part-owner of the companies. There is nothing that proves beyond reasonable doubt that she took decisions for the companies, or acted for them as their directing mind, or otherwise participated in the running of their affairs. There is nothing that tells me in a sufficiently and reasonably satisfactory manner that she silently but knowingly (hence my use of the word "covert") endorsed the scheme of fraud perpetrated with the use of those two companies. I see, instead, that it was the 1st Defendant that made "good" use of them.

We have a saying in law that we hold very dear. That saying, perhaps now upgraded into a legal maxim in our own criminal jurisprudence, is that "*suspicion, however strong, cannot take the place of legal proof*". Those were the time-honoured words of Sir Darnley Alexander, CJN, spoken when delivering the lead judgment of the Supreme Court in the case, Igboji Abieke & Anor. v The State [1975] NSCC 404, 408. On account of this, I hold that the Prosecution failed to prove its case of stealing against the 2nd Defendant satisfactorily.

THE MERITS OF THE CASE OF A CONSPIRACY TO STEAL

These are Counts 1, 3, 5, 7, 9 and 23 of the Charge.

An act of conspiracy, of course, need not be overt. It may be inert; passive. And it may be inert because it can properly in law be inferred from the established facts and the surrounding circumstances. That inference may be drawn from an act of omission, just as it can be by reason of an act of commission. Indeed, as the law also says, co-conspirators need not know themselves, and they need not ever have met. The important thing is that there was a meeting of minds to commit the offence at hand; there was a common purpose to be served. In other words, it is an offence that can be committed in a silent, stealthy manner. And what is more, it is an offence that stands perfectly on its

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own, independent of any other offence to which it relates (the "substantive offence") so that the failure to prove the substantive offence will not lead to the automatic, carefree dismissal of the charge of a conspiracy to commit that other offence. And so, starting with the 2nd Defendant, the law dictates that I must still enquire as to her alleged involvement in the offence of a conspiracy to steal as made out in Count 23.

I have just spoken about a "meeting of minds". In other words, the co-conspirators, even if operating from far-flung places, even if they do not all know themselves, had a common intent to fulfil an unwholesome purpose. It may seem that that unwholesome purpose can be inferred from the 2nd Defendant's act of receiving the proceeds of crime. But in discharging the burden on it, the Prosecution is required to eliminate all reasonable doubt. By the reasoning process of Eliminative Induction, it may well be – and it will be reasonable to think – that with there being, in the end, no evidence that actively and certainly points accusing fingers at her, the 2nd Defendant considered those gains she received to have been from valid, legitimate capital market transactions. I cannot eliminate that possibility as there is no evidence to show the contrary of it. And because of this, I am obliged by law to give her the benefit of the doubt. I say so because the 1st Defendant did give evidence without contradiction that he bought shares of the bank for her. In other words, she may well have derived benefit as a shareholder from different sources. I cannot tell that because part of the stolen money was traced to shares bought for companies of which she is a part-owner, then therefore she must have known she was receiving the proceeds of a crime. Indeed, it is clear that the dividend warrants of the two companies that relate to her were not received by her personally such as to put her on reasonable enquiry. It is also clear that they were not paid into bank accounts operated by her.

Beyond the matter of her receiving the proceeds of crime indirectly, there is no evidence that links her to the shares bought for the two companies concerned (I speak not of evidence that links her to the two companies) such as to prove beyond reasonable doubt that she was part of the plot that was a conspiracy.

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And so, having found that there is nothing that shows that the 2nd Defendant knew of the entire scheme of fraud, and with there being nothing to show that she participated by herself in that scheme over and beyond being named as the owner, or part-owner, of companies used in the perpetration of the crime (indeed, the companies were themselves "used" by the 1st Defendant, acting with the assistance and connivance of the 3rd Defendant), I find that the case of conspiracy against her equally does not succeed.

I shall now consider the case of conspiracy as made out against the 1st and 3rd Defendants.

As a preface, I will quote the words of the Honourable Mr. Justice G. B. A. Coker on the crime of conspiracy as I find that the explanations His Lordship made, because they are illuminating and in simple language, continue to serve, in my humble view, as a useful backdrop to an analysis of the crime of conspiracy till this present day. He said, in the case of Patrick Njovens & Ors. v The State (1973) LPELR-2042 (SC), as follows:

The overt act or omission which evidences conspiracy is the actus reus, and the actus reus of each and every conspirator must be referable and very often is the only proof of the criminal agreement which is called conspiracy. It is not necessary to prove that the conspirators, like those who murdered Julius Ceaser, were seen together coming out of the same place at the same time, and indeed conspirators need not know each other. See R v Meyrick and Ribuffi (1929) 21 C. App. R. 94. They need not all have started the conspiracy at the same time, for a conspiracy started by some persons may be joined at a later stage by others. The gist of the offence of conspiracy is the meeting of the mind of the conspirators. This is hardly capable of direct proof for the offence of conspiracy is complete by the agreement to do the act or make the

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omission complained about. Hence, conspiracy is a matter of inference from certain criminal acts of the parties concerned done in pursuance of an apparent criminal purpose in common between them, and in proof of conspiracy, the acts or omissions of any of the conspirators in furtherance of the common design may be, and very often are, given in evidence against any other or others of the conspirators.

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(The emphases are mine)

Inherent in the case of conspiracy is the agreement made by the 1st and 3rd Defendants with each of PW3 and Mr. Ololo to have them act ostensibly as receiving agents for a certain class of investors known to the bank, and whose subscription monies would be channelled through their securities trading company to pay for the subscription of the beneficiary companies. PW3 had said to the EFCC that she met with the 1st Defendant after the Quotations Meeting at the Nigerian Stock Exchange, and that the 1st Defendant agreed to compensate her for the loss of her company's appointed role as an Issuing House. She said that he had asked her to work out the details of that compensation with the 3rd Defendant. She stated that the outcome of her conversation with the 3rd Defendant was the deal to make her company a receiving agent for foreign investors. Mr. Ololo, on his part, simply wrote that the 3rd Defendant had approached him and asked that he act as a receiving agent for some of the bank's investors.

No doubt, the outflow of such a huge amount of money – billions of naira – from the bank and to PW3 and Mr. Ololo's companies, could not have escaped the notice and attention of the 1st Defendant as the Managing Director of the bank. The evidence shows that it amounted to a significant enough chunk of the bank's capital. It was certainly significant enough to come under the closer scrutiny of the CBN and the NDIC who then drew the attention of the EFCC to the outflows from the vaults of the bank that were, apparently, loans. Indeed, if

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at the material period in time, and according to the Chief Credit Officer, PW9, the 1st Defendant as Managing Director had no approving authority of his own regarding loans to customers, and the highest he could approve of (acting in concert with the Board Credit Committee) was the sum of N2 billion; then logic dictates that the exit from the bank (not just a lodgement into a loan account) of a much larger amount of money – billions and billions of naira – must be to his knowledge and with his sanction. For this reason, I accept the evidence from the Prosecution that the 3rd Defendant was not acting on a frolic of his own; I accept the evidence from PW3 that he was well aware of the arrangement and only delegated the task of working out the details of it to the 3rd Defendant.

Indeed, learned Counsel for the 1st Defendant had acknowledged the fact of the existence of an oral agreement between the 1st Defendant and PW3 when he was cross-examining PW3. The point of divergence, whilst putting forward the position of the 1st Defendant, was as regards the nature of this oral agreement and the terms of it. The position then was that PW3 had deliberately misrepresented the terms of the oral agreement; not that there was no oral agreement at all. That was where they differed, and where PW3 threw more light on the matter. The 1st Defendant's latter-day attempt, years later and when under cross-examination by the Prosecution, to distance himself from the oral agreement with PW3 is contrary to this stance he took much earlier on in the history of this trial. This change of position, this complete U-turn, to me is no more than an attempt by the 1st Defendant to sing a different tune after coming to see the enormity of the evidence against him. I say so because it is difficult to believe (as the 1st Defendant now wants the court to believe) that learned Counsel, duly instructed and briefed by him, would cross-examine a key witness on the facts and circumstances of a highly controversial issue – an oral agreement made in 2007 – in a manner contrary to his client's stance on that issue, and knowing (as he is deemed to know) that that client, the 1st Defendant, only met PW3 for the first time two years later and in 2009 as the 1st Defendant now says. The truth of the matter, I find, is that the 1st Defendant was part of that oral agreement about a foreign investors' receiving agency, entered

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into it knowingly with PW3, and then directed her to flesh out the terms with the 3rd Defendant. Rather than make the unfair comment that learned senior Counsel did not have his consent to cross-examine PW3 on the terms of the oral agreement, the 1st Defendant ought to have owned up to the fact that it was he who "changed strategy" instead.

And so, it is not in doubt, in my considered view, that the 1st and 3rd Defendants acted in concert in formulating this scheme and luring PW3 and Mr. Ololo (under the guise of a special Receiving Agent role for their companies) to be innocent actors in it. The plot was in stages. First was to find a way of removing money from the vaults without raising eyebrows and so the idea of loans came about. And with loans were the concomitant loan accounts – both solicited and unsolicited – also giving the air of legitimacy to the scheme. And then the "disbursement" of the loan sums – and more, followed by the seemingly innocuous transfer of all of the monies that were lodged in the loan accounts, of course, acting at the behest of the customers. The scheme required the use of helmsmen of securities trading companies as the whole idea was to buy shares of the bank for the benefit of the 1st Defendant and his family. That was the reason why Mrs. Elizabeth Ebi and Mr. Peter Ololo were needed in the scheme of things. And those two persons, acting under the misrepresentations of the 1st and 3rd Defendants about special investors coming through the bank, and in performing their role as receiving agents under the Public Offer, then paid the subscription of these "investors" who, as it happened, were companies that were acting as fronts for the 1st Defendant, and whose shares application forms had been filled exclusively by the 3rd Defendant. And finally, and in a manner cleverly devised to keep him well out of the picture, the 1st Defendant made use of the Claremount/Claremont accounts at the subsidiary bank, and which accounts he operated from behind the scenes, and also used the vehicle of a company, Land Partners Limited, set up with the name of his wife (the 2nd Defendant), his sister (Ms. Veronica Okojie) and his wife's "very close friend" according to him (a Mrs. Ifeyinwa Osime) as owners, to derive the benefit of the shares subscriptions and enjoy those benefits.

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PW12 put in clear terms the part played by the 3rd Defendant in this conspiracy. He said thus, in answer to questions put to him by learned Counsel for the 3rd Defendant,

... For me to answer your question very well, I will now pick the link from the beginning. What role did the 3rd Defendant play in concealing these loans?

The role of the Company Secretary was to collect these share certificates from the Registrar. How those shares got there with those names, he don't (sic) know. But the 3rd Defendant not only okayed a transaction which he knew was fraudulent but at the same time he was aware when these monies went out, he was instrumental to the monies going out, he was instrumental to the opening of these accounts where these loans were contrived, he was also instrumental in filling these forms with purported company names which he knew did not tally with the same money that went out.

I said investigation did not find where he benefitted. ... But that does not remove him in the conspiracy aspect. He conspired with the 1st Defendant to make these things possible. If he did not sign and okay the transactions that let these monies go out, Ifetayo Obi wouldn't have had the guts to push out twenty-something billion naira within a day. It's not one naira, it's not two naira. It's far, far, far above what she can do without a customer instruction. That is a fraudulent transaction.

How did the money, first of all, even get there? I'm used to the word, "PND", the Post No Debit, because I used to write letters to banks asking them to place a Post No Debit on a

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customer's account. And as long as, - - [inaudible], it cannot go through. But he went ahead and signed - - And said it's okay, these transactions can go through, and they went through.

PW12 said that "*investigation did not find where he [the 3rd Defendant] benefitted*". But the Prosecution, at the end of the day, extracted that information from the 3rd Defendant himself during trial. By "extracting" it, it was the Prosecution's evidence. This benefit was in the form of his promotion to the position of a "Senior Vice President" in the bank. Looking at the letter of promotion, Exhibit **D147**, which was dated the 22nd of January 2008, I see that he was compensated handsomely with a generous package of allowances and benefits. His monthly take-home pay became the sum of N16, 262, 400.00k with the possibility of an additional monthly pay of a total of N8, 491, 500.00k on top of it based on him and his team's performance. This was apart from other forms of remuneration that were also to be paid to him on a quarterly and annual basis.

The 3rd Defendant, I see, had tried to play down this promotion when the matter was put across to him during his cross-examination. He had answered that it was a general exercise in the bank, and in respect of which there was an internal memorandum notifying all members of staff. But even though given the opportunity to produce this memorandum on the next adjourned day, he failed to have it adduced in evidence after all. He said he could no longer find it in his email. The bare *ipse dixit* of his witness (Mr. Charles Odibo, DW18) without the supporting document that is said to exist will not suffice in this circumstance. This is all the more so as the said witness was not in charge of the bank's Human Resources Department at the material time. He testified that he came to be the acting head only a year later during the period January to May 2009.

Bearing in mind his pivotal role as the Chief Financial Officer of the bank, the 3rd Defendant's position was strategic to the success of the scheme, and the

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evidence clearly reveals him to have been a most helpful and active participant because he was part of the conspiracy.

THE 3RD DEFENDANT'S CONFESSIONAL STATEMENT

I must point out that my findings as regards the case of stealing, and the case of a conspiracy to steal, against the 3rd Defendant are all based on the evidence before me even without considering the 3rd Defendant's extra-judicial Statement, Exhibit **P184**, which reads as a confession. In other words, the other pieces of evidence before the court were strong and compelling enough to prove the Prosecution's case against him. And so that Statement, in my considered view, should serve as a clincher. It would make even more cogent that already established case with respect to him. But I should spell out the position of the law that it has no bearing on the Prosecution's case against the 1st Defendant, and cannot amount to evidence in proof of the case against the 1st Defendant. This is all the more so as the 1st Defendant distanced himself from the contents of the Statement.

I shall now consider the controversies surrounding that Statement, and in doing so, I think it necessary to quote salient parts of the document. It reads, in the main, as follows:

... As the CFO of the bank I was responsible for financial reporting – internal and external, taxation, accounting and book-keeping and supporting the executives to make decisions based on the analyses I provide them. I also had supervisory oversight but not responsibility for treasury unit, as this is key to maintenance of a sound financial institution. I am also in charge of budgeting and budgetary control across the bank. As the CFO of the bank I am an authorized signatory of the bank and I am required to sign or authorize certain transaction relating to payment and placements of financial

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instruments or their liquidation – on behalf of the bank. I can also jointly authorize transfers to other financial institutions. Some of these decisions, if not all are taken in response to the directive of executive directors, especially the Chief Executive. I am also an authorized signer to most expenditures amounting to N50 million ... and above. This is part of my duty as the CFO as defined by the policies and procedures of the bank. ... Regarding the company, Noelle Investments, I am not a director of the company or a beneficial owner of the company. The first time I came across the name was during our public offer in 2007/2008 – the Bank PHB IPO, it was one of 18 companies that subscribed to the shares of the company and they were passed through me. The list of the companies were given to me by the CEO to fill out forms for the companies – the CEO at the time was Mr Francis Atuche. In late 2007, the bank concluded arrangements to raise funds for repositioning the bank in the financial industry through a combination of Foreign Debt Instruments, a local offer – equity offer and a foreign equity offer. These offers were marketed to many foreign institutions between November & December 2007 with a lot of promise. However, at the end of the year many of them backed out as the financial crisis or meltdown was already rearing its head in Western and advanced financial markets. Consequently ... the debt was cancelled and the equity offer was converted to a wholly local offer. I was directed to fill out subscription forms for the 18 companies mentioned above by the CEO as there would be inflows from the investors to pay for the shares being taken up. The idea of the directive was to move or transfer funds out of the system ie the Bank PHB books and route back through one of the listed stockbrokers to the offer. However, the expected funds were

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not received by the time the offer was concluded. The funding of these subscriptions were debited to the bank's books as 'Other Assets' and credit facilities. The list of the companies given to me by the CEO – Mr Atuche contained the following names: Noelle Investments Limited, Arabian Probity Mgt, Ghazali Yakubu Investments Ltd, Stamford Global Concept Ltd, Sentron Trading, Guesstrade Services, Trenton Trade Ltd, Clareville Business Support Ltd, Montrax Investico, Commercial Trading, Felimon Enterprises, AFCO Associates, Consolidated Business Support, The Financial Company, Kalidona, Oakwood Asset Mgt, Venture Resources, Claremont Asset Mgt. Funds were then transferred to the accounts of companies or companies related to Futureview Securities Limited and Falcon Securities Limited. Some of the companies also involved in terms of receiving our funds transfer were Pine Petosan, Resolution Trust & Investments & Resolution Securities Limited. These companies then issued cheques in favour of Bank PHB Offer. These cheques were then used for the subscriptions in the name of the companies mentioned above. Based on the directive of the CEO, I issued an instruction or various instructions to the treasurer, Oby Onwuakpa to transfer these funds to various third parties mentioned. For example on the 2nd of January 2008, the amounts of ₦1, 912, 500,000, ₦2, 390, 625, 000, ₦2, 868, 750,000, ₦2, 390, 000,000, ₦1, 912, 500, 000 and ₦2, 390, 000,000 were transferred to Pine Petosan, Resolution Trust & Investments, Resolution Securities Limited, Futureview Securities – Intercontinental account, Futureview Securities – First Bank account, and Futureview Securities – Oceanic Bank accounts respectively, by me. At the time of these transactions, I am aware that Futureview Securities, Tradjek Nigeria Limited and Extra Oil Limited had no

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accounts with the bank and to my knowledge the directors did not apply to the bank to open accounts or be granted credit facilities. The credit facilities created in their names were used to warehouse the debit originating from the share subscriptions of some of the companies mentioned above. ... With respect to the accounts opened by the bank for Futureview Securities, Tradjek Nigeria Limited and Extra Oil Ltd, I did not give any instruction to open the accounts but I must have offered to assist in obtaining documents to regularize the accounts due to my relationship to the owners, but obviously a ... gesture to help. In all of these transactions, my participation is limited to following the instructions of my CEO – Mr Atuche, who was the ultimate beneficial owner of the companies and the shares allotted to them. I was not fully aware of this at the time.

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(The emphases are mine. I should also stress the point that the companies named by him to be The Financial Company, Kalidona, Oakwood Asset Management and Venture Resources do not form the subject matter of any of the Counts in this case.)

The 3rd Defendant did not raise the issue about the voluntariness or otherwise of this Statement when it was being tendered, and what is more, when it was being tendered by the person who interviewed him, and before whom he had made it. Neither did he raise the issue when cross-examining that person, Detective David Olom Nkpe, PW10. In other words, he did not set the stage for the conduct of the proceeding at which that matter of the voluntariness of his Statement would be tested. In so saying, I have not ignored the fact that learned Counsel for the 3rd Defendant cross-examined PW10 about the process that was followed when conducting that interview. This was the cross-examination of him on the alleged failure to make a video recording of the interview session and on the absence of the 3rd Defendant's lawyer at the interview session when no recording was done. (Incidentally, and contrary to

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what the 3rd Defendant's Counsel had stated in his reply address, the relevant provisions on this are those in the repealed Administration of Criminal Justice Law of 2007 which was the law in force at the time the Statement was made. The 2011 Law came into force months after that event.) Certainly, the matter of compliance with the procedure to be followed when interviewing a suspect may affect the other matter of the voluntariness of the outcome of that procedure – the ensuing Statement. But then it is just because of this that all the surrounding events and circumstances of the interview come to be the subject of closer scrutiny at a particular proceeding at which all is laid bare for the sake of an interlocutory decision of the court. I speak here about a *voire dire* hearing; a mini trial.

In other words, it is at that hearing on the matter of the voluntariness of the Statement that the issue of whether or not there was compliance with the due process during the conduct of the interview comes, itself, to be considered by the court. It is then (in the course of the hearing) that the court would assume jurisdiction to determine whether there had been a breach of that provision of the law. This, in my respectful view, is in itself the due process that is to be followed. I say this because, in my humble estimation, the provisions of section 9(3) of the Administration of Criminal Justice Law of 2007 were enacted for the singular purpose of ensuring that confessions are not forced out of suspects in any way or manner, or for any reason, at all. Thus, that provision of the law goes hand in hand with a consideration by the court of the issue of the voluntariness of the Statement. It properly arises at a *voire dire* hearing.

I believe that it is the requirement to hear the other side – this time, the interviewing officer against whom an allegation was made by the suspect-turned-defendant – and this, in keeping with the fundamental principles of natural justice, that led to the development of a particular genre of *voire dire* hearings commonly referred to as “a trial within a trial”. This is the mini trial at which the voluntariness of a confession that has been challenged by the Defence – at the point in time when the Statement was tendered – is tested through the due and proper amplification of the case of both sides on that

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particular issue. It is a trial at which the defendant, who asserts that the confession was not made voluntarily by him, will first place his case, and evidence, before the court, and the Prosecution will then be given the opportunity to be heard by way of adducing evidence in response. So therefore, to ignore the very noble and admirable principles of the law that led to the establishment of such an interlocutory proceeding by allowing a confession that had been accepted in evidence voluntarily (excuse the pun on the word "voluntarily") to be jettisoned subsequently just because of a change of trial strategy would, in itself, be an affront to the cause of justice. This, this court will not allow.

I believe that it is because of this requirement of the law that the other side must be heard at all times and in all spheres that the courts laid down the further position that the voluntariness of a confessional Statement can no longer come up for consideration if the defendant who made the Statement did not raise an objection at the point in time when it was tendered in evidence. It is too late in the day to do so when the Prosecution is unable to turn around, come back and address that issue with evidence on the point from the officer through whom the Statement was tendered. Put differently, in order to advance the cause of law, we must adhere to the process of justice.

The authorities are legion in stating, and re-stating, this position of the law – the position that once admitted without objection, the issue of the voluntariness of the confession is no longer a valid, viable matter that can be raised before the court. I refer, for example, to the case of Federal Republic of Nigeria v Faith Iweka (2011) LPELR-9350 (SC) at pages 26 to 27 in which Justice Mariam Aloma Mukhtar of the Supreme Court held as follows:

It was after the confessional statement had been admitted that the respondent retracted the statement in the course of giving evidence in his (sic) defence. This I think was an afterthought, for if she was uncomfortable with the statement, the point of tendering and admissibility should have been

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when to object. It was late in time to have retracted at the stage she did. The confessional statement not having been objected to was admissible as evidence, and the learned trial court was not in error in ascribing probative value to it.

See, also, Dickson Victor v The State (2020) LPELR-49936 (CA) at pages 12 to 15.

The 3rd Defendant, judging by his evidence, has said that he made his Statement involuntarily. He said it was done under duress and by intimidation and when he was in a state of shock. This, in my respectful view, is a completely different circumstance from that of a recant. A recant (or retraction) refers to a U-turn from what one had said deliberately, consciously, and freely before. For whatever reason (usually on grounds of principle, or the falseness or unreliability of that earlier position when new facts come to light, or a strategic reconsideration of one's position to suit present-day exigencies), the earlier statement or position is withdrawn. An involuntarily made confession, on the other hand, may be true. Indeed, in most cases, it is true! But the truthfulness or otherwise of it is not the business of the court. What concerns the court, what it focuses on rather, is the issue as to whether that statement was extracted forcefully in a manner that is antithetical to the ideals of a fair hearing, especially when one considers the higher goal of safeguarding the fundamental right to liberty in truly deserving cases. It is matters of this sort that agitate the mind when adjudicating upon cases about the commission of a crime. And so, the truth or untruth of the confession is not the real issue as far as the court of law is concerned. The reason why the court would reject an involuntary confession is not that it was not a true account. It is, rather, that that true account was not freely made. It is for this reason that I am of the view that to say that a confession was made involuntarily, and to also say at the same time that one was retracting what one had (freely) said before, would be to engage in doublespeak as far as the language and orientation of the court is concerned.

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But just in case I was wrong, and it can be successfully argued that the issue of a retraction was validly raised by the 3rd Defendant as a different matter from the issue of having made Exhibit **P184** under duress, I will now consider that matter of a retraction.

In so doing, I will look at the evidence he gave as the basis of this recant. That evidence is that he did not know what he was writing most of the time as he was in a **state of shock** all through the period he was with PW10, being interviewed by him and making the Statement before him. In other words, the state of shock was from within, a medical (psychological) condition, and not from without – that is, not from being coerced. The state of shock, he said, started on a Friday and continued up till and throughout the period of the interview the following Tuesday. His evidence is that it prevented him from being able to write the truth (sometimes), and it prevented him from being able to handle the interview with PW10 in the right frame of mind. And so, the question arises (and this from the rigorous cross-examination that he faced on this issue), was he truly in a state of shock such as would justify this retraction?

This state of shock, according to him, was a continuous, all-pervasive condition. It never left him. From his evidence, it appears to be a state of automatism that prevented him from being in full charge of his faculties. And because of that position of weakness, according to him, PW10 was able to take advantage of him. He testified (under cross-examination by the Prosecution) that even whilst so handicapped, some parts of his Statement were true whilst other parts were completely false. But then it was not only his biography and background history as recorded by him that he agreed were true, and which, as he said, he could write about involuntarily "at any time". What was also true, according to him when under cross-examination, was his account (in this state of shock) of the business ventures in which he was engaged or involved.

The 3rd Defendant answered that it was also true, as he had written in Exhibit **P184**, that he had no interest of any sort in the company, Noelle Investment Limited, one of the beneficiary companies. He agreed that he was conscious

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and collected enough to know and write that to be so. I should add that what is true is that the companies he said PW10 had enquired about from him (the companies he listed in his Statement) were companies the EFCC was investigating at the time, as has turned out from the facts and circumstances of this case. Because of this, being interviewed by an Investigating Officer about those companies could not, from that fact alone, translate into being compelled to speak about what he knew (or did not know) about them. I say this because the 3rd Defendant made heavy weather of the fact that PW10 had given him a list containing those companies, not that he (the 3rd Defendant) had volunteered information about the companies himself.

But, according to the 3rd Defendant, what was not true was the further statement he made regarding the use those companies were put. In other words, and during this all-enveloping state of shock, he was selective about when he said he wrote the truth and when he said what he wrote was not true. By a strange coincidence, he would speak the truth when the matters in respect of which he was writing were totally innocuous (like his background history), and when they were exculpating (like him distancing himself from Noelle Investment Limited). But then, when whatever he wrote amounted to damning accounts, they took on the shape and hue of a lie! Indeed, as learned Counsel for the Prosecution submitted in his final address, the court would require expert analysis from a psychologist or a psychiatrist in order to determine the true effect of this type of selective shock on the 3rd Defendant's senses, and its ramifications on his Statement!

The 3rd Defendant, when testifying on how his state of shock came to be, said as follows in his evidence-in-chief:

... I was driving one day, I think it was on the 12th of May 2009 (sic), and I heard an announcement on the radio declaring me wanted with the 1st and 2nd Defendants. I almost had an accident. I was ehm ... I mean, for the tune of N33 billion. So they said on the radio. I had to park. ... Sorry, 2011 So this

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was on the 12th of May 2011 ... So I had to park. I just cleared at the next available space and stayed there to recollect and think about the significance of what I just heard. I was ... I don't know whether "shock" can begin to explain the state of mind I was at that time. "Shock" will be an understatement. I felt like I was stoned for an hour, just glaring, looking into the air, doing nothing; that I had been declared wanted for stealing the sum of N33 billion!

(The emphases are deliberate)

But under cross-examination, this is what he said instead:

*Question: ... What did you do immediately after you heard it?
That day, that evening, what did you do? That's
immediately you were shocked, what did you do?*

Answer: I heard it in my office.

Question: In your office?

Answer: Yes.

Question: Remember before --

Answer (Interjects): No, I was in the car, not in my office.

Question: You now say --

Answer: The car was parked in front of ehm --

Question: The office?

Answer: Yes.

Question: So you were inside the car --

Answer: Yes.

Question: In your office?

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Answer: Yes.

(Again my emphases)

Quite clearly, these are contradictory accounts. It seems the 3rd Defendant is the master of recants! One minute he was driving along the way, the next he was in his office. One minute, he almost had an accident whilst driving and listening to the announcement on the radio, the next, his car was always stationary, parked as it was in front of his office. Indeed, he had had to be reminded by cross-examining Counsel of the different tale he had told the court before!

As he has been inconsistent in putting forward explanations on this state of shock and how it came about, and which state of shock was the excuse he gave for the involuntary nature of his confession – indeed, the basis for the assertion that it was involuntarily made – I find that the entire account about a state of shock, sitting as it is on discredited evidence (and discredited by none other than him), is in itself, equally discredited.

I am of the considered view, therefore, that the premise upon which the retraction (if truly this was one) is founded – the supposed “state of shock” – is a non-existent one. It crumbles completely as it lacks credibility. In the event, Exhibit P184 is very valid and very open to the court’s consideration. The necessary protocols were followed as he by himself made evident when he wrote that the words of caution were administered on him, and when after those protocols, he said by himself that he “willingly elect[ed]” to make the Statement.

And so, just as I had alluded to before, this confessional Statement serves to give fillip to the already established case of the Prosecution against the 3rd Defendant, it having weighty and significant corroborative effect.

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OTHER ISSUES RAISED BY THE DEFENCE

I have, in the course of this judgment, addressed a number of issues that were raised by either or both Defence Counsel in their respective final addresses. But that was not all. I will now consider other issues that were raised by them.

One was that the Prosecution failed to show how loans in the total sum of N18.2 billion as disclosed in Counts 1 to 10 of the Charge translated into the purchase of shares of a value of "N40.8 billion" according to learned Counsel for the 3rd Defendant, or "N33.8 billion" according to learned Counsel for the 1st and 2nd Defendants, which they say was the aggregate amount in issue in the ensuing Counts 11 to 27. In other words, there was an incongruity, a contradiction in terms, that made the case of the Prosecution difficult to sustain.

But I see instead that the case made out in the Information is a two-pronged one. I believe that this is very clear. The first ten Counts concern the offence of stealing under the guise of loan agreements as made out in the terms of fictitious loan documents. Those fake documents included the respective credit approval memoranda and the credit avancement tickets that relate to each Count. The terms of the false agreements include specified loan amounts. Those amounts, then, form the subject matter of each of the Counts. The second part of the case, concerning the remaining Counts, deals with the purchase of shares with stolen money. It is predicated on the creation of fictitious loan accounts to house stolen money, and in the case of the Petosan account, the soliciting of that account for its use for an underhand purpose. And so the act of stealing the respective sums recounted in the false loan documents is one thing whilst the stealing of monies lodged in contrived loan accounts created on the basis of those false loan documents is another. They form a chain of transactions but then are divisible in themselves.

The contention that the case of the Prosecution is that the exact sum that was described as loans and being the subject matter of Counts 1 to 10 of the Charge – the total sum of N18.2 billion – was the exact sum that was used to buy shares for the beneficiary companies is, with all due respect, a false

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narrative that has been propounded to the court. This, again with respect, is no more than an attempt to put a particular interpretation to the case that was made out in the Counts in the Charge; to reconstruct that case in order to defeat it using some contrived technical point. It seeks to undermine the case that was spelt out in English, and in clear, plain and simple terms. The case presented in the Counts of the Charge, as I believe is very easy to digest and understand, is that after creating false loans in that total amount, the monies that were transferred out of the bank were falsely made out to be the proceeds of those loans. The monies that were moved out did not have to match the loan amount in terms of numbers – and this because upon the creation of a receptacle for the stolen money (that “receptacle” being the loan accounts) the avenue was artfully created (such as to avoid raising eyebrows) for money of whatever amount to be removed (stolen) from the vaults of the bank and lodged into those “loan” accounts under the guise of existing loan agreements. That was the hoax! And so, under that pretext, the respective sums of money with which the shares in issue in this case were bought, whatever amount they came to be in the aggregate, were then channelled out of the bank and eventually used to pay for shares for companies that acted as a front for the 1st Defendant. That, I see, is the case that was presented in the Charge, and that was the evidence that was produced to prove that case.

The 1st and 3rd Defendants understood this well; not just because it was the game they played, not just because they are highly educated and well versed in banking terms and practices, not only because, being well educated and being versed in the English language, they answered that they understood each Count of the Charge when they were arraigned and/or re-arraigned, but much more than this – because they answered to this very set of facts and circumstances when presenting their respective defence cases.

And so, what matched in terms of a nexus was the fact that the respective sums of money described in Counts 11 to 27 used to buy the shares in issue were derived from, and transferred out of, those loan accounts – accounts that came to be as a result of the events in Counts 1 to 10 – under the pretext of

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them being loan sums granted those supposed customers of the bank. In other words, those individually stated sums in Counts 11 to 27 simply describe the particular amount that was used to buy shares for the particular company that formed the subject matter of that Count out of the stolen money that had been lodged in the contrived loan accounts.

The amounts stolen and used to purchase shares, and the amounts described as loans in the false loan documents, were never put forward as adding up to the same total amount. Indeed, each Count of a Charge lies separate and distinct from the other, based as it is on the separately-worded Particulars of Offence contained and described in it.

The law is that rather than file separate cases and conduct separate trials, rather than cause an undue multiplicity of court actions leading to the waste of tax payers' money, rather than go look for the same witnesses over and over again, such matters that are connected because they arise from the same run of events, the same spate of activities, the same series of transactions, should be tried together for the sake of convenience, time and money efficiency, and for the purpose of ease with respect to the Defendants. This is the law; a law made in advancement of the public good and in accordance with best public institution practices. A law made to ensure that the Defendants' constitutional right to a fair hearing as ordained by section 36(4) of the Constitution is safeguarded.

Thus, the provisions of section 153 of the Administration of Criminal Justice Law, in its sub-sections (ii) and (iii), read as follows:

*Offences may be [c]harged and tried together as the Court
may deem fit in the following circumstances –*

...

*(ii) any number of the same type of offence committed by a
person; or*

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(iii) *any number of offences committed by a person in the course of the same transaction having regard to proximity of time and place, continuity of action and continuity of purpose.*

The law does not contemplate that such differently occurring offences must be tried via separately filed Information papers. The law, rather, encourages that such separately committed offences are tried at the same proceeding especially in circumstances of the "*proximity of time and place, continuity of action and continuity of purpose*".

It has also been argued, this time on behalf of the 1st Defendant, that the slant of the interviews conducted by the EFCC investigating team, and which led to all of his extra-judicial Statements was about special banking offences and not about the matter of stealing and a conspiracy to steal as are the matters in issue in this very case. It was submitted that the 1st Defendant, therefore, "made statements in response to accusations of Federal offences". I should think, however, that it would be completely out of place for a court of law, being the independent umpire that it is, to seek to define, determine or delimit the role of the investigating law enforcement agency, or to dictate to it, directly or indirectly, the way and manner it should have gone about its duties. This is so, not just because that law enforcement agency acts according to the duties prescribed for it, not just because it is particularly skilled – it has expertise – in the way it goes about performing those set duties, but far more importantly, because the court does not descend into the arena and interfere in the way one side to a case prepares that case of his.

In any event, it is for the court of trial to determine what is relevant and germane as regards the evidence placed before it. It is for the court, in the performance of its adjudicatory role, to determine which piece of evidence is of weight and which one is to be discountenanced or ignored. I do not see that the Statements made by the 1st Defendant have no import on the case that was made out in the Information, and in the case presented thereafter at trial. And

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because of this, I do not agree that his fundamental right to a fair hearing was breached in the manner advanced by Counsel in his submissions to the court.

The 1st Defendant, rather, was given all of the accommodation he asked for or required in line with the principles of fair hearing and the requirement that the other side be heard. He had notice of the case made out against him as he was served with the Information papers containing the Proof of Evidence ahead of his arraignment, and served with other intended evidence contained in subsequent Proofs that came to be filed. I recall that at the early stages of trial, an adjournment was granted on one occasion, and one or two stand-downs permitted at other times, for his sake and to enable Counsel acting on his behalf better prepare for the on-going proceedings. Two Prosecution Witnesses were recalled on his application so that he could put further questions to them under cross-examination. One of those two, PW3, was central to the Prosecution's case against this. And in presenting his defence case, he faced no impediments and so he gave extensive testimony spanning a long period of time in answer to the case made out against him in this Charge. In the process, and in making full use of the opportunity to present his case, he called fifteen witnesses including him, and produced in evidence more than a hundred and thirty-eight documents very many of which were of large volumes. Many of the objections of Prosecuting Counsel to the nature of his own testimony during his examination-in-chief were overruled by the court which wanted to hear him speak. Whenever he required the assistance of the court, *subpoenae* were issued upon his application and in aid of the fair hearing of his defence. A good number of *subpoenae* were issued on the bank, and indeed also on the EFCC, so that he may have access to, and produce in evidence, most of those documents he presented in aid of his case. And then, beyond this High Court, the records show that he exercised his interlocutory right of appeal in the course of this trial – a right that was acknowledged and granted by the Court of Appeal and the Supreme Court a number of times.

The argument that the investigating team did not confront him with the issues raised in the Charge is, with respect, no more than an ingenious attempt to

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remedy a perceived difficulty – the difficulty of the 1st Defendant being unable to recant or attempt a retraction from words freely spoken by him in his extra-judicial Statements. The Statements were all validly made, following the prescribed statutory form and procedure as can be seen from the words of caution administered on him, and it is clear that they were written voluntarily. It is evident from them that he fed the investigators with information, and not that they imposed information on him. It is clear that they gave him the latitude to write about whatever was asked of him. The Statements are therefore all legitimate, and the supposition or assumption by him that he was not asked pertinent questions relevant to this case will not negate the fact that the trial of this cause followed the due process of the law.

At the end of the day, this trial is based on the Information before the court, of which he had advance notice. It is not based on interviews conducted by the EFCC as the outcome of those interviews is nothing more than evidence to be considered by the court.

There is the further submission of learned Counsel for the 1st and 2nd Defendants regarding what he termed "the juridical deficiency of this Charge" on the ground of the existence of another criminal case against the 1st Defendant at the Federal High Court. All I shall say is that having ruled on this very matter at a much earlier stage in this trial, I am *functus officio* in respect of the same.

Finally, I should make it plain that those parts of the reply addresses of both Defence Counsel that do not address novel issues of law only just thrown up in the final address of the Prosecution, but rather amount to a second bite at the cherry – that is, another attempt to make submissions on the facts, to include what had not been said before, to rehash previous arguments – have been disregarded by me. And the making of fresh arguments and backing them up with case law will not automatically turn such arguments into "replies" on points of law. This is particularly so with the 128-page Reply of Counsel to the 1st and 2nd Defendants. Indeed, it was as if it was the final address of the Prosecution that finally gave him impetus and direction as to how to go about the presentation

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of his closing arguments on behalf of the 1st and 2nd Defendants. Sadly, it was too late in the day. Or was it that learned Counsel was ignorant of the law on reply addresses?

The law, I should say, is strict in guarding the boundaries of the reply address to points of law alone made in direct response to an issue raised by the Prosecution, in order to maintain a fair balance and ensure even-handed play. I expect Counsel to know this.

CONCLUSION

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Documents – that is, written accounts that must be “prepared” and kept – have played a key role in establishing the facts of the matter in this case. Documents ranging from the emails sent by the 3rd Defendant (Exhibits P96, P97 and P95 in chronological order), to the application for shares of most of the beneficiary companies (Exhibits P40 to P50), to the cheques and bank deposit slips evidencing payment, the bank's spooled record of payments (in Exhibit P110A), to the schedules of collection of both share certificates and dividend warrants provided by the Registrars to the Public Offer (Exhibits P52 and P39), and then to the correspondence of different kinds concerning the existence and operation of the Claremont accounts and the emails from the Treasury Operations Department evidencing payments of the dividend warrants and payments made from them. Then there are the Statements of key actors in this case, Statements made at a much earlier time than the time of trial, and Statements free from any true stain on their integrity. These documents bring home the truth that the courts have always postulated – the truth that documents act like a hanger held up in the light, exposing and revealing the integrity and veracity, or otherwise, of the oral words spoken to the court. I am reminded of the inimitable words of another esteemed jurist, the late Mr. Justice G. B. A. Coker of the Supreme Court, who explained as follows in the case of S. B. Fashanu v M. A. Adekoya (1974) 6 SC 83:

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The parties gave evidence and called witnesses and indeed there was on each side a great deal of hard swearing. Undoubtedly, the duty of the court in ascertaining the truth in those circumstances is all but easy and the best logic may be as availing to one of the parties as it is to the other. But there was produced by both parties a large body of documentary evidence containing a number of letters and other documents and, as argued by learned counsel for the plaintiff, it is the duty of the learned trial Judge in a case like the present to test the probability of the case of either of the parties by reference to relevant documents which represent evidence of some more or less permanent or perhaps unassailable character.

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(See pages 91 to 92 of the law report. The emphases are mine)

I would only add that in a criminal case, where it is the case of the Prosecution that is ultimately being tested, it is, of course, much more than the "probability of the case" that is considered and weighed on the scales. It is whether there is any reasonable doubt in the case that was made out.

The documents placed before me serve to support and confirm the testimony of the Prosecution's witnesses with such compelling force, in my humble view, as to remove any reasonable doubt from one's mind.

The Prosecution, I find, succeeded in proving the trail that the EFCC investigators, PW10 and PW12, said they had unearthed – the movement of the monies from humble beginnings as cash in the vaults of the bank to their eventual transformation into dividend warrants that were paid into accounts in the bank (the Claremount accounts at Mortgages PHB and the suspense account of the bank's Treasury Operations Department), thus bringing the trail back home as it were after a circuitous journey, and such that the stolen funds were left under the control, and at the disposal, of the 1st and 2nd Defendants.

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But I should say, with specific regard to the shares bought in the name of Claremount Asset Management Limited and which transaction forms the subject matter of Count 14 of the Charge, that it is now apparent that it was not all of the N3, 825, 000,000.00 transferred to Mr. Peter Ololo's company's account (Falcon Securities Limited's account at Zenith Bank Plc.) that had come from the tainted pool of stolen money being the five loan accounts in issue in this case. It was a part thereof – the sum of N1, 965, 753, 050.00 – that was deducted, specifically from the Petosan account, under the guise of a false loan and transferred out of the bank towards that particular payment for shares. The rest of the money came from another source within the bank. That other source does not fall under my jurisdiction here. And so, I find that the 1st and 3rd Defendant's culpability on this score is in the sum of N1, 965, 753, 050.00 and not in the sum of N3, 825, 000,000.00 as was stated in Count 14 of the Charge. In any event, stolen money was used in buying that company's shares. It is the decree of the law {see on this the case of David v Federal Republic of Nigeria (2018) LPELR-43677 (CA)} that the fact of culpability in a lesser amount will not defeat the Charge (or the Count).

As for the shares purchased for AFCO Associates Limited, whilst it is clear that the money came from the vaults of the bank upon the 3rd Defendant's instruction as made evident in his email, Exhibit **P97**, whilst it is clear that the money was not from any supposed incentive package due to the 1st Defendant, there is yet nothing that shows clearly that it came from any of the five loan **accounts** that form the subject matter of my jurisdiction in this case. What this means, further, is that the case of a conspiracy to steal as made out in Count 23 of the Charge will succeed against the 1st and 3rd Defendants with respect to the company, Ghazali Yakubu Investment Limited, only.

With respect to the shares purchased for Sentron Trading Limited, Stamford Global Concept Limited, Felimon Enterprises Limited and Montrax Investico, there might be a cloud of suspicion around them because of the various bits and pieces of evidence that link them to the 1st Defendant, but the case against them, in my respectful view, was not solid enough as to dispel reasonable

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doubt. Even if the 3rd Defendant filled out application forms on their behalf, even if their stated addresses tie them to the 1st Defendant, even if the number of units bought on their behalf and the corresponding purchase price fit a set mathematical pattern that applies to the other companies whose purchase money came from stolen funds, even if their share certificates were collected by the 1st Defendant and their dividend warrants were paid into his camouflage bank accounts, there is, nonetheless, no evidence that proves to the requisite standard that their subscription was paid for with money that came from any of the five poisoned loan accounts that form the basis of this particular case. I should emphasise the point here that it is those five accounts that served as the springboard from which the stolen funds in issue in this case took flight out of the bank and ended up being used to buy shares.

Thus, and on account of the position of the law that "*suspicion, however strong, cannot take the place of legal proof*", I hold that the case against the 1st and 3rd Defendants as it relates to those particular companies – that is, AFCC Associates Limited, Sentron Trading Limited, Stamford Global Concept Limited, Felimon Enterprises Limited and Montrax Investico – has not succeeded.

And with respect to the case against the 2nd Defendant, I reiterate that the Prosecution failed to prove its case to the requisite standard. I find that even though she benefitted from ownership of some of the shares that had been paid for with stolen money, there is nothing, after all, that ultimately proves that she was ever actively involved in running the affairs of the particular beneficiary companies that she part-owned, and nothing that ultimately proves that she had actual knowledge of the source of the funds used to purchase those shares, such as to make it plain and clear to the reasonable man that she was a real participant in the scheme of fraud. Put differently, it may well be true, judging on a balance of probabilities from the totality of the evidence before me (or the lack of such evidence), that she was totally ignorant about the entire scheme. She therefore succeeded in casting reasonable doubt on the case made out against her.

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In the final analysis, however, the Prosecution succeeded in proving that the 1st and 3rd Defendants, using well-recognised stockbrokers so as not to raise eye brows, and under cover of those stockbrokers' companies being publicised receiving agents to the bank's Public Offer, were able to transfer monies belonging to the bank under cover (again) of them being loans, and put those monies to use in buying shares for companies under the control of the 1st Defendant. The profit from those shares thus ended up under the personal control of the 1st Defendant who used his subordinates to carry out transactions on those accounts on his behalf in a way that distanced him from the transactions. Certainly the 1st Defendant had the culture of using others – employees, family members, associates and shell companies – as fronts and to cover-up his tracks. He was in fact the unseen hand; the master controlling the puppets on his string. I say this with all due respect and only as a metaphor for the events that occurred. It is by no means meant to be a deprecating comment on those persons who were innocently made use of.

It was a well-planned scheme, and a well-executed one at that. But then, the bubble burst when the CBN and NDIC unexpectedly closed in on the bank, resulting in the invitation of the EFCC to ascertain if there was, as well, any criminal activity. The acts of concealment, the acts of fraud, then came to be exposed upon skilled forensic scrutiny.

I should say that neither of the 1st and 3rd Defendants was convincing as witnesses of truth. They (and many of their witnesses, particularly the 1st Defendant's witnesses) were not just "economical with the truth". They in fact withheld the truth, they abandoned the truth, they manipulated the truth, and then spoke outright lies. I saw that the 1st Defendant, during the test of cross-examination by the Prosecution, was deliberately tactical; he was diversionary and evasive, working hard to avoid answering probing questions in a direct manner. Indeed, he would sometimes refuse to answer questions, preferring instead to go on a frolic of his own, thus basking in the art of subterfuge. He was sometimes confrontational and sometimes rude to cross-examining Counsel. His posture certainly did not portray him as a witness of truth. The

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same went for the 3rd Defendant who, also under cross-examination by the Prosecution, would be cocky, combative and rude. Like the 1st Defendant, he too was evasive, refusing to answer questions in the manner put to him as if trying to stifle the truth.

In the final analysis, and by reason of all of the foregoing, it is my decision that the case against the 1st and 3rd Defendants has succeeded for the most part. The 3rd Defendant as the active helping hand of the 1st Defendant is a party to the crime in the first degree. As a *particeps criminis*, the law considers him to be a primary offender. And so he is just as guilty as the 1st Defendant. But the case made out against the 2nd Defendant failed as I have come to see, in the end, that there was nothing more than a swarm of suspicion around here.

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THE PRONOUNCEMENT

I therefore hereby pronounce that the 1st and 3rd Defendants are each guilty of each one of Counts 1 to 11, 14 to 20, 23 and 24 of the Charge contained in the Amended Information of the 1st of June 2011. They are therefore convicted of the respective offences of a Conspiracy to Steal and Stealing as stated in each of those said Counts. But by reason of the failure of the Prosecution to prove its case as regards Counts 12, 13, 21, 22 and 26 to the requisite standard, I pronounce the 1st and 3rd Defendants not guilty of those Counts and they are therefore each acquitted and discharged on each of them.

The case against the 2nd Defendant, and which is contained in Counts 23, 25 and 27 of the Charge, has not succeeded as the Prosecution failed ultimately to prove its case against her. She is, in consequence, pronounced to be not guilty of each of them. The case against her is dismissed and she is accordingly acquitted and discharged on each of the said three Counts.

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This shall be the judgment of the Court.

L A Okunnu

LATEEFA ABISOLA OKUNNU
JUDGE

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1,110 plus at ~~444,400~~ per fish

ADJO T. O.
Lagos High Court
Igbosere
Lagos State
17/6/2021

COURT OF LAGOS STATE
17/6/2021
Date
CASH OFFICE IGBOSERE

17-6-2021