

IN THE HIGH COURT OF LAGOS STATE
HOLDEN AT IKEJA JUDICIAL DIVISION
SITTING AT HIGH COURT NO. 5, SPECIAL OFFENCES COURT
BEFORE THE HON. JUSTICE M. A. DADA (MRS.)
TODAY THURSDAY THE 4TH DAY OF JUNE, 2026.

Bakarey Kemi
Commissioner For Oath

BETWEEN: High Court, Ikeja **COURT OF LAGOS STATE** **SUIT NO: ID/9456C/19**
FEDERAL REPUBLIC OF NIGERIA **COMPLAINANT**
AND
1. TOM AWHANA
2. PAUL OKORO **DEFENDANTS**

Sign: _____ Date: 17-6-2026
CASH OFFICE, IKEJA

JUDGMENT

The Defendants were arraigned on 19 Counts Information dated 9th April, 2011.

Count 1 is for Conspiracy to steal contrary to Section 409 and punishable under **Section 285 (1) of the Criminal Law of Lagos State, 2011** against both Defendants. They are alleged to have conspired between 2012 and 2013 in Lagos within the jurisdiction of this court to commit a felony, to wit; Stealing the sum of N3,660,000 (Three Million, Six Hundred and Sixty Thousand Naira), property of Mogbeyi Sagay & Co.

Count 2 is for Stealing contrary to **Section 285 (1) of the Criminal Law of Lagos State, 2011** against only the **2nd Defendant** for the sum of N3,660,000 (Three Million, Six Hundred and Sixty Six Thousand Naira) property of Mogbeyi Sagay & Co.

Counts 3 to 19 are for Stealing contrary to **Section 285 (1) of the same Law** against only the **1st Defendant** of various sums at different times, property of Mogbeyi Sagay & Co.

PW1, Soridei Akene, Banker with Heritage Bank testified thus:-

I am a Banker with Heritage Bank. I am a compliance officer. I relate with Law Enforcement Agencies and Regulators and respond to their requests.

In October, 2018 we received a request from EFCC for Account Opening documents and statement of one of our customers. We responded in November, 2018 and forwarded the certified true copies of the Account documents and statement of the

customer to EFCC. These are the said documents on Mogbeyi Sagay & Co. I compared them with what is in our record and they are the same. The statement was generated through a central Data Base of the Bank and I used the mainframe computer of the Bank and printed it from HP printer working perfectly well. Yes, we use them to produce similar documents.

(Heritage Bank's letter to the EFCC dated 19/11/18 with its attachments is **Exhibit P1**).

The signatory of the Account is Sunday Tom Ahwana, the 1st Defendant. Yes, there were both credits and debit inflows from the Account.

Under cross examination by Ojediran for 1st Defendant, he stated thus:-

Part of the requirements on opening an Account is to engage external solicitor to conduct a search on the company wishing to open an account. It shows Mogbeyi Sagay & Co was incorporated on 22/04/2014. The Account was still functional as at when we printed these documents just tendered. The sole signatory is the 1st Defendant. Yes, it is a Law Firm Account. We only honour Mandates on the Account. What is sent into the account is not known to us.

Under cross examination by Mr. Ani, for 2nd Defendant, he stated further thus:-

The 2nd Defendant is not a signatory to this account.

There was no Re- examination.

PW2- Charles Ahubelen Chidi sworn on the Holy Bible in English language. My name is Charles Ahubelen Chidi, 3b Marina Lagos Union Bank Plc. I am the Regulatory Liaison officer of the Bank. I liaise with Law Enforcement Agencies. In October, 2018, we obtained a request from EFCC on an Account opening Package, statement of Account of Mogbeyi Sagay & Co. and we honoured the request. This is our Response to the request. The entries in it were in the ordinary course of Bank's transaction. The entries are in custody and custody of the Bank. I signed the certificate. The devices used are functioning well we also went to our Archives to get our Account opening package. I compared them as the same.

Court: Union Bank's letter to EFCC dated 12/11/18 with its attachment is admitted as **Exhibit P.2**. There were inflows and outflows in the Account. The signatory to the Account are the 2 Defendants.

Under cross examination by Ojediran for the 1st Defendant, he stated thus:-



Yes, I am aware it is a Law Firm Account. We did a search on the Law Firm at Corporate Affairs Commission. I wouldn't know if it is a Business Name Account. The Law Firm was incorporated. I wouldn't know the narrations for the transactions.

Under cross-examination by Mr Ani for the 2nd Defendant, he stated thus:-

There were withdrawals by the 2nd Defendant. On 1/02/2013, there was a withdrawal of N225,000. On 28/2/13, there was a cheque withdrawal. On 4/03/13, there were 2 withdrawals on 24/6/13 and there was a cheque deposit.

Union Bank withdrawal slips will be filled for withdrawal. We have them in the Bank. Yes, the signature of the person who withdrew will be on it. The statement of account cannot show who authored the slip.

There was no re examination.

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PW3 Chirs Azubuike Okafor testified thus:-

My name is Chris Azubuike Okafor. My office is at 28, Ajasa Street, Onikan, Lagos. I am a Legal practitioner. I joined the Law Firm of Mogbeyi Sagay & Co. in the year 2013. It was registered by the late Mogbeyi Sagay SAN who died on 28/02/2012. I know the two Defendants. The 1st Defendant was a lawyer in the Law Firm of Mogbeyi Sagay & Co. until 4/06/2013. 2nd Defendant was also a lawyer in the Law Firm but I did not meet him there and from the correspondences in the file, I know he was in the Law Firm. He left before I joined.

I am in court in respect of the case reported to the EFCC by the Law Firm on the instructions of the Consultants to the Firm, Professor Itse Sagay SAN and the Administrators of the Estate of Mogbeyi Sagay SAN. The Petition arose out of the handling of the funds of the firm of Mogbeyi Sagay & Co by the Defendants. The Law firm has two known Bank Accounts; Access Bank and later Zenith Bank. The signatories to the Zenith Bank Account are the 3 Administrators of the Estate of the late Mogbeyi Sagay and the 1st Defendant. Incomes of the Firm were paid into it and expenditures of the Firm were drawn from that Zenith Bank Account. The Mandate to the Bank was that any 3 out of the 4 Signatories can draw money out of the Account. The withdrawal cheque Booklet was domiciled with the 1st Defendant until 4/06/2018 when he left the office and handed over to one of the Administrators Mr. Cliff Kokogho together with list of Files that were in the Firm. The 3 Administrators/Signatories are Mrs. Nneka Sagay, Mr. Cliff Kokogho and Mr. Monima Lawson-Jack. After the exit of the 1st Defendant from the firm, we conducted an inventory and discovered that some files were missing from the office. While that was going on one of the major clients of the Firm who regularly visits; Mr.



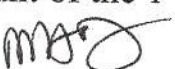
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Babatunde Allen came to the office to follow up on his case and in the process, he was reminded that he still had some fees to pay to the Firm. At that point, he stated that he had paid over N18M to the Firm. After the 1st Defendant left, I was made a signatory to that Zenith Bank Account. So, we checked the office Account to confirm what the client had said and it was discovered that only N5M was reflected in the office account from that client. We disagreed with him that he had paid N18M to the Firm and he said he had a receipt given by the 1st Defendant and a counter-foil of the cheque in the Booklet but that he could not find the receipt at that time. So, we asked him how he made the payment and he said it was through cheques. He said he did not specify the name of the Beneficiary on the cheques but he just signed and stated the amount and handed them to the 1st Defendant so we requested for the client's statement of Account and he obliged us. This was around July but the inventory was on 30/06/2018. I confirmed from the statement that he actually paid about N17.5M to the Firm and that N16M plus cleared in the Account of the Mogbeyi Sagay & Co meanwhile only N5M cleared in our office Account. So, I collected the Statement and dismissed him. Then on 25/07/18, I went to the office of the 1st Defendant but before then I asked the Administrators and the Accountant if there was another Firm bearing the name of the Firm but they said they are only aware of Zenith Bank and Access Bank but that some money would have cleared in Access Bank but that they would confirm in Access Bank. They also said that after the death of the late Principal, they went with Letter of Administration to all the Banks to collapse his Account and there was no other Account elsewhere apart from Access and Zenith Banks so I went to the 1st Defendant's office on 25/07/18 and enquired whether there was any other Bank Account of the Firm that he did not hand over after his departure. He said he is not aware of any other Account apart from Zenith Bank which he handed over. Then I told him that Mr. Allen came and made these allegations and we confirmed the money cleared into an account of Mogbeyi Sagay & Co which we are not aware of as money for work done for him by late Mogbeyi Sagay SAN which the office is continuing. The 1st Defendant insisted there was no different Account known to him anywhere in the name of the Firm. So, the Administrators referred the issue to the Consultant Professor Itse Sagay SAN who then asked the Administrators to write a letter to the 1st Defendant requesting for the missing files and for clarification on the money. So, they wrote the letter and it was served on the 1st Defendant. The 1st Defendant went to his Bank and confirmed that N10M and N1M cleared in the name of Mogbeyi Sagay & Co domiciled with Heritage Bank. We later discovered that an Account titled Mogbeyi Sagay and Co was fraudulently opened by the 1st Defendant and he is the sole signatory to the said Account. Meanwhile the Certificate of Registration of Mogbeyi Sagay & Co indicates Mogbeyi Sagay as the sole Proprietor of Mogbeyi Sagay & Co who passed

away in 2012. There was no authorization from the Administrators of his Estate for the opening of any other Account after his death. Mr. Cliff Kokogho, one of the Administrators confronted the 1st Defendant with all these information and the Account at Heritage Bank and the 1st Defendant admitted in his response to the letter sent to him by the administrators that he actually opened the Account without any authorization and it was some clients who lured him to open it. Initially he said it was a "Clients Account" that some clients led him to open it. We also discovered another one opened in Union Bank. 1st Defendant also admitted receiving some monies in his response and listed them as his Reply to the Administrators' letter. We discovered that most of the monies cleared in those later Accounts were monies due to the late Sagay as monies for jobs he had concluded or at various stages of conclusion before he passed away. When the 1st Defendant was requested to return the monies he admitted, he alleged that he had used part of them to argument the funds released for him to run the office. Meanwhile in his response, he admitted that some funds of the Firm was in his custody and he should be advised where to pay them but he did not state the amount or where the funds came from. So, we held meeting with him to bring forward the extra expenses he said he incurred while he was in the office because the Administrators were releasing money into his Account while he was in the office. So, from what he disclosed as the extra expenses, there was a shortfall of N10M outstanding with him to be refunded to the office but he disputed the figure but did not state how much he would refund. Then Professor Itse Sagay SAN was on medical vacation out of Nigeria and when he returned, he called and stated that the 1st Defendant sent him a text message admitting that he opened some accounts in the name of the Firm without authorization. So, the Consultant said it should be reported to the Authorities for proper investigation. I was instructed to do the Petition to EFCC which I did.

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This is the Petition I wrote and signed.

(A Petition from Mogbeyi Sagay & Co to the EFCC dated 25/10/2018 is **Exhibit P3**) EFCC investigated and discovered from the Statement of Account that almost all the monies received into the Account were paid by clients which they gave to the late SAN some of which he had concluded before his death and others at various stages of conclusion before he passed away. One other account was discovered by EFCC, making 3 Accounts opened by the Defendants; 2 Defendants, and same with FCMB while that of Heritage was opened and operated solely by the 1st Defendant. The statement of Heritage Bank Account shows that almost all the withdrawals were diverted to the personal Account of the 1st Defendant and some to the Landlord of his house, another to his sibling. 

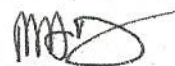
Austoju Nigeria Ltd is a client who paid money for the work the SAN was doing for them before he died and is still going on. The matter is gone to the Supreme Court. It is a Community in Delta State. The 1st Defendant admitted they made payment as part of the fees due to the Law firm which he diverted.

On Metropolitan Bank which has gone into liquidation; Union Bank appointed the late Sagay SAN as a Receiver to recover money due to Union Bank. The late Sagay SAN worked for NDIC in the liquidation of Metropolitan Bank.

The 1st Defendant admitted that the payment was for the Firm. Financial derivative company is used by a client of the Firm for the work he gave to the late SAN and at the time he passed away judgment had been entered and Garnishee proceedings were stalled because of the appeal filed by the Judgment Debtor. The late SAN was pursuing the Appeal against the Garnishee Order nisi when he passed away. When I joined the Firm, I discovered that the Appellant had abandoned the Appeal. I applied for reactivation and obtained the Order against the Garnishees and then our clients paid that N5.5M to the firm but all the while the 1st Defendant was saying the client refused to pay our fees that we should leave him to God until 2018 when we discovered that the client had paid the Firm but the 1st Defendant diverted it. It was also discovered that the client had made several payments to the personal account of the 1st Defendants but insisted that this one should go to the Firm and wrote a cheque specifically in favour of the Firm as part payment.

Mr. Babatunde Allen is a client and very close friend of the late SAN who had worked for him on many cases when he was alive at a time when the man had no money. When he sold his property he came to the Firm and issued 2 cheques with specific instruction that one should go to the wife and children of the late SAN and the other to the Firm; the 1st N5M and the other N10M respectively that he did not have money when the SAN died though he worked for him. That was why he said the 2 cheques on same date but unfortunately the wife of the SAN had not called to thank him for the receipt of the money he gave to her. Whereas while the N5M cleared in the office account and was used for the running of the office, the N10M cleared in the Heritage Bank Account fraudulently opened by the 1st Defendant. Soon, after it was diverted to the 1st Defendant's personal Account.

Ausdary is the same person as Austoju. His real name is Austin Odiesan. He made payment to the Firm for the work their Community gave to the late SAN which he did



to a point before he passed away and the Firm is continuing in the Supreme Court now. They are still paying.

Watyen Enterprises is a payment made for the work carried out by the late SAN. Omadino Community is in Warri that the SAN was defending in a matter from Asaba to Benin. Their Secretary Mr. Udeh has confirmed that their payment is for the work they gave to the SAN which they made in favour of the SAN in the name of Mogbeyi Sagay & Co as they did when he was alive.

There was a transaction between Mr. Babatunde Allen one of our clients who executed a judgment of court and seized some properties belonging to Judgment Debtor which were sold by the court and I pursued the case to the Chief Registrar's office when the proceeds were due, they said payment should be made to the Firm because the late SAN was the one that got the judgment for him at the Magistrate Court. It was actually the 2nd Defendant that was attending court in respect of that case but under salary like any other lawyer. So, the payment came to the office.

UEE is a company belonging to one Mr. Sylvester Unatempoh one of our clients we worked for at Magistrate and High Courts.

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Emmanuel Chimere & Co. is a client of the Firm we worked for to recover money and he made payment. EFCC was involved and the other party now paid.

Olanrewaju Yusuf is related to the same case with Emmanuel Chimere who we helped to recover money with the help of EFCC. Trust Microfinance relates to the same case involving EFCC according to the 1st Defendant's admission when they declared the debtor wanted. He first sued and we were in court with him before he now paid.

Appeal CA/L/355/2008 there are 2 Appeals we are doing for Union Bank, Assang & Co and Visana Vs. Metaloplastical FHC/L/CL/75/2000 payment came from Union Bank.

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Consomate is a Construction Company which gave the SAN Deed of title to perfect before he passed away. The customer paid charges directly to the Government and paid fees directly to the firm by then the SAN had passed away. 

Arbico Plc is a Construction company that the late SAN gave loan to but they refused to pay. He took them to court but he passed away. Then they settled and made the payment.

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Bob C.J is a practicing lawyer who levied execution against Diamond Bank who asked us to stop the execution, which we did and stopped the execution and they later settled and our fee was N1M out of the N2.5M paid by Bob C.J.

I am now the head of Chambers in Mogbeyi Sagay Sagay & Co. Records in our office show that the late Senior Advocate gave a loan to ARBICO Co. Ltd and when they failed to repay after several demands, he instituted a winding up action against them. Thereafter settlement was reached but before payment could commence, he passed away. We later discovered that they eventually made payment because there was a letter from their lawyer; Olanihun Ajayi SAN informing us that they had made the last payment of N1M tranches that we should confirm that they have been discharged on the indebtedness. I recall that the 1st Defendant wrote a confirmation to them but between then, on the day the letter dispatched the 1st Defendant was in Abuja in respect of one of our matters. So, he instructed me to sign the letter on his behalf, I initially thought it was paid into our official Access Bank Account but much later on. Last year, we discovered that those payments ended up in the fraudulent union Bank Account opened by the 1st Defendant personally for this purpose.

The transactions with AMCON are cases they gave to the late Sagay SAN when he was alive, 2 of which cases were withdrawn from the Firm after the demise of the late SAN upon the files being handed over to the 1st Defendant who was seized of the office files of these matters. There was a letter in the file purportedly written by AMCON to the Firm indicating that they were withdrawing the matters and that no payment is due to us upon the withdrawal of the letters. There is also a photocopy of a letter from the 1st Defendant addressed to one SAM GOLDEN, a blood brother of the Senior Advocate wherein he reported on all the matters he was handling. That letter is with EFCC. The report he made includes the 2 AMCON matters that were purportedly withdrawn. In 2018, while we were moving to our new office, we stumbled into another letter also from AMCON on those same matters identical with the letter purportedly withdrawing the said matters. The only difference is that AMCON actually agreed to pay the fees based on quantum meruit.

The transaction with Consomate was partly paid to the late SAN, but the balance was paid after his demise to the 1st Defendant. I identify the documents I referred to. I searched for the originals but I could not find them.



CERTIFIED TRUE COPY

The 1st Defendant wrote a letter of demand for the payment of the balance from Consomate after the SAN had passed away. The acknowledgement copy is with us. The 1st Defendant was head of chambers. The 2 Defendant were by our records appointed by the Consultant to the Firm, Prof. Itse Sagay, SAN specifying their entitlement. He is on Medical Vacation at the moment we tried to reach him but his lines are not going. The originals are with the 2 Defendants.

Nukon Nig. Eng. Ltd. owned by one Mr. Ogbemi, for whom the late SAN recovered a judgment in their favour in 2004. The enforcement of the judgment took a long time and in the process the SAN passed away. When Cross Rivers State Government eventually paid Nukon Engineering; the Judgment Creditor, they paid our office for the work the late SAN had done via a cheque with a forwarding letter attention to the 1st Defendant. The 1st Defendant concealed both the letter and the cheque until 2018 when we eventually discovered a photocopy of the letter. We made thorough search for the originals to no avail. We later discovered that the cheque was cleared in one of those fraudulent Accounts opened in Heritage Bank opened and run solely by the 1st Defendant in the name of the Firm. He did not get any consent of the late SAN's Estate or that of the Consultant.

CERTIFIED TRUE COPY

Watyendks Enterprises Ltd. is a company that fell under receivership wherein the late SAN was appointed as a Receiver. There are 2 Suits on the matter wherein the late SAN was involved. Eventually settlement was reached. The SAN was owed fees on those cases. After his demise, the 1st Defendant wrote a letter demanding fees and there was a meeting where Enterprise Bank requested for evidence that the matter had been concluded. This letter forwarding the Judgment was written by one of us, Mr. John Ebo we have an acknowledged copy in the file. The original is with the Bank.

CERTIFIED TRUE COPY

These are the documents I referred to.

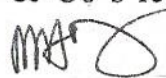
((1) Acknowledged Letter from Mogbeyi Sagay & Co addressed to City Construction and Real Estate Ltd dated 5/04/12 (2) Mogbeyi Sagay & Co.'s Letter to the Head Legal Services, Enterprise Bank Ltd dated 17/06/2015 (3) AMCON'S (4) 2 Letters addressed to Mogbeyi Sagay & Co both dated 27/08/2012 (5) Olanihun Ajayi's Letter addressed to Mogbeyi Sagay & Co dated 21/06/2013. (6) Mogbeyi Sagay & Co's letter to Arbico Plc dated 24/06/13 (7) An Additional Situation Report on Mogbeyi Sagay & Co signed by the 1st Defendant dated 18/03/13 (8) Nukam Engineering Co.'s letter to Mogbeyi Sagay & Co dated 3/03/2015 (9) Mogbeyi Sagay & Co's letter to Enterprise Bank dated 17/03/2015 are **Exhibit P1-P12 respectively**) 

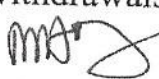
Exhibit P2 is Union Bank Statement; on 19/10/12, 'Appeal on Suit No CA/LP550' is actually a fee paid in respect of a matter given to Mogbeyi Sagay by Union Bank. At the time the fee was due for payment Mogbeyi had just passed away. On 8/11/2012, a cost awarded in favour of our office in respect of a matter given to our firm by Consollace Law firm. On 21/11/12 payment from FCMB traced to be from AMCON, N1.83M withdrawing their matter and paying for work done on quantum meruit.

Exhibit P1 is Heritage Bank Account. Payments are clearly fees owed Mogbeyi on 12/12/14 from Osceri Resources Ltd, he is also Oscari.

These payments were not known to the Firm or even these 2 Accounts till 2018.

No, I was not employed to the Firm by the 1st Defendant. The Administrators of the Estate employed me and confirmed by the Consultant Prof Itse Sagay SAN. The 1st Defendant took part in interviewing me, one Mr. Clifford Okokgho Nneka Sagay, Onema Osita is the 3rd Administrator but did not participate on interviewing me. After the appointment of Administrators, the Firm's Account in Zenith Bank changed the title from Mogbeyi Sagay & Co, It became the Estate of Mogbeyi Sagay. Before the Letter of Administration, this Zenith Bank Account of Mogbeyi Sagay & Co, we had Access Bank Account of Mogbeyi Sagay & Co. The Consultant, Prof. Itse Sagay SAN opened this Access Bank Account in the name of Mogbeyi Sagay & Co. It was earlier in time than Zenith Bank and office funds and expenses were paid into it. Prof. Itse Sagay SAN is not the only signatory, Clifford Okokogho, the Account is also a signatory to it.

The Estate was paying staff salaries through the 1st Defendant in cash. Initially the Estate was paying directly later they started paying through him sometimes he would delay in paying us saying the Administrators had not signed or one of them was not around. I don't know how he received the monies from the Estate to pay us. Expenses and running costs were paid by the Estate through the 1st Defendant when money was released to him. There are also records in the office. I have seen transfers from the Firm's Zenith Bank Account to the 1st Defendant's personal Account. He claimed to have made expenses to augment funds released to him and the Estate asked for details and I believe he has also responded.

I have been able to lay my hand on 2 letters from the 1st Defendant requesting for money for the payment of salaries, running of the office and other expenses, written in his handwriting. I also have our Zenith and Access Statements of the official Accounts of the Firm highlighting withdrawals approved and withdrawn by 1st Defendant for the running of the office. 

(The 1st Defendant's letter to Professor Itse Sagay SAN dated 11/01/2013, 1st Defendant's letter dated 7/03/2017, Access Bank's letter to EFCC dated 4/02/2019 with supporting documents and Zenith Bank's letter to EFCC dated 12/11/2018 with supporting documents are **Exhibits P13-P16 respectively**).

I also have the Audited Account Statements here which capture the payments of the salaries paid by the 1st Defendant.

From when I joined the Firm in June 2013 till when the 1st Defendant left in 2018, May, I can't know the total salaries I collected from the 1st Defendant. The Estate was paying us our salaries until the 1st Defendant complained and monies were now released to him. The Estate was initially paying us directly but I don't recall for how many months. Yes, when we collect salaries, we sign but the 1st Defendant is the one that fixed the date. Apart from me, John Eboh was also a lawyer being paid salaries we were both engaged at the same time on same salary Babatunde Ishola was our Admin Secretary also on salary. Olanma Okoronkwo was our litigation clerk.

I confirm these papers as what we signed for the 1st Defendant anytime he paid salaries.

(13 copies of acknowledgment of salaries by the Defendants and others between 2014 and 2015 are **Exhibits P17-P29 respectively**). **CERTIFIED TRUE COPY**

The 1st Defendant was drawing all these monies from the official Bank Accounts including salaries for the running of the office. At a time when our salaries were delayed and we complained, a client Mr. Babatunde Allen paid N1M to the 1st Defendant by a cheque with which we were paid. The 1st Defendant had complained that the Estate had not released money to him. It was I think a First Bank cheque. He also at some time when we recovered N500,000 for Mr. Babatunde Allen, on an execution carried out in his favour on a Bus which was sold by the Sheriff for N500,000 and we appealed to him to support the office salaries so he released the cheque to us. It was an oral instruction. The case was Babatunde Allen against Trustees of Redeemed Christian Church of God. **Exhibit P.3**, 2nd paragraph of the last page with a list of cases I attached to my Petition.

(A List of cases referred to and admittedly attached to the Petition submitted to the complainant by PW3 is **Exhibit P30**).

Yes, many of the cases were filed after the demise of late Sagay SAN, nos 1, 2, 5-13, 27-28. I made a statement to EFCC that I was engaged in July 2013. I don't know if the Letters of Administration had then been issued but they were acting as



Administrators. This is a certified true copy of the Letters of Administration dated 28/10/13.

CERTIFIED TRUE COPY

(The certified True Copy of Letters of Administration dated 28/10/2013 is hereby admitted as **Exhibit P31**).

The Statements of Accounts in **Exhibits P1** and **P2** of Heritage and Union Banks were examined by me. This discovery forms the basis of my allegation against the 1st Defendant. Mogbeyi Sagay & Co from 2012 has no designated Account in that name. Yes, we found out some clients' monies were paid into these Accounts. In Heritage Bank, we noted Tempo Housing paid on 30/11/ N20.5M 1st Defendant stated that other clients paid into the Account which were netted off.

I have prepared documents for a client; First Global Microfinance Bank in the name of Joe Aranosi and N23.15M was paid at various times into **Exhibit P1**. The 1st Defendant claimed that monies belonging to clients were paid in but he has been unable to show how he paid to the clients. No complaint received from Chief Joe Aranosi. I know Bob C. J & Co. I conducted that case. Monies of Access Bank were paid into it, N25M less of expenses. Our fee was N1M and we have paid Access Bank. Yes, we levied execution. It was a settlement. This was the brief of one Busola **Banyon** but she couldn't do it. So, she came to us. We filed a Motion to restrain and we filed an Appeal. It was after the demise of the learned SAN. The Estate said we could not be doing side cases while they were paying salaries because before then, we were busy recovering debts owed Mogbeyi Sagay SAN. Yes, there are some returned cheques in **Exhibit P.1** on **P.5** 7/08/17, 20/10/17.

Omadino Community had 2 cases with the Firm before the demise of the SAN Sagay. It is not true he was paid before he died. Yes, these Rulings are on the case.

(A certified true copy of the Ruling of the Benin Court of Appeal in Appeal No; CA/B/230/2010 dated 15/12/2013 and its judgment dated 7/07/2014 are admitted as **Exhibits P 32** and **P.33** respectively).

CERTIFIED TRUE COPY

These also refer to the Omadino Community; the Amended Brief and the Supreme Court in Metaloplastical. I know about these cases.

(The certified true copies of the Judgments in Suit No FHC/L/CS/75/2000 and in CA/L/95/14 while the **certified true copies** of **Respondent's** Amended Brief in Suit No W/132/70 and W/62/71 Supreme Court dated 4/03/2015 are **Exhibits P34- P36** respectively).

I confirm these letters of the Firm and the Ex parte Order in respect of Nukom Engineering 3 from NDIC.



((1) An enrolled Order of the Federal High Court in Suit FHC/L/CS/1416/14 (2) A letter to the Law Firm of Mogbeyi Sagay & Co by Nukom Eng. Ltd dated 3/03/2015. (3) 2 Letters from NDIC to the Law Firm of Mogbeyi Sagay & Co dated 8/08/2018 and 31/10/2017 are **Exhibits P 37-P40 respectively**).

I said the 1st Defendant told us that some of the monies in his Heritage Bank Account were monies received from Chief Aransi.

I don't know where this letter is coming from though it is addressed to our Firm. I also do not know the Terms of Settlement. The 2nd person referred to in this 2nd Letter addressed to the Firm was mentioned by 1st Defendant Bob C. J. & Co's letter too to the Firm, I have not seen these letters before. Yes, I know these people but I don't know about these letters. Items 4 on **Exhibit P.30** Sahovel Oil & Gas Resources. I know Ingrades, Metropolitan Bank, NDIC, AMCON.

(i. confirmation Letter from Chief Joe Arausi dated 21/07/16 with an uncertified Terms of Settlement. (ii) A letter from IC-Global Micro Finance Bank Ltd dated 18/01/18 addressed to the 1st Defendant. (iii) A certified true copy of the proceedings of the FHC Lagos on 23/05/18 withdrawing Suit No FHC/L/CA/1716/15 (iv) A letter from the law firm of BOB C. J & Co. to the Principal Partner Mogbeyi Sagay & Co dated 4/09/14 with an attachment (v) An offer Letter to Mogbeyi Sagay & Co from Ken Uche Oraka dated 2/08/14 with an attached undated Lease Agreement (vi) Letter from the Law Firm of Mogbeyi Sagay & Co to Construmat Nig. Ltd dated 10/10/13 (vii) A Letter from Quantum to T. S. Awhana & Co dated 10/10/2011 with an attached copy of a First Bank cheque (viii) An instrument of Instruction by UEE & CEE Nig. Ltd to Mr. T. S. Awhana dated 15/11/16 (ix) Letter from Mogbeyi Sagay & Co to AMCON dated 30/05/2013 (x) Another Letter from Mogbeyi Sagay & Co to AMCON dated 10/10/14 (xi) Letter from Mogbeyi Sagay & Co to AMCON dated 30/08/12 (xii) Letter from Mogbeyi Sagay & Co. to AMCON dated 30/08/2012 (xiii -xiv) 2 AMCON's letter to Mogbeyi Sagay & Co dated both 5/09/12 (2x)-14 (xv) Mogbeyi Sagay & Co's letter to NDIC dated 30/07/15 (xvi) Letter from the Law Firm of Consolox to Mogbeyi Sagay & Co dated 16/10/2012 (xvii) A bundle of Receipts for Mogbeyi Sagay & Co, and A Nigerian Weekly Law Report, Pt. 1403 vol.6 are **Exhibits P41-P58 respectively**).

Exhibit P31 is the Letter of Administration issued on the personal properties of the deceased. Mogbeyi Sagay & Co is a Sole Proprietorship. The Accounts listed are on Mogbeyi Sagay & Co.



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Page 6 of **Exhibit P32**, line 8, "Mr. Awhana argued that P.12 is the list of Counsel that appeared. 1st Defendant while working with Mogbeyi Sagay & Co., the instruction was to Mogbeyi Sagay & Co and he was earning salaries.

P.5 of the **Exhibit P33**, the 1st -5th Respondents' Brief was settled by T. S. Awhana on 4/11/12 while he was working with Mogbeyi Sagay & Co on salary.

Any lawyer in the Firm can adopt it for the Firm.

Exhibit P34, the 1st Defendant and John Eboh were employees of the Firm at the time. Same for **Exhibit P35 p.4**, the original brief was filed by Mogbeyi Sagay & Co. Same for **Exhibit P36**, but 1st Defendant diverted the funds after the death of the SAN. **Exhibit P37**, p.2, I was in court in respect of that case and 1st Defendant just happened to be in Court for another matter. Judgment had been given before the SAN passed away. I filed Application for Garnishee. Both of us were under salaries. He moved the Application. **Exhibit P58**, the 2nd Defendant's name appeared on the Brief. As at the date of Judgment, I was the one who represented the Firm after the death of the SAN. Yes, 1st Defendant on behalf of Mogbeyi Sagay & Co settled the brief in **Exhibit P.36**. I don't know how much was paid by Chief Joe Arausi. I don't know who paid on his behalf.

The 1st Defendant said he paid Tempo's money into the Firm's Account of which the office remitted N20.5M and retained N7.5M as our fees. I don't know if N500,000 was paid as commitment fee. **Exhibit P44**, it was attention to the 1st Defendant and me. He was the head of Chambers then. 1st page of **Exhibit P48** read. These cases were all being handled by the Firm including myself, John Eboh and 1st Defendant who had said we all should bring our private cases to the Firm. So, I don't know where this letter is coming from. **Exhibit P1** N60,000 from UEE & CEE Ltd. On 1/02/18 N200,000 was paid. The matters were being done by Mogbeyi Sagay & Co. T.S Awhana has his own private Account so if the payments were for him, why pay it into Mogbeyi Sagay & Co? **Exhibit P42** on 15/11/2013 N1.357M was paid by BBPC for Mogbeyi Sagay & Co..

Yes, I know Sylvester Alfred of UEE & CEE. The payment is for fees of Mogbayi Sagay & Co. I can see his name on **Exhibit P48**. The case was done by our Firm. So, I don't know why the name T. S Awhana is appearing on this letter. I know the 1st Defendant was a Director in Quantum Securities. **Exhibit P47** shows he is a Director.

I don't know the total inflow to the 1st Defendant's Access & Zenith Banks. The running expenses are receipted in the Firm. Between when I joined and now, I don't

know how much the expenses of the Firm are. The 1st Defendant knew what to do if he needed running expenses. Omadino Community is still paying the Firm till now. There is a letter in the Proof of Evidence showing how much they've paid and how much is outstanding. **Exhibits P49 and P50** are Letters to NDIC. Agency Fee is 3% for every recovered sum -**Exhibits P50/ P55** is to NDIC for expenses. These payments are paid into office Accounts and then you can make your requests. The money had no business going into that fraudulent Account. **Exhibit P2** is dated 16/10/12. The 1st page, 2nd transaction is the cost of N20,000 which came in after the SAN's death. **Exhibit P56** on 21/05/2012 the Defendant continued to handle the matter for the Firm after the death of the SAN.

I remember I went to Port-Harcourt for Union Bank i.e NDIC when the learned SAN was still alive. He had finished the matter before he died. He was even a party in that matter. When he requested for payment of his fees, the Bank requested for proof that he had concluded the case. Yes, I think this is the court process.

(A certified true copy of the Order of the Federal High Court in Suit No PHC101/96 is **Exhibit P59**).

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I went to Port Harcourt to collect the Order but it was not ready, so I left. Later on they sent it to the 1st Defendant and they forwarded it to us. I went to Enugu and Port-Harcourt and collected the Enugu Order. I can see this document from the Firm. I am seeing this document for the first time. I can see item 22 showing that I collected N50,000 to go to Enugu and Port/Harcourt.

Exhibit P16, the total money given to the Defendant by the Estate for the running of the Firm is N3M plus but, I can't confirm.

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Yes, in **Exhibit P22** when we complained that our salaries had not been paid, Dr Edun paid N1M to the Firm. It is not true the 1st Defendant paid us double salaries. My salary was N75,000 but the 1st Defendant paid me N135,000. It is not double of my monthly salary. John Ebo's salary is same as mine but for this March, he was also paid N130,000 . I can confirm the document stating our salaries with my signature. I joined the Firm in July, 2013. 

(i. An Exercise Book of Weekly Report of the firm of 15/01/2011, ii. A bundle of handwritten schedule of salaries of plain sheets of papers for the months of March-December 2012, another one typed for May, attached with a copy of a cheque. (iii) A 2nd set from January 2013-May 2013 (iv) one for October, 2014 (v) A typed schedule of payment from March 2012 – August 12 are **Exhibits P60-P64 respectively**).

Yes, I said at a point that it was N10M that was lost but when the EFCC was called in, we discovered that far more was missing. The 1st Defendant admitted to be holding some of the monies but that there were expenses he also made, and then we did a set off of those claims by him, we saw that over N10M was outstanding. It was Dr. Babatunde Allen that triggered the whole issue. When we discovered Babatunde Allen's payment paid into the 1st Defendant's Account, we called his attention to it and he made disclosures that these monies were paid into Union and Heritage Banks Accounts and at that point, some other clients too were coming up to say they had also paid our fees into the 1st Defendants Account and they produced evidence of those payments and this is what we used to have meetings on which we arrived at N10M before EFCC came in. **Exhibit P.15** is Access Bank Account. I am not a signatory to it. I can see it was opened on 28/03/12. Yes, the SAN died in February, 2012. Yes, it was opened after his death in the name of the Law Firm and before the Letter of Administration for his Estate was released. The Estate had the Authority of the consultant to open the Account, Prof. Itse Sagay SAN. The 1st Defendant paid into it. Yes the person that opened the accounts was authorized by Prof Sagay SAN, the Consultant. There is a letter from him to this effect. The date of incorporation is 16/09/1990. In the attachment to **Exhibit P.16** the Firm's Account with Zenith Bank the date of incorporation is 22/04/1987. I know of only one date of incorporation and only one Certificate of Incorporation. After the death of the SAN, the law Firm was managed by Prof. Itsel Sagay SAN and he was the one that employed the 1st and 2nd Defendants. Yes, I was not in the Firm when the late SAN died but there are records. I think the 1st Defendant was appointed in 2004 but I'm not sure. Before the learned SAN died, the 2 Defendants were on salaries but after his death, Prof. Sagay elevated

them and increased their salaries with profits. Yes, my Petition to EFCC was written on the instruction of the Consultant and the Estate. It was EFCC that listed me as a witness.

I don't know the exact date Mogbeyi Sagay & Co was incorporated or when the Certificate was issued. I don't know all the facts but the ones I know I state. There are records of what transpired.

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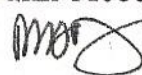
Under cross examination by Ani for 2nd Defendant, he stated thus:-

I joined the Firm in June 2013, Yes, between February, 2012 when SAN died and when the 2nd Defendant joined the firm, I was not yet there. Within this period, the 2nd Defendant was employed by the late SAN. Prof. Sagay had been part of the Firm even from time immemorial even when the late SAN was alive. He had always been a Consultant. They are related. I don't know if he is in a contractual relationship with the Firm or if he is in any form of remuneration by the firm.

The name of the Consultant is not on the Letters of Administration. The Administrators in the Letter of Administration; one of them is an Accountant in the Firm even when the SAN was alive. The Firm is a sole proprietorship. The Letters of Administration were issued in 2012 maybe 28/10/12. The Union Bank Account was opened on 24/09/12 fraudulently after the death of the SAN, before the Letters of Administration were issued and the Firm's account was run by Access Bank. There was a Union Bank Account opened in the lifetime of the SAN. After his death and before the Letters of Administration were opened, the Defendants were acting. The Letters of Administration issued were in respect of his personal properties and the Law Firm as his personal property.

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Mogbeyi Sagay is still a proprietorship. The Defendants were allowed to manage the firm before the issuance of Letters of Administrations. There was an Agreement that the 1st Defendant would be entitled to 12% and 2nd Defendant 10% of the profit of the Firm. Nothing empowered them to open that Account. Anytime they needed money the Estate would oblige them. There were Bank Accounts for the Firm, Access and



company. I was to go to court and I asked my late friend Mr. Mogbeyi Sagay SAN to file the action for recovery of N100M from the debtor company.

The recovery commission/fee stipulated by AMCON was 25%. It was for him to file the action in court and to lead me in the proceedings in Court. This he did but prior to that we entered into an Agreement as to the sharing of the Commission/fee and this was put into writing in the presence of the 1st Defendant. This is the letter which embodies the Agreement I entered into with my late friend Mogbeyi Sagay and Co.

(PW4's letter to Mogbeyi Sagay & Co dated 5/5/2011 is **Exhibit P.65**).

The matter was settled between the parties with the Terms of Settlement filed as judgment of the court. Subsequently, on 21/05/2012, AMCON paid the first part of the commission to me and I issued my union Bank cheque for the sum of N920,000 plus to the 1st Defendant in his name but specifically indicated that the proceed of the cheque should be given to the widow of Mr. Mogbeyi Sagay and the children as agreed to in our letter. Another payment came in from AMCON as a Bank transfer from my Union Bank Account to the 1st Defendant's Zenith Bank Account for N500,000 and specifically again I told him it was meant for Mrs. Mogbeyi Sagay and the children. There 2 payments were made in September 2012. Because I'm not very active in legal practice again after I retired from Union Bank, more often than not I am at my home State in Warri, Delta State, so I shuttle between Lagos and Warri. To my astonishment, sometime last year, I was called by the chambers of Mogbeyi Sagay & Co asking for his shares of the monies as per the letter, **Exhibit P.65** and I was shocked. He was a very dear friend, we all shed tears, we were all at his burial, nobody could eat at his burial, it was a painful thing, so when they asked for the money, I said I had paid and I stated my mode of payment to the 1st Defendant. I must say that I had nothing to do with the 2nd Defendant at all. I just knew him in the chambers simply because of the issues of intestacy going to probate etc, I told him to pay directly to the wife and children so that they won't need to suffer. The matter was concluded before he died. It was only payment that was made after I was

appearing in court under his guidance though I was his senior at the bar but he was the master of the roll.

Cross – Examination by 1st Defendant's Counsel.

The matter was concluded by February when he died. The Terms of Settlement are there. The cheque I issued in the name of the 1st Defendant will be in May 2012. The 2nd one was transferred on 21/09/2012. The idea was that the monies be paid to Mrs. Mogbeyi Sagay and Children to avoid the complexity of application for Probate letters and intestacy. It was the easiest way to do it. We knew each other very well. He appeared with me in court a few times. We both sat down together to work the sharing and there was no suspicion. He was a senior member in chambers and I appeared with him in the matter severally before Justice Okeke. There was no need for any written Agreement. Yes, I was in Warri when the chamber called. I had no personal relationship with the wife. It was strictly professional. I called the 1st Defendant after sometime and he told me he had left the chambers, but this was long after the payments.

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Exhibits P.65 was attention to that person because he was the one that wrote to me from the chambers. So, I replied and marked it for his attention. In fact the 1st Defendant told me why should I agree for 50 – 50 instead of 70 – 30 and I said Mogbeyi is my friend.

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The other Defendants in that case, are part of the debtor company, so they were all joined. It was in their official capacity in index petroleum. Nmamani was the manager and I took the action against them in court. They had their office at Kirikiri Waterside where I used to visit them. There is no dispute at that Mr. Eze Ani signed the settlement himself and gave a copy of the letter accepting the Terms of settlement on behalf of the company and other Defendants because they were his staff. No, it is not true the 2nd Defendant was in the same room with Mr. Mogbeyi at the time of the Negotiation. I did not make any statement to EFCC.

Under cross examination by Eboh, he stated thus:-



It was verbal instruction I gave to the 1st Defendant on the payment and I had no inkling of this drama that is unfolding now. I have no relationship with the 2nd Defendant, I only knew him in the office.

There was no re-examination.

PW5 Babatunde Allen testified thus:-

My name is William Babatunde Allen. I live at 1& 2 William Allen Quarters on William-Allen Street Alakuko Lagos. I am a retired Mechanical Engineer. Yes, I know the 2 Defendants. I met them in Mogbeyi's chambers some years back. One Mr. Okoro has attended to one of my cases before in the Magistrate court. Late Mr. Mogbeyi Sagay SAN used to handle my cases before he died and I met these 2 Defendants there. I had so many cases with the chambers. The last one was the Appeal that was given to Mr. Okoro after he finished it at the Magistrate court, but he failed to do it. The chambers handled them. Late Mogbeyi Sagay attended to my cases for 4 years without collecting a kobo from me because I was down financially. But this case that was given to the 2nd Defendant which he abandoned in 2015 is now continuing with another lawyer. The said case was the Appeal I brought to Sagay before other cases came in. The 1st Defendant had been in the chambers for quite some time before the chambers got burnt and the whole firm was burnt but only my case file was saved. I mean Mogbeyi Sagay Chambers. He took me as a friend, a brother. When I came into the chambers, I paid a registration of N80,000. I knew Mogbeyi Sagay until he died. We were friends. Because I had no money, I didn't go to the chambers again, but after some years when my money came in, I had to search for their new chambers at Ikoyi after the burnt one. When I got to the chambers, I met the 1st Defendant as the head of the Chambers then which he said they would charge me for what Mogbeyi had done for me. Then I opened my pocket and gave the 1st Defendant a N10M cheque, first for the chambers and another N5M Cheque for the family then another N1M cheque, then N700,000 cheque, then N500,000 cash, then another N1M cheque in his name to pay the staff, since 1 or 2 of them came to me that they had not been collecting salaries for months. So, I gave 1st Defendant the



N1M cheque to go and cash it and pay the staff. There was an Appeal case that came up, the 1st Defendant told me to go and find money, I gave him N500,000 cash first and another N500,000 cash before he resigned from the chambers.

The matter on Appeal that the 2nd Defendant abandoned we are now re-appealing now. The cheques I issued to him were for all my cases, almost N18M for concluded and on-going cases. **Exhibit P1** has the name of Mogbeyi Sagay & Co on the Account. I issued the cheques in the name of Mogbeyi Sagay & Co. The 3rd page has 1st Defendant's name on it. On 1/04/2015, N10M was the cheque I issued: On 11/05/2015, I paid in N700,000. On 20/09/2018 was the N1M I paid.

Under cross examination by Ojediran, he stated thus:-

Yes, I was very close to Mr. Mogbeyi SAN before he died. Yes, I did not give him any money before he died. Yes, I gave N10M for the firm and N5M for the family. On 1/4/2015 in **Exhibit P.16** is the N5M I paid to the Estate of Mogbeyi; the 2nd payment. Yes, I remember the case I have against RCCG. I met the 1st Defendant on the cases handled by him. I don't know any Alfa Olaniyan, Ok. He is late now. Yes, I wrote this letter to the 1st Defendant as the head of the chambers of Mogbeyi Sagay & Co on 1/4/16.

(PW5's letters to the 1st Defendant as head of Chambers of Mogbeyi Sagay & Co dated 4/06/2014 and a handwritten receipt on the letter head of Mogbeyi Sagay jointly signed by the 1st Defendant and PW5 on 1/4/2015 are **Exhibits P66 and P67 respectively**)

I did not give the 1st Defendant any cash. Yes, I had a predicament why I did not pay Mogbeyi Sagay when he was alive. The N5M is what I paid to the chambers Account for the work apart from the N5M I paid for the family. This was later after the N10M. (The 2nd paragraph of **Exhibit P66** read).

The N5M for the family was not the cost of the cases but because of what he had done for me and 1st Defendant told me I had to give something for the family and so I gave the cheque in the name of the Chambers. The 1st Defendant discussed with me as head of chambers and after Mogbeyi's death. Lately I paid another N3.1M to the chambers because I still have on going cases with them. I paid in cheque a few

months back. **Exhibit P67**; "The above fee covers already concluded and ongoing matters..." Yes, it includes the case against Sodeinde with me. We are still in court now. Ansalem was my Tenant at Shomolu and Barrister Chris (PW3) in the Mogbeyi Sagay Chambers & Co that is handling it after Mr. Sagay's demise.

Under cross examination by Ani, he stated thus:-

The case at the Magistrate Court I had with RCCG was done by the 2nd Defendant. Yes, he secured judgment in that case. Yes, he abandoned the Appeal. I didn't have money before. My money was paid about 2015 and the 2nd Defendant had left the Firm of Mogbeyi Sagay & Co. Before he left the chambers, the Appeal was assigned to him. The 2nd Defendant did not receive any money from me on behalf of the Firm. Yes, I made payments to the Firm and I don't know how the money was spent.

There was no re-examination.

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PW6 Clifford Kokokgho testified thus:-

My name is Clifford Kokokgho. My official Address is 28, Ajasa St. Onikan Lagos. I am a chartered Accountant and a Forensic Accountant and a Management Consultant. Yes, I know the 2 Defendants as the employees of Mogbeyi Sagay and Co Law Firm which I worked with as the Firm's Accountant and in-charge of Administration. I left to set up my own Practice in 2009 upon the demise of Mogbeyi in 2012. I came in as a family member in order to re-organize his Estate. By 2013, myself, the wife Nneka Helen Sagay and another cousin Mr. Nonina Lawson-Jack were appointed Administrators of the Estate by the Lagos State High Court Probate and since then till now, we have been in charge of his Estate.. After the death of the late SAN, the 2 Defendants who were lawyers in the chambers were appointed by the Consultant to the Firm, Prof. Itse Sagay SAN to carry on with the business of the Law firm. In the course of this, sometime in 2013, one of the Defendants, 2nd Defendant, left. Thereafter Prof. Sagay renewed the Mandate to the 1st Defendant to continue with the management of the Law Firm. The Estate had one Account in M. Sagay & Co's name opened by Prof. Sagay before the appointment of Administrators when the



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Application was pending at the Probate. I was a signatory to that Access Bank Account with the late SAN's wife and another cousin, making 3 signatories. It was expedient to open that Account at the time because clients' monies that were recovered from Bayelsa State Government had to be paid into that Account for onward transfer to the clients. So, the 1st Defendant was sent by Prof. Sagay to go and collect the cheque from Bayelsa. That cheque was paid into that Account. The Clients proportion of that money was transferred to him and the fee for the Law Firm was left. Subsequently, when the Letter of Administration came out, that Account was perfected by submitting the names of the 3 Administrators/Administratrix. All recoveries and incomes from the expenses from the state were also run from that Account. A couple of recoveries were paid into that Account by the 1st Defendant and whenever the Law Firm made requests for funds, they were paid from that Account. In 2015, the 1st Defendant gave the Administrators a proposal of how he wants to run the Law Firm and suggested opening a Bank Account with Zenith Bank where he and the Administrators would be signatories. The proposal was accepted and the Bank Account was opened with Zenith Bank in the name given to the Bank was for any 3 of the 4 to sign. We continued to run that Account with him and monies were also from the Law firm into that Account and whenever request for fund is made to the Administrators, cheques were issued to meet such requests. Along the line upon our Review of the operations of the Estate generally and the Law firm in particular, we discovered that the Law Firm was unable to sustain the needs of the family because almost all that came into the Account went back into the Law Firm as expenses that it became difficult to cater for the educational needs of the children. It took the intervention of a family member to take these children to Jos; 2 of them and place in schools. Because of the obvious shortcomings of the Law Firm, in 2018, the Administrators after consulting with Prof Sagay, who is the Consultant to the firm to close down the office and have a change of management. The 1st Defendant was then invited to the office of Prof Sagay and he was told to round off the affairs of the Firm within one month. This was an early May. But he rounded up even much earlier as he vacated the office on 28/05/2018. After he left, he did not hand over properly

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because he just gave sheet of paper containing a list of cases. Meanwhile Prof Sagay had appointed Barrister Clins Okafor to take charge of the office because he had been a staff in the firm before then. Upon review of the works of the office and the List of cases handed down by the 1st Defendant, it was decided that a formal letter be written to him. The Administrators wrote to him to do a proper handing over. His response prompted having to engage him in series of meetings in order to reconcile figures and also the number of cases and case files. But unfortunately, we could not agree. Barrister Chris Okafor who is now in charge of the Law firm was mandated to take up the case. That led to a petition being written to the EFCC.

This is the proposed Working Agreement written by the 1st Defendant and one of his requests for 12% on recoveries as agreed with Prof-Sagay. They were written to the Administrators.

(A proposed Working Arrangement for Mogbeyi Sagay & Co. by the 1st Defendant dated 25/11/2013 and his handwritten letter to the Administrators of Mogbeyi Sagay Estate dated 2/02/2016 with an attachment dated 03/05/2012 are **Exhibits P68 and P69 respectively**).

Before the demise of the SAN, there were several Accounts operated in the name of Mogbeyi Sagay & Co.

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In **Exhibits P1 and P2**, the Accounts are Heritage and Union Banks but it is not one of the Accounts operated in the lifetime of Mogbeyi Sagay nor was it opened with the knowledge of the Administrator of Mogbeyi Sagay & Co. They were not in existence during his lifetime neither are we aware of their existence. They must have been fraudulently opened. The late Mogbeyi Sagay SAN died in 2012. The Administrators were fully constituted in 2013.

The Heritage Bank Account in **Exhibit P1** was opened in 2014. The signatory to this Account is the 1st Defendant signature.

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Under cross examination by Ojediran, he stated thus:-



Yes, I am a Chartered Accountant, Forensic Account and a Management Consultant. I was trained in Akintola Williams & Co between in 1991 till around 1992. Yes, I found my own Management Consultancy Firm in 2009 when I left Mogbeyi Sagay & Co. It's a one man show. I started work with Mogbeyi Sagay in 1992 and left in 2009. Yes, when he was alive. Even after I left, he still engaged me as an Expert witness at an Election Tribunal in Asaba. When I started working with him, in 1992, there was no formal letter. Yes, I made a statement to EFCC on 6/11/2018. This is the said statement. The Estate of Mogbeyi Sagay wrote a letter to the 1st Defendant which I also signed. This is the letter 27/7/18.

Exhibit P31 is the Letter of Administration. Even though the law Firm is not stated on it, it forms part of the Estate. The figure stated as the total asset of fees summed up is N66,793.34. This is not the Estate Value but the fees percentage paid to the Lagos state Government on this disclosure. Okay I see that that is the value and the percentage is N6,679:00k.

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The Access Bank Account in **Exhibit P.15** was after the Letter of Administration in **Exhibit P.31**. The account is not in Mogbeyi Sagay & Co's name but in M. Sagay and Co. **Exhibit P 16**. The Certificate of Registration of Mogbeyi Sagay & Co is dated 22/04/1987 and that of M. Sagay & Co is 16/03/1990. But they are not the same incorporation. Access Bank Account in **Exhibit P15** was opened one month after the death of Mogbeyi Sagay. It has an inflow covering 2012 to 2019. On 17/04/2012, I withdrew N550,000. On 09/04/13, I withdrew N200,000. On 22/05/2013, I withdrew N430,000. The total withdrawal by Mrs. Sagay is about N43M between 2012 and 2018.

Under cross examination by Ojediran, he stated thus:-

I remember my statement on 6/11/2018. Our letter to the 1st Defendant dated ...

(A letter from the Estate of Mogbeyi Sagay to the 1st Defendant dated 27/07/2018 is **Exhibit P70**). 

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The 2nd sentence of the 2nd paragraph in **Exhibit P.70** (read) to close the Law office was the initial decision. The decision rests on the Administrators whether initially or after. It does not rest on any other person. None of the administrators/Administratrix, Mrs. Nneka Sagay, myself and Mr. Monima Lawson – Jack is a Legal practitioner. We had discussion with the 1st Defendant who wrote a letter on how the Firm would be run and letter of engagement was given to him by Prof. Sagay. I tendered it already.

On the last page of **Exhibit P70**, we demanded for some missing files from the 1st Defendant as the one running the Firm. The 1st paragraph read out, "Note you have terminated our appointment" We gave them authorization but not without control. He himself captioned our agreement in writing which I already tendered. The authorization is in the engagement letter Prof Sagay gave to him and the letter I tendered. **Exhibit P.69** annexure is the Letter of engagement. Prof. Sagay is the Consultant to the Firm and he is the senior brother to the late Mogbeyi Sagay and when he was alive, he remained Consultant to the Firm. Yes, he worked with Prof Sagay when he was alive. The nature of the authorization was not necessary to be indicated in **Exhibit P70**.

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The Letter of Administration in **P31** is dated 28/10/2013. Yes, we applied earlier but I can't remember the date. Yes, our authority flows from this Letter of Administration, **Exhibit P31**. Before the Letter of Administration was applied for, the family already agreed that the 2 of us should act as the Administrators of the Estate upon which the Application was made to the Probate Registry.

The 1st Defendant already wrote to us and gave himself a limit as to how the Firm would be run and we followed it. **Exhibit P.69** paragraph 9, "An Account of all recovered monies will be open in Zenith Bank Plc to be operated by the 3 Administrators and myself..." This was done with the Mandate that any 3 can sign and we gave him custody of the cheque book. We discussed it with him and verbally agreed. **Exhibit P.15**, Access Bank Account No. 0056022445 was opened one month after the deceased passed on dated 28/03/2012. Exhibit P31 couldn't have been listed with Exhibit P15 because all those listed were those where the deceased was the sole signatory and the purpose of listing them was to be able to access and operate those accounts. Prof Sagay facilitated the opening of **Exhibit P.15**.

Under cross examination by Mr. Ani, he stated thus:

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I am a chartered Accountant. Mogbeyi Sayay himself employed me. He did not issue a letter of employment to me, not even to the Defendants. I was an Accountant to Mogbeyi Sagay & Co and I was also in charge of Administration. There is no payroll

ma

before the court but the Defendants also cannot deny the fact. We came in as Administrators and became signatories to **Exhibit P15** after application for Letter of Administration had been made. I worked for Mogbeyi Sagay & Co. There is a registered firm, M: Sagay & Co. initially he practiced as M. Sagay & Co. but he registered Mogbeyi Sagay & Co. with which he practiced till he died. Yes, we opened **Exhibit P.15** with M. Sagay & Co after he died.

Yes, I made a statement to EFCC. Yes, Chris Okafor wrote the Petition to EFCC. I am aware of it. The Petition was initially against the two Defendants because of the Union Bank Account they opened together. In my statement to EFCC, because the 2nd Defendant left much earlier and he did not stay that long for me to have mentioned his name. I am an Administrator of the Estate and no longer an Accountant. The Petition is that there was an infraction which had to be investigated. Yes, one is the opening of the union Bank by the two Defendants in the name of Mogbeyi Sagay & Co. They are not the Administrators and so should not have opened the Account without our authorization. There is no memo for or against it.

There was no re-examination.

PW7 Dan Ekpar Azibagiri testified thus:-

My name is Ekpar Dan Azibagiri of 15A Awolowo Road, Ikoyi, Lagos. I am an Operative of the EFCC presently at the Zonal (Lagos) office. As an Operative, my schedule is general investigation of all cases assigned to my team; interviewing of Complainants, Suspects, Witnesses, Statements taking, carrying out arrests of Suspects, writing letters of investigation activities, investigation Reports, intelligence gathering, formulas and other duties assigned to me by my superior officers. My team members in the EGC Team 3 are Ahmed Ghali as head of the Section, my team leader is Boniface Uzoechi myself, Patience Kalu and Timilehin Arogundade. Yes, I know the Defendants. I got to know when a Petition was assigned to my Team for investigation sometime in 2018. It was written by one Chris Okafor of Mogbeyi Sagay & Co against the 1st Defendant alleging that the 1st Defendant fraudulently diverted and converted monies belonging to the Estate of Mogbeyi Sagay when the 1st Defendant was the head of the Chambers of Mogbeyi Sagay & Co. The Petitioner alleged that at the demise of Mogbeyi Sagay SAN, the principal of the chamber, the 1st Defendant was engaged as the head of the Law Firm alongside other lawyers in the Chambers and that a Zenith Bank Account was opened in the name of Mogbeyi Sagay & Co wherein the 1st Defendant was made a signatory to the Account together with 3 Administrators of the Estate of Mogbeyi Sagay. The account was opened for the general running of the Chambers, that the cheque book of that Account was domiciled with the 1st Defendant until 2018 when the 1st Defendant left the Chambers

and handed over the cheque Book to one of the Administrators. When the 1st Defendant had left, the Petitioner alleged that he discovered that some fraudulent Accounts were opened by the 1st Defendant in Heritage Bank, Union Bank and FCMB without recourse to the Administrators. This **Exhibits P.3** is the said Petition. **Exhibit P.16** is the Zenith Bank Account the 1st Defendant opened and the signatories are himself, Mrs Nneka Helen Sagay, Clifford Okokgho and Monini Wittington Lawson – Jack. The Account was opened on 31/07/2013. There are credits of total of N23.3M into the Account. On receipt of the Petition, preliminary investigations were carried out. Letters were written out to Zenith Bank, Heritage Bank, Union Bank, FCMB and CAC. Response from Heritage Bank Account of Mogbeyi Sagay & Co revealed that the 1st Defendant was the sole signatory to the Account. Response from Union Bank and FCMB Accounts of Mogbeyi Sagay & Co revealed that both Defendants were both signatories to the two Accounts without having any of the Administrators as signatories to the two Accounts. The 1st Defendant was invited and he was given opportunity to invite his lawyer who came to witness the interview. The Petition was given to the 1st Defendant to ascertain why he was invited. He read through it and acknowledged he understood and that he wished to make a statement even when he was not obliged to do so. In the presence of his lawyer, the cautionary words were read over to him and he said he understood and he signed below it and his lawyer countersigned. The 1st Defendant gave us a voluntary statement admitting he was a staff of Mogbeyi Sagay & Co and that he opened the Zenith Bank Account as sole signatory. He also admitted opening the Accounts in Union Bank, FCMB Heritage Bank with him and the 2nd Defendant as the only signatories to the three Accounts. The 2nd Defendant was also invited. He reported with his lawyer and he made voluntary statement under words of caution. He admitted being an Employee of Mogbeyi Sagay & Co and also a signatory to FCMB and Union Bank Accounts and that he was not aware of the Heritage Bank as at when it was opened. Some Audited Reports of the Law Firm were recovered showing the incomes and Expenditures of the Firm.

From my investigation, it revealed that the two Defendants were under the employment of Mogbeyi Sagay & Co before the death of Mogbeyi Sagay SAN before he died in 2012. After his death as principal, their services were engaged by Prof Itse Sagay SAN who is the Consultant to Mogbeyi Sagay & Co for them to manage the affairs of the Law firm. Investigation further revealed that the Zenith Bank Account was opened in the name of Mogbeyi Sagay & Co having the 1st Defendant as one of the signatories with 3 Administrators of the Estate of Mogbeyi Sagay & Co. It revealed that in a bid for the Defendants to fraudulently divert the monies belonging to the Law Firm of Mogbeyi Sagay & Co; they opened other

Accounts in Union Bank and FCMB as signatories to the 2 Accounts. The 1st Defendant single handedly opened the Heritage Bank Account in the name of Mogbeyi Sagay & Co and made himself the sole signatory. Those Accounts fraudulently received clients' funds meant for the Law Firm and diverted all the funds to their personal uses. **Exhibit P1** is the Heritage Account with the 1st Defendant as the signatory. It was opened on 11/09/2014. In the statement of Account there were several credits of total of N80,985,875.80. Total debit is same amount and the balance of 0.00. The withdrawals were by the 1st Defendant severally. The signatories in **Exhibit P2** are the two Defendants the Account was opened but date is not shown here. There were credits and debits. The debit columns have the names of the Defendants as withdrawing. There were several payments to various of their cronies. These are the Defendants extra-judicial statements. I was present when they were recorded.

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(The 1st Defendant's extra judicial statements dated 10/01/19, 11/01/19, 14/01/19, 14/01/19 and 16/01/19 and the 2nd Defendant's dated 18/01/19 and 25/01/19 are admitted as Exhibits P71-76 respectively).

These are the Audited Reports I mentioned, 2012-2018.

(The Audited Financial Statements of the late Mogbeyi Sagay Estate for the years 2012-2018 by the Firm of Orji Ayah & Co PW7 are **Exhibits P77-83 respectively**).

Page 4 of **Exhibit P77**, item 7 "Law Firm Expenses; N8,411,650M, Clients' Deposits; pg. 9 Analysis of Law firm Expenses total is N8,411,650M Clients' deposit of N200M in 20 tranches.

Page 5 of **Exhibit P78**, "Mogbeyi 2013: Received sum total is N241,339,096.59. Payments/expenses is N8,440,900.

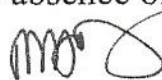
Exhibit P.81, P.7, Income total is N1.537,368.50M. Lexicon International Ltd rent of the Law Firm N2M, 1st Defendant N1M+ N550,000.

Under cross examination by Ojediran, he stated further thus:-

Exhibit P.15, I see Manager's cheque paid in. In the Audited Report in **Exhibit P77** on p.1, the Bankers are Access Bank Plc and Stanbic IBTC. It is stated that the Administrators were responsible for the preparation of the Financial Statements. **Exhibits P.71** is the 1st Defendant's statement on 10/01/2017. The 1st Defendant was invited and he reported. But investigation is a continuous process.

The 1st Defendant 's statement on **Exhibit P72** was not in the presence of his counsel because he stated that he wished to do in the absence of his counsel. On Page 26 the

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1st Defendant mentioned names of some people who paid him like Mr. Albert Ikomi and that these monies were not professional fees. The Defendants failed to provide Dr. Ikomi to the Commission. He wrote "...some fees were paid in particularly from Contemporary Designs and Associates Company Ltd...I have been shown my Zenith Bank Account...where the following transactions took place, Mr Albert Ikomi on 25/1/2012 paid...There were monies meant for transportation cost to Abuja for Dr. Ikomi...Dr Ikomi is available to throw more light on these monies. These monies were not professional fee to the Firm..." But he did not provide tickets or boarding passes to prove this. Those were his claims that all the monies were for transportation but he did not provide proofs.

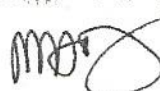
Witnesses reported to the Commission. In **Exhibit P31**, the 2nd page, the Law Firm is not mentioned, but it is stated as the properties of Mogbeyi Sagay & Co owned by Mogbeyi Sagay SAN. Prof. Itse Sagay's letter to the Commission confirms the services of the Defendants. I can't recall the letter of appointment by Prof Sagay. The Banks' statements show several payments not to the knowledge of the Administrators and the 1st Defendant was the sole signatory making withdrawals. The statements of Account show the names of the clients paying monies in the name of the Firm. **Exhibit P79** shows list of Assets as at 2014 and reconciliation of Banks movements. The Audited Reports are to show that monies are usually appropriated for the running of the firm. Yes, our investigation is founded on the petition by Chris Okafor.

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Under cross Examination by Ani, he stated thus:-

The Petition was written against the 1st Defendant. Yes, I interviewed and took statements from witnesses. We don't need to have any witness indicting the 2nd Defendant directly because the 1st Defendant in his statement stated that he and the 2nd Defendant opened and operated Accounts. Then Bank statements also confirmed this. Yes, after the death of Mogbeyi Sagay SAN, they were running the Firm. I can't remember seeing any document that prohibited them from opening other Accounts. Yes, some monies were traced into their accounts and as signatories to the Accounts. The 2nd Defendant made statement that the monies traced to his Account were paid to him by the 1st Defendant as expenses incurred for the cases he handled on behalf of the Firm. These payments were from fictitious Accounts. The 1st Defendant in his statement admitted that the payments made to the 2nd Defendant from these fictitious Accounts where none of the Administrators were signatories were all suspicious transactions. I do not know what documents the Auditors used in preparing their Audited Reports and I cannot state if they said any fund was missing. I am aware that one of the Reports shows Bank Reconciliation. No receipt was submitted by the

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Defendants on any expenses incurred but only verbal explanations. I do not know how the sum alleged against the 2nd Defendant was arrived at. I am not in the Legal Department charging.

There was no reexamination.

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PW8, Ben Daminabo testified thus:-

I am a Public Servant with AMCON and have been from June 2011 till date. As at today AMCON seconded me to **one** its subsidiaries, the Consolidated Discounts Ltd, CDL, as the Managing Director. As at the date of incident, I **was** the Chief Legal officer of AMCON from 2011-2015. I got a subpoena addressed to my Managing Director asking me and my colleague, Ayomide Williams to come to court today. I have attached letters dated 27/08/12 purportedly signed by me and my colleague Ayomide Williams. Both letters were similar though they differ, one addressed to Mogbeyi Sagay & Co handling one of our matters; Resort International Ltd stating that AMCON was willing to pay quantum **meruit** on work done, and the other stated they had not recovered anything and therefore not entitled to any fees. When we received the subpoena with the attached letters we went through our records and we could only find the letter stating that we are willing to pay quantum **meruit** for work done. The 2nd letter could not be found in our files and we wonder how it came about. In response to the one we found the Firm of Mogbeyi Sagay & Co responded by a letter dated 30/08/2012 requesting to be paid N2M for work done and listed what they had done. We AMCON responded on 5/09/2012 offering to pay N1M. On 18/09/12 the firm responded to the said letter accepting the offer of N1M and gave the Account details to pay the money into it was signed by the 2nd Defendant. Based on this, payment was made to the Firm as agreed and the Firm returned our file to us. The letters are certified from our office. The originals are in the office.

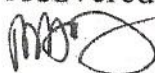
((i)AMCON's Letter to Mogbeyi Sagay & Co. dated 27/8/12 (ii) Letter from Mogbeyi Sagay & Co addressed to AMCON dated 30/08/2012, (iii)AMCON's letter dated 05/09/2012 (iii) AMCON's letter dated 05/09/2012 (iv) Mogbeyi's letter dated 18/09/2012 and (v) another one dated 5/10/12 are **Exhibits P84 -P88 respectively**)

Exhibits P6 and P7, the 1st is the one we could not trace in our record while we could not trace the other.

Under cross examination by Ojediran, he testified thus:-

Yes, AMCON appointed the Firm of Mogbeyi Sagay & Co. as a Recovery Agent for the non-performing loans. Yes, our letter of instruction is dated 22/12/11. The letter is in our office. The percentage is 5% of any recovered sum. At the time we saw the

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record, nothing was recovered yet. **Exhibit P.7**, the 3rd and 4th paragraphs "Note that pursuant to our instruction as accepted by you, and as indicated in the letter dated 22nd December, 2011, you are only entitled to 5% of any sum recovered by you" This does not confirm my testimony. No money was recovered as then. It is not the business of AMCON to know how the funds paid to a firm are being expended.

There was no re-examination and the Prosecution closed.

1ST Defendant opened his defence with Chief Joe Arausi as DW1. He testified thus:-

My name is Chief Joe Arausi. I live at Oruo Isoko South Delta State, No. 12, Old Elemolo Road. I am a lawyer/Banker. I am the Chairman of IC-Global Microfinance Bank. Yes, I know the 1st Defendant. He is a lawyer. He and I were co-DirectorsBoard Members of Quantum Securities Ltd, Yaba, Lagos.

Yes, I had a professional engagement with the 1st Defendant in the course of our meeting in Quantun securities Ltd, Yaba – Lagos. I complained to him that one Mathew Olusegun Aworemi defrauded my Micro finance Bank IC-Global up to the tune of N38M in 2008 and that I wanted to engage him in pursuing the case in EFCC. I complained to the 1st Defendant in 2013-2016. The 1st Defendant took the brief to pursue it to EFCC and recover the N38M. Yes, I put it in writing. This is the confirmation of instruction to carry out the matter with EFCC.

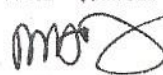
(DW1's confirmation of Instruction to the 1st Defendant dated 25/06/2016 is **Exhibit D**).

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The 1st Defendant commenced the purpose of which I engaged him with EFCC who reached out to Mr. Olusegun Aworemi. After a time, we agreed with Aworemi to settle the matter that he would pay N25M to my IC-Global Microfinance Bank instead of N38M. There was no court proceeding. No case was filed in Court. I can now see this document. It is the same as **Exhibit P41** shows a case in the Federal High Court Suit No FCH/C/L/C51716/2015. My Bank is mentioned. It was First City Microfinance Bank before Central Bank of Nigeria advised us to change the name. The Applicant there is Olusegun Aworemi and the Respondents are EFCC, myself and my Bank.

By last Sunday (18th July 2021) I became 71 years old. The 1st Defendant was involved in the negotiation with the lawyer of Aworemi and as instructed by me and we signed Terms of settlement for the N25M. I signed for my Bank and the money was to be paid in one bloc but along the line Aworemi suggested instalmental payment. I also agreed with the 1st Defendant to be collecting instalmental payment on my behalf. I signed **Exhibit P42**. It was when the 1st Defendant drew my

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attention that he was leaving Mogbeyi & Co and I told him to transfer whatever Aworemi paid to him to his own personal account pending when he would send the whole money to the account of IC-Global. Yes, IC-Global eventually received the total amount of N23,150M out of the N25M. There was no dispute with the 1st Defendant because he forwarded the N23,150M he received to our Account. I agreed to pay the 1st Defendant 5% of the sum recovered including other expenses. I did not meet with Mogbeyi Sagay SAN. It was a direct contact with the 1st Defendant. I don't know Prof Itse Sagay SAN and never met him. I don't know Mogbeyi Sagay's wife or any other person beside the 1st Defendant.

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Under cross examination by Prosecution counsel, he stated thus:-

No, I do not have a Law Firm. I am not a practicing Lawyer. Yes, I gave the 1st Defendant instruction to act more than once; first, oral and by documentation. Yes, documentation was twice. My signature in **Exhibit D** is not fresh. My signature in **Exhibit 41** is also not fresh. They look the same it depends on the time of signing. They reflected my authority. The 1st paragraph of **Exhibit D** (read) ;“I Chief Joe Arausi of 9 Hughes Avenue, Yaba, Lagos do hereby confirm that I instructed Tom Awhana of Mogbeyi Sagay & Co...to act as my Solicitor...” I gave instruction to Tom Awhana, not to Mogbeyi Sagay & Co. Paragraph 1 of **Exhibit 41** to Tom Awhana of Mogbeyi Sagay & Co. my instruction is to Tom Awhana, not Mogbeyi Sagay & Co. That's what I wrote.

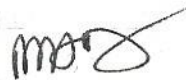
My letter in **Exhibit 42** is addressed to T. S Awhana of the address Mogbeyi Sagay & Co. Yes, I know Mogbeyi Sagay & Co is a Law Firm. As-at the time I wrote this letter, I would not know that Mogbeyi Sagay had already died. It was in the pendency for this case that I knew he died. When I instructed the 1st Defendant to recover the funds, I did not direct him to receive these funds into his personal account or not. My own concern is how the money gets to me. Immediately after my signature in **Exhibit 41** is, “T. S. Awhana for Mogbeyi Sagay & Co.”

Tom Awhana signed it for Mogbeyi Sagay & Co. The attachment; Terms of settlement in **Exhibit 41** was not filed in court. The License to operate the Microfinance IC-Global was given by CBN. It started in 1991 in Itsoko Community Bank under the Presidency.

By 2008, CBN took over all Community Banks and the license was given after that. “Client Account” is the Account of the Law Firm and not the personal account of the lawyer.

There was no re-examination.

DW2 Bello Olasumbo Adio testified thus:-



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My name is Bello Olasunbo Adio. My office address is 29A, Afolabi Aina Street, Ikeja. Lagos. I am an Auditor and an Accountant. I am a Fellow of the ICAN, Institute of Chartered Accountants of Nigeria, a fellow of the Institute of Bankers, Institute of Taxation, MBA and BSc. of Lagos State University. I started with Audit with Marinho and Partners Chartered, Oceanic Bank Inspectors Department in 1992 and I spent 23 years, Eco Bank. 18 years of the 23 was in the Internal Control and Audit Department. I retired in 2016 in Eco Bank and started personal Audit in 2017 till date as Bello Olasumbo Adio Audit Firm. I am here in court to give a summary Report based on the engagement of the 1st Defendant on the Accounts of Union Bank and Heritage Bank analysis of Mogbeyi Sagay & Co. This is my said Report.

(DW2's Analysis of Bank Statement of Mogbeyi Sagay & Co (Law Firm) For UBN Plc and Heritage Bank of Nig. PLC dated 26/11/2021 is **Exhibit D1**).

In **Exhibit D1** based on the transactions and statements of the UBN and Heritage Bank, page 4 Executive summary, the total inflow into the 2 accounts was N114,150,855.32, the total withdrawals were N114,141,765.58. This was as at 2012-2016 (5/05/16) for UBN and Heritage from 8/10/2014 -25/07/2015. It is broken down to appendix 1A on page 10, 1B of page 11 and 1C on page 12 from pages 13-16, we have deposits of UBN fully analyzed withdrawals of UBN from pages 17-24A. For Heritage Bank inflows are on pages 25-28 fully analysed. Withdrawals are on pages 29-43A. Summary of deposits made into the 2 Accounts meant for the client are on pages 44-45. For refunds to the clients, are on pages 46-49. Notes to the Report, are on pages 50-59 which are details of the breakdown of most of the expenses. From all these breakdowns, of the N114M total inflow, only N43.99M relates to the Firm, Mogbeyi Sagay & Co. The rest are client's funds, returned cheques, personal funds of the 1st Defendant contained on page 10 of the Report.

Under cross examination by Mr. Oyedepo, he stated thus;-

I am aware of the ICAN professional code of conduct. I am aware of the 2017 code of conduct. I am also aware of the Guidelines of the International Federation of Accountants IFAC. My immediate responsibility as an Auditor engaged by a client is verification of the reports given to us for review. I was engaged in April 2021 by the 1st Defendant. My letter of engagement is not here. The letter did not state that the report given is subject of a criminal investigation. Yes, I have juniors in my firm. My Firm cannot be audited without my approval. Yes, I sought and obtained the permission/approval of Mogbeyi Sagay & Co indirectly before auditing because I was shown a letter that shows Tom Ahwana as head of Chambers. Circumstances might demand it. The letter is from the 1st Defendant, not Mogbeyi Sagay & Co. We audited Mogbeyi Sagay & Co's Union Bank and Heritage Bank Accounts. The office

address of Mogbeyi Sagay & Co. is 29 Ademola Street, Ikoyi. Lagos based on the information given to us by the 1st Defendant. Yes, I did not visit the Firm of Mogbeyi Sagay & Co. throughout the Audit, Yes, the 1st Defendant told me he was no longer in the services of Mogbeyi Sagay & Co as at when he engaged me. No, I did not exchange any correspondence with Mogbeyi Sagay & Co. All correspondences were with the 1st Defendant. Yes, I was paid a fee of N400,000 by the 1st Defendant, both cash transfer. He did not tell me that while he was in the employment of Mogbeyi Sagay & Co., he opened another account or that funds were diverted into the said separate account. My juniors in my firm cannot open an account in the name of my firm without my knowledge. If I am aware that the entire transactions that entered the said separate account were surreptitiously conducted, it is for the court to decide.

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In the course of my analysis, I did not interact with one of the clients. I met Chief Arausi of IC Global in Lagos in the 1st Defendant's office at 99, Awolowo Road, Ikoyi Lagos. It is stated in my Report that the 1st Defendant applied for the statements of the Accounts of the two Banks and the Banks did not avail him. The last paragraph of **Exhibit D1** "I made efforts at obtaining... without any positive response" When he failed, I did not approach the two Banks. I also did not approach Mogbeyi Sagay & Co. for these two accounts. We didn't make any attempt to do that. All I have in my report as stated on page 2 are based on what the 1st Defendant told me and gave me supporting documents. They are not attached to the Report. If there is need for it, I will bring the supporting documents, 1A, 1B, 1C are appended. The 1st Defendant attested to the Report on 26/11/2021 in his personal capacity. As at this time, he is no longer the head of chambers of Mogbeyi Sagay & Co. Yes, I am seeing **Exhibit P1** and **P2** for the first time. Page 2 of **Exhibit D1**, in my Report, I did not audit or analyse the Account of UBN number 003787746..., it is not included in this analysis. Yes, my Report was completed on 26/11/2021. The 1st Defendant was the one who told me that part of the funds were his own personal funds. No, I did not verify from Mogbeyi Sagay & Co. Page 13-43A of my Report shows my narrations of the two Accounts. For Heritage Bank it is on pages 25-43A. On 12/12/2014, there was an inflow of N1.5M by Ostojo Nig. Ltd showing it was for an Appeal he conducted in Benin. In **Exhibit P1**, the narration of 12/12/2014 FCMB is Astojo Resources Nig. Ltd, with N1.5M credit. No, it did not say it is as a result of the effort of the 1st Defendant. Yes, my analysis in my Report is based on what the 1st Defendant told us and the documents he gave us. The space provided by the Bank in the statement of Account cannot contain all the narrations. The entry of 16/12/14 shows that when the N1.5M came in, the 1st Defendant withdrew N400,000 by cheque. MB

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No, I do not know the 2nd Defendant. The signatories in the accounts that I analysed is the 1st Defendant alone. That's what he told me. No, he did not give me the Mandate of the accounts I analysed. On 8/10/14 to 7/04/2015, I don't know how many counsel were in the Chambers of Mogbeyi Sagay & Co. Between this period from 1/10/14 and 7/04/15, the Bank will not narrate salaries if there was no mandated to do transfers. I am not aware if Mogbeyi Sagay & Co pays salaries by transfers. On 4/03/2015, there was an entry of N5.5M on behalf of Financial Derivative. It is contained in my Analysis. We don't need to verify from customers but the client. When this fund came in, the 1-5 withdrawals of N700,000, N150,000, N550,000, N250,000 and N740,000 were all withdrawn by the 1st Defendant leaving a balance N3M+. They were well analysed. Another N10M came in 1/4/2014. No, my analysis did not reveal that all these funds were converted to the personal use of the 1st Defendant who engaged me. In my analysis in **Exhibit D1** on the N55M Derivative is on page 25 shows client's fund. The whole of Report is based on the analysis given to us by the 1st Defendant. Details as provided by the 1st Defendant that from the income generated only N3M+ belongs to the Firm, "Income generated through Garnishee..." was generated by the 1st Defendant, not my Finding.

On the N10M from Allen William Babatunde, it was not my Finding that it was an income generated in 2015 but the statement given to us by the 1st Defendant. The various details I gave are not my Findings but the statement given to us by the 1st Defendant that the N10M was generated through the personal effort of the 1st Defendant from Allen Babatunde. This one is not with any supporting document. It is based on what the 1st Defendant told us. He said it was an income for the Firm. He did not tell me how he utilized the N10M. All the expenses are analysed. From **Exhibit P1**, N10M came in on 1/4/2014, on 7/4/14, the 1st Defendant withdrew N160,000 for compilation of Report of cases. That's exactly what he told us. Yes, it is what he told us that we put in the Report. He transferred N2M to Buluku Felix on 13/04/15. It is also in the 2 Reports, page 31 of **Exhibit D1**. No, I did not see any receipt because he made efforts to get it but it was not given. My understanding is that Chief Felix Buluku will soon be here to give evidence as the landlord of the chambers. On 27/04/ and 4/05, the 1st Defendant withdrew N650,000 and N450,000 for transportation, lodging and loans to staff were not from my Findings but on what he showed us that he has flight tickets, lodgings receipts. He has the details of the loans to the staff of Mogbeyi Sagay & Co where he is the head of Chambers. I don't know the name of the staff. There is one Toyin but there is no specific person as staff who took loan; none. Toyin is just a staff. I saw the flight tickets of the 1st Defendant. He provided some analysis as flight, tickets, lodging and loan based on what the 1st Defendant told us. On 4th June-4th November 2015 N500,00, N100,000

N900,000 N450,000, N100,000 etc were all in the name of the 1st Defendant. The analysis is on page 31. N700,000 as Default Fee on page 31A, Mr Allen Babatunde paid N700,000 on 11/05. I don't need to know the Suit number. **Exhibit P1**, shows the N700,000 payment by Mr. Allen Williams Babatunde, but in the statement in my Report that it is as Default Fee is what the 1st Defendant told me, not my own Findings.

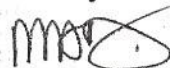
The 1st Defendant withdrew N900,000 on 11/06/2015 as salaries on page 31 column 31. This is like a cash book because expenditure is always too large, so read page 31-31A. Yes, he is the one who told me that he used N700,000 out of N900,000 as default fee. Salaries are paid as at when money is available. It is in the Note on pages 50-51. I was shown the receipt of acknowledgement of N200,000 of the staff of Mogbeyi Sagay & Co. We have salary schedules of several months. It is part of the supporting documents we were given by the 1st Defendant not Mogbeyi Sagay & Co in his capacity as the head of chambers as at that period. The schedule I saw is hand written. No, it was not a register and they were signed. It only has names of people on the papers. It is not stated on top of it that it was Mogbeyi Sagay & Co. Some of the staff are still with the 1st Defendant and I called them and they confirmed that they received salaries. No, I did not interview them in relation to the separate account opened by the 1st Defendant. Apart from **Exhibits P1 and P2**, I did not see any other statements of Account. We are not aware of any other statements of Account. For funds meant for salaries I have no other record to consider. He did not tell us the accounts were opened without the consent of the Firm of Mogbeyi Sagay & Co. From what I analysed from the statement of accounts, there is no narration that will show salaries, transport. It is the customer withdrawing the narration, except you give instruction to the Bank to transfer. Salaries can also be paid in cash. We have a copy of **Exhibit P2**. It is the same as what we have in our record. Yes, I am just seeing this original for the first time today. The signatories to this Account are the two Defendants. I am just seeing the 2nd Defendant today. No, I did not receive any document from the 2nd Defendant and none from Mogbeyi Sagay & Co. My Report is based on what the 1st Defendant told me and supporting documents as stated in the Report. On 21/11/2013, there was a deposit of N1.831M. On 28th and 27th withdrawals of N100,000 each. This Account is not stated as a non-Salary Account.

On 1/12/2012, COT-non-salary Account, there were COT's for the withdrawals- non salary Account on 28/3/, 30/04, monthly From **Exhibit P.2** on 29/01/2013, there was a deposit of N500, 000 which reflects on page 13 of my analysis on **Exhibit D.1** is said to be for Governor's consent. We did not see the Government Treasury Receipt for this but based on what the 1st Defendant told us it is meant for a customer/client. This is what the 1st Defendant told us. There was a sheet he gave us showing the

various payments made. The client made payment to another Firm that did the job. The 1st Defendant collected the money and made another payment on his behalf and gave the receipt to the client. The client; Construmart Nigeria Limited paid ₦500, 000. Before then the balance in the account was ₦5, 000. After the credit of ₦500, 000 the 2nd Defendant withdrew ₦225, 000 and left a balance of ₦183,000. The 1st Defendant gave ₦15, 000 to Babatunde Ishola leaving ₦226, 731. On same 28/02, 2nd Defendant withdrew another ₦220, 000 leaving a balance of ₦42, 000 in the account. It analysed the receipt not the expenditure. About ₦445, 000 out of the ₦500, 000 paid in was withdrawn by 2nd Defendant. Page 18 of my analysis captures it as office expenditure. The 1st Defendant gave all the analysis. We obtained supporting documents as well. All the Information and activities of the Mogbeyi Sagay & Co are with the 1st Defendant as the then head of Chambers. The documents are available. I did not see any document signed by the 2nd Defendant that he received ₦425, 000 as office expenditure of Mogbeyi Sagay & Co. The Bank Statement has the narrative. The confirmation of the head of chambers was more than enough. There were receipts for generator repairs, Air Conditioner maintenance and other expenses for the office. The 2nd Defendant is not the only one who made withdrawals from the Firm's account.

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No, I am not aware that Funds were provided by the Administrators of the Estate of Mogbeyi Sagay & Co for the running and expenditure of the Chambers. No, the 1st Defendant did not tell me that the Administrators of the Estate did not know about the opening of **Exhibits P1 and P2**. On 25/03/2013, a deposit of ₦1M was made by the 2nd Defendant. The cheque was issued by Arbico Nigeria Co. from my analysis on page 13. But the resource document did not show the Issuer of the cheque. What was stated is the First Bank cheque number as shown in Column 6. Yes, it was the 1st Defendant who told me that it was settlement from Arbico Nigeria Plc. On 25/03/2013, when the ₦1M was deposited when the balance was just ₦42, 000+ and upon the payment of ₦1M, the 2nd Defendant withdrew ₦1M on 28/03/13. It is captured in Column 19A of my Analysis as Rent for the 2nd Defendant. The 1st Defendant told me it is for the rent of the 2nd Defendant. No, I never heard of Mogbeyi Sagay SAN at all. On 25/04/13, Arbico paid another cheque of ₦1M, the balance came to ₦1, 032, 000. ₦80, 000 was withdrawn by the 2nd Defendant. 1st Defendant took ₦920, 000, 000. On 23/05/13, Arbico paid another ₦1M and 24/06/13 another ₦1M was paid by Arbico. But on the 23/05/13, 2nd Defendant took ₦75, 000, 1st Defendant too ₦925, 000. On 24/6/13 the 2nd Defendant took ₦70, 000 while 1st Defendant took ₦930, 000. The analysis from what the 1st Defendant told us is on Page 19 withdrawal by the 2nd Defendant of ₦75, 000 as transport fare to Port Harcourt as what the 1st Defendant told us. It was by Air but the 1st Defendant did not

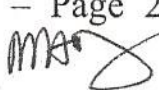


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make the ticket available because the trip was by the 2nd Defendant. The ₦925, 000 the 1st Defendant took from the ₦1M is on page 20A roll 28, money set aside for the purchase of diesel, fuel, servicing of generators for office use. I don't know of provision for the maintenance of the office is from any other source of funds. Pages 8-9 are the analysis of other funds 1st Defendant listed as having collected from Access Bank – Estate Administrator and First Bank. No, I did not see these accounts and they are not the purpose of this analysis. Yes, I cannot beat my chest that this all the funds he received for the purpose of these accounts. I don't remember the name of the Engineer Servicing the Generators nor the type of the generators. We have the source/supporting documents in our office at 39A, Afolabi Aina Street, off Awolowo Road Ikeja. I saw cost of servicing Generator, an Invoice from the individual that is servicing. The ₦925, 000 was provision for a long time. I am not aware of any cash Register in the Firm or an Account department in the Firm. Yes, I know what a Client's Account is.

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This is the 1st time I would be auditing a Law Firm. They draft Agreements and go to Court. The ₦1M paid on 24/06/13, Pg. 20, 2nd Defendant took ₦70, 000 while the 2nd Defendant took ₦930, 000, office representation of ₦70, 000 by the 2nd Defendant at Asaba on 28/06/13 is what the 1st Defendant told me. The 1st Defendant took ₦930, 000 as salaries. The monthly salaries of the Firm are about ₦430, 000. 1st Defendant's salary is about ₦200, 000 while the 2nd Defendant's is about ₦100, 000. It is not static. It is graduating. On 18/09/2013, ₦2M was paid in **Exhibit P.2** by Eriifeoluwa income from Amagina's case by 1st Defendant. It is on Pg.14. The source document in **Exhibit P.2** did not narrate it as described by me in **Exhibit D1** which has detailed analysis as what the 1st Defendant told us. On 4/10/13, the 1st Defendant withdrew the whole ₦2M and left ₦22, 000 in the account. Yes, it is correct. In my analysis on Pg. 20A, column 37, "office rent" is what the 1st Defendant told me. He did the withdrawal and he said he paid it to the landlord of the Firm. You can pay rent in cash. I don't have any evidence of any cash payment. But the 1st Defendant withdrew the money from the Bank. He said even the landlord refused to acknowledge the receipt. The mode of payment to the landlord is not known.

Yes, I was told I was going to produce my Report in Court. On 13/11/13 there were various inflows; on 15/11/13 NNPC paid ₦1,357M. As at 1/11/13, the balance was only ₦27, 000 but it grew to ₦6, 601, 615.20 from 13th – 18th November, 2013. On 25/11/13 the 1st Defendant made a transfer to Tom Awhana & Co of ₦5.2M, his own Law Firm – Page 21 of my Report shows Governor's consent, Registration in Column1. 

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The Account of Tom Awhana & Co was not under Review for me to see it and how the money was expended. No, I did not need Tom Awhana & co' Account. I did not see Lagos State Treasury Receipt for ₦5.2M in the course of my analysis.

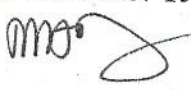
Prior to the Report, I did not have the consent of Nneka Helen Sagay, Clifford Kokogho and Monma Lawson. It is an analysis of expenses and income on the 2 Accounts. It is not an Audit. There is reference to source documents on the transactions on those 2 Accounts.

Analysis of Accounts is the Statement and the source of the incomes and debits in the Statement of Account. It shows who conducted the various activities in those Accounts. Yes, I know my role in this case in offering my opinion as an impartial witness. We identify the approving authority of the transactions. These **Exhibits P1 and P2** are not to my knowledge. It is only the statements of Accounts in them; of Heritage Bank and Zenith Bank that were analysed. The name of the 1st Defendant is shown as the one who conducted the transaction debit on 9/03/15 via cheque of N700,000. Payments into the accounts were by the clients for the Firm of Mogbeyi Sagay & Co. by the head of chambers in the letter of instruction. His name is not on the Statement as the depositor. **Exhibit D.1**, I am not aware that the Firm of Mogbeyi Sagay & Co. was audited while the 1st Defendant was still there. Page 4 and last 3 lines of **Exhibit D1...**

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The funds were not attributable to the Law Firm. No; Bank Statements do not have full details of the source of the incomes. Yes, my opinion is not based on the Statement of Accounts because they don't contain all the details. The head of Chambers of Mogbeyi Sagay & Co. is the 1st Defendant. Yes, I relied on what he told me as the head of Chambers. Yes my instruction was on 26th November 2021, and I wouldn't know who the Head of Chambers was as at date but at the period of analysis, he was. Yes, as at that date, he was not the Head of Chambers.

(At this stage learned SAN Ebun Olu – Adegboruwa came in).

1st Table of page 5 of **Exhibit D1**, "Various Deposits Made on behalf of Client" was based on what I was told, not based on the analysis of **Exhibits P1 and P2**. Roll 2, shows the name of the client. The name of the customer/client is on the Statement. It won't be in the Statement that it was for Governor's consent. Lines 3 – 6 – line 4 "Personal Funds of the 1st Defendant made into the Account", is what the 1st Defendant told me. It is not stated in the Statements. "Default Fees", is also what I was told. 

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Yes, Exhibits P77 – P80 are the Financial Statements in 2012, 2013, 2014, 2015, 2016, 2017, 2018 of the Law Firm of Mogbeyi Sagay & Co. But I never saw them before I did my analysis. The source of payments and to who as part of our finding/Report is based on what the 1st Defendant told me. Pages 8 – 9 show the details of the money the 1st Defendant received and for what. Yes he told us this information. He told us everything on which I gave opinion. From the collections, he mentioned the transactions that were funded by the Administrators of the Estate. Zenith Bank and Access Bank were mentioned by 1st Defendant but not reflected in the Report as having been sighted by us. No, we did not see them. On page C 22k of **Exhibit P.16**; the Letter of Administration without Will but whether its details are not contained in **Exhibits P1 and P2** I can't tell.

There was no re-examination.

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DW 3 – Sylvester Unuafemonfoh testified thus:-

I live at 95, Ogba Road, Agege, Lagos. I am a businessman. I sell frozen foods. I know the 1st Defendant. He is my friend and lawyer. I have known him since about 2017. He handled a Union Bank case for me in 2017. Then he was with a Firm in V.I. then Sagay & Co. I paid for the case. He gave me an account that I paid to; Sagay & Co. He worked in that Law Firm. He was the one that handled it for me. He's the only one I know.

He was not cross examined by the 2nd Defendant's counsel, Mr Ani.

Under Cross- Examination by the Prosecution Counsel, Mr Oyedepo, he testified thus:-

The Court where the 1st Defendant handled the case for me is at TBS; the Court they burnt down. He is the one that handled the case. I don't care to know the name of the Judge. Yes, I was always in Court every time the case came up. Yes, there was trial in that case. I don't recall if the 1st Defendant ever appeared with another lawyer. I think I visited the Law Firm at V.I. one day. He is my friend.

Yes, he filed the case for me in the name of the Law Firm he was working for and gave me its accounts into which I paid. My account from which I paid is Zenith Bank but I can't remember the one I paid to. It will be in the Statement of account.

There was no re examination.

DW4 – Eghosa Osagie testified thus:-



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I know both Defendants. We were in the same office at Mogbeyi Sagay & Co. from 2009 – January 2012. I joined in 2009. While there, I handled cases in Court outside Jurisdiction like Asaba, Warri and Benin. On 2 occasions, I missed my flight to Asaba, so I travelled on land. The others, I travelled on land.

It is the office that bears the cost of these trips. The office has a pardiem on the cost of each trip, hotel accommodation, feeding and filing of court processes where necessary. It takes the economic realities into consideration while preparing the transport fares. Yes, at this time, the 1st Defendant was very much in charge. Upon return, we are not called to account except if the lawyer spent over what he was given, then he will ask the Firm to reimburse him.

There was no cross-examination on behalf of the 2nd Defendant.

Under cross examination by the Prosecution counsel, Oyedepo, he stated thus:-

I will not know anything about what happened in the Law Firm after I left.

Yes, I am aware of the demise of Mogbeyi Sagay SAN. While I was there, he was alive, so I did not open any account in the name of the Law Firm.

While I was in the Law Firm, the 1st Defendant was the head of Chambers supervising the work after the learned SAN. The 2nd Defendant was a junior to the 1st Defendant and had been in the Firm before me.

There is no standard rate for travelling expenses because the flight may change, transport fare may change. Whilst in the Law Firm, I can't remember salary being paid into my account. I think it was by cash. I can't remember if I signed for it. I don't know Chris Azubuke Okafor. There was no such counsel while I was there. I know Mr. Clifford Kokogho.

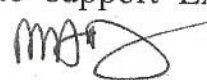
I can't really remember the AMCON case. I think it was filed in 2011. I was junior then.

Yes, I had to appear in court with the 1st Defendant on some matters.

No, I never had cause to introduce a client to the Law Firm while I was there.

I can't remember if any member of staff had cause to introduce a client to the Law Firm. Whilst I was there, I never handled matters privately.

There was no re-examination.

DW2 was recalled to support Exhibit D with a Certificate of Identification and testified further thus: 

Yes, I was in Court to give evidence in February 2022 and I indicated that the Audit Report **Exhibit D** was produced through a computer Device.

This document was authored by me. It is the certification of authentication pursuant to **Section 84(4) Evidence Act** in respect of the Audit exercise of Magbayi Sagay & Co. on the Account at Union Bank and Heritage Bank that the computer was operating perfectly without any defect before, during and after the exercise.

(Certificate of Authentication dated 11th Feb. 2022 which original copy is in the court's file is **Exhibit D3**).

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DW5 – Ken Uche Oraka testified thus:-

My name is Ken Uche Oraka of 19A, Ken Uche Oraka Ogidi Crescent, Lekki Phase 1, Lagos. I am a businessman. I know the Defendants. The 1st Defendant is Tom Awhana. In 2016 and 2017, I had dealings with them. My relationship with them goes way back to 2011 – 2012. I had a Matter; it is a celebrated case of Memorandum of Understanding on Oraka and Oraka. I approached Mogbeyi Sagay when he was alive; to do a case between me and my wife Oraka vs. Oraka. He took it up and I paid him for it and assigned the 2nd Defendant in his chambers to hold the matter. Mr. Okoro was in charge of the case. We started in 2011 and filed the matter in 2012. Along the line, Mr. Sagay Mogbeyi became my friend, and his wife and his sons. I know everybody in the family. So when he died, I became friend with the wife and the family. So the matter he was doing for me, the 2nd Defendant left the Firm and went to Ikebe & Co. Law Firm. Since the matter had not reached trial and the 2nd Defendant was the one that was handling the matter, I wrote a letter to his company that I wanted to transfer my matter to Ikebe & Co. from Mogbeyi Sagay & Co. So when the matter before Justice Oyebanji was concluded and judgment was not a clear one, nobody can interpret it. So I had to go on Appeal. That was when I briefed the 2nd Defendant again for the Appeal and I needed another lawyer to assist him. So I had to bring in Tom Awhana although there was another lawyer I briefed because I couldn't pay her fees, so I briefed the 1st Defendant to take the case with the 2nd Defendant since I didn't have money to pay them immediately, so I told them that I had a property in Lekki I wanted to sell and then I will be able to pay them their fees. So they did the matter without my paying them. I live at 19, Ogidi Crescent and the next property to it is No. 21, Ogidi crescent is the property I am talking about. 21 is an empty plot. A client later came to rent it and we agreed on the fee of N21M, at N3.5M per year of 6 years. So when I briefed the 1st Defendant, he acted as a Solicitor on the rent. The 2nd Defendant wasn't part of the negotiation of the rent. The client was delaying in paying the agreed rent. So, I had to travel to Canada and instructed the 1st Defendant to collect the money on my behalf whenever the client is



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ready. After about 2 weeks or so, 2017 or 2018 he called me that the money had been paid by cheque. I asked him that since I knew the family of Mogbeyi Sagay & Co. I wouldn't want a situation where he would pay the money into their Estate or his company account that he should move the money into either his personal account or his company account till I come back. But I had by then gotten close to the wife of late Mogbeyi Sagay, so there was a property Mogbeyi Sagay had at Banana Island which C of O was in the possession of his wife, Nneka Sagay. So she took it and gave it to Prof. Itse Sagay. She personally called me and I advised her not to let the property document get out of her hand. So she went to Itse Sagay to retrieve it and they started having some issues. So he refused to give it to her. It was then I called the 1st Defendant that on no account should he pay my money into either the Estate or Law Firm of Mogbeyi Sagay & Co. So he told me that he already did. So I told him he should either remove my money or if anything happened, I would hold him responsible. So when I get back and asked him for my money, so he moved the money from the account he deposited my money to into my account. It was at that point that I signed the Agreement for the rent. The Lessee is Temple Housing. They are still on the property till now. This is the document of the Agreement. I have misplaced the original.

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(Copy of an undated Lease Agreement between DW5 and Tempo Housing Nig. Ltd is **Exhibit D4**) Being an undated document; the weight, if any is to be attached to it will be determined at the conclusion of the case. **Walter Vs. Skyl Nig. Ltd. 2001, 3 NWLR pt. 701,438 at 470 para D – T.**

The rent I received was N21M out of which I paid the Defendants N8M as their Legal Fees and they returned N12M to me or N12.5M. It is in my Statement of Account.

Under cross-examination on behalf of the 2nd Defendant, he stated further thus:-

The N8M was not meant for Mogbeyi Sagay & Co. It was the legal fees of the two Defendants.

When I first briefed Mogbeyi Sagay in the Suit between me and my wife, I fully paid his Firm. I am not in any way indebted to the Firm of Mogbeyi Sagay & Co.

Under cross examination by the Prosecution, he stated further thus:-

Yes, I knew the two Defendants in the Law Firm of Mogbeyi Sagay & Co. They were still staff there. 

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Yes, I wrote a letter transferring my brief from Mogbeyi Sagay & Co. to Ikebe & Co. No, I don't have it with me.

Yes, I made payment to Mogbeyi Sagay & Co. for the brief done by him. I wrote a cheque in 2 instalments. He charged me N7M which I paid cash of N2.5M equivalent in dollars and the rest by cheque. No, I do not have evidence of that payment before the court.

The payment of the lease of my said property was about 2018. Yes, I had a very good relationship with the late Mogbeyi Sagay and his family. He died in 2012. I later became aware that there are Administrators to the Estate of Mogbeyi Sagay about 2015 or 2016, not sure.

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Yes, when the N21M was paid for the Lease of my property, I was already aware of the existence of the Administrators to the Estate of Mogbeyi Sagay & Co. I am aware that as at 2016, the 2nd was no longer working with Mogbeyi Sagay & Co. I was never aware if the 1st Defendant was no longer with Mogbeyi Sagay & but I know the 1st Defendant had done some jobs for me on some of my properties on which he used his name Tom Awhana. So I knew he had his own Firm when he was still with Mogbeyi Sagay & Co. even when Mogbeyi was alive, he had done 1 or 2 things for me on my properties. I confirm that the N21M for the Lease of my property I told him not to pay it into the Law Firm of Mogbeyi Sagay & Co. because I knew they already had issues which I didn't want. They advised me that Mogbeyi Sagay & Co. would cease to exist legally once the Proprietor dies. I don't know when the N21M was paid into Mogbeyi Sagay & Co. or why. Yes, I know why the Defendants are standing trial before this court. Yes, I know Clifford Crawford. Like I said I know every member of Mogbeyi Sagay's family. I know Nneka too. I know all the Administrators of his estate except for one.

Yes, I am aware that the 1st Defendant opened an Account with Heritage Bank in the name of the Firm Mogbeyi Sagay without the consent of the Administrators. It was when this matter came up that I became aware that the two Defendants jointly opened an account in the name of the Firm Mogbeyi Sagay & Co. at Union Bank. I am aware the two Defendants nominated the account of Mogbeyi Sagay & Co. into which the N21M for the Lease of my property was paid into.

There was no re-examination.

DW 6 – Ababyomi Olajuwon Abraham testified thus:-



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My name is Abayomi Olajuwon Abraham of 27, Araromi Street, Onike, Sabo – Yaba. I am a Banker with Ecobank Nig. Ltd. I'm an Accounts Manager. Yes, I received a Subpoena to produce Bank Statement of the 1st Defendant. It is from 1/1/2010 – 1/12/2010. It was generated from our Server and printed from my laptop which I have been using 2022 including the Printing of customers' Statement. It's an HP laptop. I have an identification attached.

DW7 – Subpoenaed witness, John Onegbulem sworn testified thus:-

My name is John Ojoegbulem of 21 Road, Festac, Ecobank Nig. Ltd, a team Lead for Retail Banking Lagos, Apapa Central. I was indtructed by the Bank to present Bank Statement of 4th Jan. 2010 till date on a Subpoena in the name of Awhana Thomas Sunday A/C No. 0962008365. I have the Certificate of Identification dated 30/01/2023.

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(The 1st Defendant's Ecobank Statement of Account from 4/01/2010 till 27/06/2022 is **Exhibit D5**).

Mr Ani for the 2nd Defendant had no cross examination for the Witness

Under cross examination by learned silk for the Prosecution, he stated thus:-

Aguda branch of the Bank is also under my jurisdiction of the 21 branches. I don't have the address offhand. On Mondays, I resume at Mazamaza, Tuesday – Ikotun branch, Wednesday – region of Apapa, Thursday towards Seme border and Fridays. I visit other branches like 5.

Today, I resumed at Ajao Estate where I had the copy printed close to my house due to traffic. It wasn't printed at Mazamaza. It can be printed in any branch. I can't say where this account is domiciled even from **Exhibit D.5**. I don't know the details of the transactions in the account or the source of the funding into the account. The transaction of 14/10/2010, I can't say if the deposit is a cheque lodgement or transfer. On 21/10/2010, a debit of N1,470M. The beneficiary is not stated.

On 21/10/2010 a debit of N150,000; on 30/03/2011 deposit of N140,000 by the 1st Defendant. There is no narration. As at 27/04/2012, the balance was above N500,000. Then by 20/03/2013 N500,000 was placed on the column of withdrawal into a fixed deposit account and liquidated on 19/04/2013 and re – invested on 27/05/2013. The patern continued. By 20/11/2020, it has grown to N700,000 plus. I canot see any transfer in this account to the Firm of Mogbeyi Sagay & Co.

Under re-examination, he stated thus:-

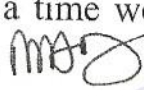
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On 21/10/2010, the sum of N1,470,000 was deposited by cheque by one Anthony Nwakolo.

The 1st Defendant as DW8 restified thus:-

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My name is Tom Awhana. My Address is 99, Awolowo Rd, Ikoyi, Lagos. I am a Legal Practitioner. I practice in chambers and I also go to court. I attended University of Lagos with LLB and I was called to the Bar in 2004. I did my NYSC in Rivers State, Port Harcourt in 1985 as I have a Master Degree in Unilag. When I left the Nigerian Law School, I had three opportunities to work with Rotimi Williams' chambers, Chief Richard Akinjide chambers and Mogbeyi Sagay & co. I went for Interview at Rotimi Williams' and Akinjide's chambers. I was still waiting for the result of the interview at Rotimi Williams chambers because 8 of us did the Interview and they asked me, "Who do you know that can aid your employment?" I was surprised. I was still waiting for Akinjide's call when I ran into Mogbeyi Sagay. Incidentally, I had known him much earlier because we are from the same Sapele in Delta State. When I mentioned to him the possibility of practicing in his Law Firm, he was very happy. He told me that he has helped other lawyers from other parts of the country and that this was an opportunity to help his own person. So he said I can come and work for his Firm. I didn't write any Application. Mogbeyi Sagay is a Legal Practitioner, the sole Proprietor of Mogbeyi Sagay & Co. practicing at 38/40 Stranchan Street, Lagos Island, Lagos. He eventually became a Senior Advocate. He engaged me as a Legal Practitioner in his Firm with no letter of employment. The office doesn't normally give letters of employment. It was an oral interview.

I was involved in several activities, preparing Pleadings; Statements of Claim/Defence, Replies, Pre - trial conferences, drafting conveyancing matters, going to Police Stations at his instance, writing letters, correspondences between different clients we represent. There were times I went to SFU at Milverton, IGP in Abuja, Panti - Yaba, Zone 2 AIG's office at Onikan, in addition I draft Leases and Notices to Quit, several research activities at his instance, we could go on into the nights because the man did not like half - measures, even if it means staying till the next day. I also was involved in writing Written Addresses up to the Appellate courts, he was supervising. I do litigations at the Magistrate Court, High Court, Court of Appeal and following him to the Supreme Court Election Petition Matters. I was not the only lawyer in chambers. There were other lawyers there; Nelson Imoh, Godson Ugochukwu now SAN. When we had election matters, we usually invited those who had worked in the Law Firm before like Uzo Onwukwe, Robert Emarkpore SAN and we travelled to Asaba, Benin, Abuja. At a time we invited Gani Fawehinmi & Co. working for Chief Great Ogboni at Asaba. 

The condition of Service with Chief Mogbeyi was on the cordial relationship I had with him. He encouraged his colleagues to aspire to greater heights. When I started with him my salary was N20,000 and he told me that I should not worry about the salary that what I will learn from this job is more than the N20,000. That I should always go after the elephants, not the ants. He allowed us to do our private briefs even in his office. That was his policy. He said when he was working with H.O. Davies; he was allowed to do private practice. In the course of time, we had a working arrangement which involved that I can use the Firm's name and materials to prosecute my private briefs e.g. when 7Up Company's Truck ran into my client's car, in the process, 2 people died and one survived and I brought this matter before him. He allowed me to use the office facilities to prosecute that matter. I was ready to take 7-UP to the court representing the 3 victims. I wrote a letter to 7-UP using the office facilities and the company wrote back seeking for our co-operation that they were ready to settle amicably. Eventually I held meetings with the management of 7-UP at Apapa and they offered to pay N8.4M Mr. Mogbeyi Sagay was aware of all this and when the cheque was written, it was written in the name of Mogbeyi Sagay & Co. It was a private brief by me. All he did was to endorse to me the proceed of the case so that I can pay the victims. It was paid into my Ecobank account. I was not a signatory to the Firm's Account at that time but I received value and disbursed to the dependants of the 3 people. One of those who died, the wife is a Medical Doctor. She gave me Power of Attorney to prosecute the case. Dr. Ifoma Iloma, her husband who died was Uloka Iloma. The other person that died is Ileoma Casmay Onyema. I was remunerated by the 3 defendants. Uteodo Sagay is the cousin to Mogbeyi Sagay, a legal practitioner and a friend to former Governor of Lagos State, Babatunde Raji Fashola, SAN.

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Utuedo Sagay was based in London and when his friend BRF became Governor, he encouraged him to come back to Nigeria and registered a company Riverview Solicitors and he started the Practice in Mogbeyi Sagay & Co.'s office and started his own practice and I was the one assisting him.

My boss believed that they could work together but it did not happen that way and my boss Mogbeyi Sagay was not too happy with the fact of his registering his own Law Firm instead of joining our chambers. I was the one helping him because he wasn't conversant with the terrain. My boss said he would want those who had worked with him to be SAN, Judges etc. He was a perfect gentleman. He makes you proud as a lawyer calling us 'my learned friend' 'my colleague'.

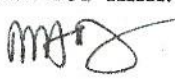
I was engaged by him in 2004. I progressed rapidly under his watch before he passed on. I learnt a lot under him. Nelson Imoh left the Firm and Ugockukwu SAN also left,

then he called me into his office one day and said henceforth in 2010, I would become the head of Chambers. This was the very first Law Office that I ever practiced. At a point during my career with him, most lawyers were calling MFC, "most favoured counsel" because my Principal was giving most of the jobs to me. Instead of going with my seniors, he would send me to Banks to go and collect money. My senior colleagues also called me MFC because he gave me most of the cases to handle which exposed me. At a time, he took about 12 or 15 cases from one of my senior colleagues and gave them to me to handle which exposed me so much including Appellate matters. Each time he was going for sensitive cases or meetings and election matters, I was always with him. He had 2 plots of land at Banana Island which the Federal Ministry of Works wanted to revoke that he had not paid some fees on the land. It was my action and my colleagues filing a case at the Federal High Court that helped to restore the 2 plots.

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As head of chambers, I relate and engage with clients; I helped him to employ lawyers including the 2nd Defendant; the secretary of the Firm, Tunde Ishola, another lawyer Stevenson Okuchemeya, now late, one Chidim Ifekwen lawyer too I employed. I was involved in going to court, preparing briefs, a lot of research. He saw the book I wrote for Law School students, "Passing Part 2 Law School Exams made easy" and when he read it, he was happy and said he would like me to help him write a Book on Receivership. He is an expert in that area. He had already done some research and said we should put it together.

I was also involved in engaging clients on behalf of the Chambers e.g. former IGP, Mike Okiro. I went with chief to Abuja and introduced him to the IGP. There is also a senator friend I introduced to him and who later brought his friends' matter. I helped him to CBN, NDIC Dr. Albert Ikomi. They are so many. They were paying clients. I was the one to monitor their payments. I was also trouble – shooting for the Firm e.g. we had a case with Union Bank vs. Hass & Co. in which the Management of Union Bank was decided to take the case from us because we had been having the case struck – out in court on several occasions. He sent me to the Management and I went in and met Mrs Oguamaman and Mrs. Oyetibo representing the Management and I was able to appeal to them not to take the case from us. Subsequently after my boss' death we did the case up to Supreme Court and we won and they were very happy.

When a client comes, we will bill him and follow up on the Terms of Payment, 20% down payment. He told me to follow up on the payments. For instance, Dr. Ikomi's case he told me to raise the bill for him. Dr. Albert Ikomi is from our area. But the major bill, he does it himself. 

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In 2010, when I became head of Chambers, there were other lawyers as I mentioned and our relationship wasn't cordial. I deputized for my boss and when he is not around at our Friday meetings, I deputized for him. Yes, I was supervising these other lawyers; if one wrote a brief / Written Address; I would vet it and pass it to our boss for final approval. Example like Motions/Applications I did final vetting. I also disburse funds for cases outside Jurisdiction, if a case is outside jurisdiction. In a case at the Federal High Court in Benin; Okebho Farms Ltd's Receivership and I was the one that was collecting money from the Bank; Liberty Bank Benin to represent the Firm. We did this several times.

My salary and payment in that Firm is by cash, nothing like cheque.

Apart from 7-Up, I did other cases like that e.g. going to Police Station, Recovery of Premises. I did and collected money, e.g. Ojugbo's case, a rent matter which I did and he asked me to take the money. All other lawyers were also given free hand to handle private practice.

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"RiverviewSolicitors" was the Firm of the cousin, Utuedo Sagay who was encouraged to return to Nigeria from the UK, a very good friend of H/E Tunde Fashola SAN. My late boss advised and encouraged him to return back and he had about 6 briefs from Lagos State Government. He was not very versatile with the Nigeria Practice so I was one of the people assisting him to do some of these briefs to the knowledge of my former boss whose view was for his cousin to bring briefs that they can do together in the Firm. But he rather registered River-View Solicitors when he got these briefs. So he was doing his independent practice from my boss's practice and office, equipment and staff. Privately my late boss complained to me personally that this was not his original plan. He told me he was paid the 1st tranche for these briefs about N12M or N15M. I was assisting him to handle some of these briefs. One was before Justice Okuwobi. My boss in other words had a liberal attitude towards these matters. Otuedor and River View Solicitor before then, on 17/04/2010, we had a fire incident in the office at Mogbe Sagay & Co. I was at home about 7am when I had a call from Lagos Island that our office at 38/40 Strachan Street was on fire.

I dressed up and went there. By the time I got there, fire had engulfed the whole place. I called my boss if he heard what happened and he said yes and he eventually joined us and he couldn't believe his eyes. I told him to go home knowing his medical report of HBP problem. I told him I would get back to him and he agreed reluctantly. In the process, I called the other lawyers including the 2nd Defendant, Stephenson Okwuchemiya, Chidi Ifekwem, Efosa Osagie, Utuedor Sagay and some of them came and we were occupying the 5th floor of that building. At the end of the day, the whole place was in ruin, we could not pick up a pin, files, law books, our

wigs and gowns, practice books all gone, even the safe, laptops, personal books all destroyed. We waited in that place till evening and I went to my boss' house at Dolphin Estate to brief him and he was devastated. We didn't know where to start from. The fire was put out by the combined efforts of the Lagos State Fire Service and maybe First Bank Fire Service. I left him by 7:30 – 8:30 pm that Saturday and encouraged him. By Monday, we resumed in his house at Dolphin Estate, all the lawyers and put heads together to see how to retrieve all our files. We went to some Courts and made CTC of the processes and we were practicing from the Court of Appeal library to do research for a few months. After a while, we considered getting an accommodation.

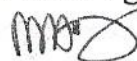
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One of our former clients Chief Felix Buluku on whom the court issued Subpoena, EFCC arrested him to Awolowo Road prior to this time and he approached my boss who gave me the assignment. He collected about N280M from Oceanic Bank to buy their shares which he did not and they petitioned EFCC who arrested him. I stepped in and EFCC demanded for Terms of Settlement and Bail Terms with Chief Ikeneku and they did. At the end of the day, my boss gave him the Bill of N3M which he refused to pay. So, when the Fire Incident occurred and he knew we were looking for accommodation, he offered to give accommodation to my boss. He inspected the place and I told him the man would not give us for free because I know him from Delta State as we went to the same secondary school. He died last week (evidence of 5/6/23). By January 2011, we moved in after some renovation.

After sometime, we had an Election Petition Matter at Asaba and we stayed there for about 3 months, my boss and myself. While there, my boss told me everything about himself. We both went from there to do another case at the Supreme Court but he told me to go to Lagos first and I called him to tell him about my experience on the plane that couldn't land for a while and almost crashed. When he came back and he wanted to go to Bayelsa and he called me and told me we needed to buy new books. He went to Yenagoa and when he finished from court and he was on his way to Airport to return to Lagos when the vehicle he was travelling in ran into a Stationary Truck and had an accident. He eventually died on 28th February, 2012. He was rushed to Elele General Hospital in Rivers State, then to UPTH. We were making arrangement to go and visit him in Port Harcourt when they said there were plans to fly him abroad by family and friends. Unfortunately, he passed on that same date he was to travel; 28/2/2012.

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Before this date, he invited 4 of us to his house on 28/12/11 which he said was his birthday; Chief Great Ogboru, Mr. Tino his friends, myself and himself. I told him all the money we made from Asaba and Lagos, he didn't give me anything, I was joking



and he now said 'Tom, don't worry, I just got 2 briefs from AMCON, Bi-Courtney vs. AGF and Result vs. AGF both owned by Babalakin SAN and we represented the FGN. He said these briefs were given to him on 22/12/2011. He now said 'I will compensate you, go and buy me AMCON Act, It's a big brief '. I went to Igboere and bought the Act and gave it to him. We had food and drinks and I left the 3 of them. So, after his death, there was confusion everywhere. We were mourning knowing that your father – figure in the Firm was gone; after the burial, the issue was his Firm. The wife, Mrs. Nneka Sagay with 4 young children, the eldest was 9 years old. The lady just graduated from the University. She was of the opinion that she would it run just like a Supermarkets. She was not a lawyer. Utuedo, River View solicitors, wanted to also run it, collapse his River View together with Mogbeyi Sagay & Co. to run it. The wife was opposed to that. It was then that Prof. Itse Sagay, SAN, a cousin to my boss and a brother to Ituedo, called me to his office in Surulere and asked me what was going on. He had his own problem with Mrs. Nneka. He asked me how we were running the Firm before. I told him we were doing independent Practice from River View solicitors, though we were assisting him. He said why does his brother want to collapse the 2 Firms? I said I don't know. So he said, 'continue the way you were running the 2 Firms independently'. About this time, most of the lawyers in the Firm left and only 2 of us, the Defendants remained. I stayed behind for 3 reasons; my late boss was very nice to me and left 4 young children, we had a client that was owing the Firm, Fiogret owned by Chief Great Ogboru about N800M. We got a Judgment for him in a case of alleged 1990 coup against Babangida and the Military destroyed all his properties in Lagos, Rivers, etc. and when he eventually came back to Nigeria, Mogbeyi Sagay & Co. filed an action at the Federal High Court before Hon. Justice Mustapha Abdullahi, now retired and the court awarded us \$42M against the FGN. Our fee was 10% of that sum. My belief was that if we could get part of the money, the family would be taken care of. Substantial part of the money was outstanding. They paid a fraction and my boss told him to go and use it for Politics. Then thirdly, his legacy' he had told me that he wanted one of his children to read Law, preferably the 2nd child. We were owing 2011–2012 rent. Many of the clients came to pick up their files, Omadino Community in Warri, Thomas Ekpemupoho vs. Egemuda Court of Appeal Benin; land with Oil in Warri. They said Buge Edukugho sent them to pick up their files after his death. I went to court and arrived to see them and I said no, I will do your case well. Go back to your father and tell him. The 2 of them were Prof. Yomere and Etukugho. They didn't recover the file. Also, Ken Oraka who testified, his case with his wife, he wrote a letter and took his file. By this time, the 2nd Defendant was on his way out with a better offer and Ken Oraka was of the view that since he was the one handling the matter, he should take the file away. He took the file and left but he later

withdrew the file from him. We then had NDCI who also took the files. I had to go to their office in Marina, and spoke to them. They said I must go to Abuja because they had already briefed someone else, Onoja SAN in Abuja. I went to Abuja and pleaded with the Secretary of the Board. He eventually gave the brief back to us. We were supposed to retrieve the money Chief Ogboru took from Metropolitan Bank and I was able to recover that; i. Visana Vs. GPMG. ii. Hass & Co. Vs. Union Bank which I returned back to the Firm. I was the one that concluded the case of Nedart vs. Bayelsa State Government that he went for and died. He had asked the cousin to conclude it and get the money but he did not go because of what had happened. But I went to Bayelsa State and met the Chief Judge and concluded that case and brought the cheques of N206M and the people wanted to put it in my name but I said they should put it in the name of the Firm. They said they would not get their money. It was the 2nd time they wrote the 21 cheques, N10, N10M and N6M. I gave them to Prof. Sagay which were used to open the Access Bank Account of the Firm in **Exhibit P.15**. When these cheques came, it assisted the family for some time, because my boss did not have enough cash. The Letter of Administration shows the total in those Accounts, **Exhibit P.31**. There was a case of contemporary Design which we did in Lagos before Justice Okuwobi rtd, I advised my boss before we went to Court that the issue of Jurisdiction would be raised as it is about Asaba Airport Project which was designed by our client and the Government refused to pay. So my boss felt the Judgment Creditor should be paid where he resides as contemporary Design resides in Lagos. Some of us were of the view that we should commence the action in Delta State. Eventually Justice Okuwobi ruled against us while my boss was around. Then we went to the Court of Appeal. After his death, I met the client to let us transfer the case to Delta. I transferred it to Delta and I won the case in Asaba. Our fee was N20,750M.

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It was paid in the name of the Firm. Our fee was 5% of each tranche the Government was paying. Before I left there, they had paid about N15M.

(The sworn Affidavit of Fact deposed to by Chief Felix Buluku on 25/10/2021 is **Exhibit D6**).

Paragraph 9 of **Exhibit D6** is correct that I was paying rent for the office from my personal account.

In Chief Mogbeyi Sagay's family, none is a Legal Practitioner; his wife and children. I assumed management of the Law Firm upon his death in 2012. When I took over the Management of the Firm, the office had no money at all. **Exhibit P.31** is the Letter of Administration issued by the High Court of Lagos for his Estate. The total amount left in the accounts is about N67,000.00 (Sixty-Seven Thousand Naira Only).

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We had no money to run the office. The 2nd Defendant and I were virtually running the office from our private pockets. At some points we had to borrow money from some of our friends Ken Okaraka, Ngene, Prof. Itse Sagay SAN. **Exhibit P.71** is my statement to EFCC on paragraph 6, I said 'Prior to the appointment of the Administrator...'

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My schedule included running the Firm effectively and bringing in Policies that would favour the firm, ensure that costs were reduced e.g. my late boss was asked to pay N50,000 for water and N500,000 for land use charge. I paid one of those charges and I went back to meet the landlord to say it is not right for a tenant to pay for those 2 items. As of 2012 when I took over, most lawyers had left except the 2 of us. The other staff, Secretary Tunde Ishola was there, Owolabi now late, Mary, Chuks, Tony still remained and I was paying their salaries. We were doing so many things, going to court to represent different clients, preparing pleadings Written Addresses, briefs, Filing/Service of Court processes, managing the Firm itself. We had about 20 Air Conditioners servicing them, paying for DSTV, during Xmas, make provision for his family, buy rice, Oil and cash to them continuously before I left the Firm. I also did same to the staff. In the process, the 2 of us lawyers go outside jurisdiction then.

This Respondent's brief of argument between Chief Thomas Ekpemupolo is one of the briefs we handled for the Firm.

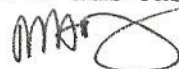
(The 1st – 5th Respondents' Amended Brief of Argument in SC/759/2015 dated 4th March, 2015 is **Exhibit D7**).

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In this case in **Exhibit D7**, I went to Court of Appeal, Benin and the Court ruled in our favour. The other Parties went to the Supreme Court. The case was still at the Supreme Court when I left the Firm. Most of the payments in **Exhibit P1**; the Statement of Account; on 5/1/2015 N1.5M, on 12/12/2014, N1.5M by Austoju Resources Nig. Ltd who are Respondents in **Exhibit D.7** N1M on 10/2/15 N10M on 18/5/2015, NM Austkery & Co. Nig. Ltd that I generated for the Firm through this case to the supreme Court. This is a certified true copy of this case.

(The Record of Proceedings of the Federal High Court Lagos in Suit No. FHC/L/CS/1305/11 is **Exhibit D8**).

The last proceeding has my name for the 2nd Defendant. This case is one of 2. The 2nd one is Resort Ltd. We were representing the Federal Attorney General. The 2 cases, the companies are owned by Dr. Wale Babalakin SAN. My late boss was given this case on 22/12/2011 and he went to Court once; on 25/01/2012 before his demise. Then subsequently, I went to Court. AMCON in this case asked us to discharge the



Orders made against the Federal Government in these 2 cases. I'm sure the AMCON witness didn't know the facts. After my boss' demise, AMCON debriefed the Firm and gave it to Dr. Olisa Agbakoba SAN. So we handed it over. It is because of the fees. Originally AMCON refused to pay until we wrote to them that they must pay us on quantum meruit. They paid us N1M for each of the 2 cases and deducted their tax.

I managed the Firm from 2012 up to early 2018. We were paying rents. In 2012, when he died, we were already owing rents from 2011 to 2012, 2 years' rent. We were supposed to pay N8M. When I came from Bayelsa I brought N206M out of which our fees was N18M. We took N5M from there. Because Chief Buluku was owing us N3M which he did not want to pay for 2011 and 2012. Chief Buluku insisted we must pay him N8M but I told him he was owing us and he now took N5M. He was the landlord of the property. In 2013, we paid N4M. In 2014, the Administrator refused to pay. I had to pay as shown on **Exhibit P.1**; rent of N2M in favour of Chief Buluku; N2M from my personal account and N2M from the general income.

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In 2015 and 2016, from the money I generated from Asaba, we were able to pay for 2015 and 2016; from the case of Contemporary Design & Associates DM Engineer vs. Delta State. We generated N20M. In 2017, the Administrators refused to pay again. I had to bring out N2M from my personal savings, to pay rent for 2017 with N2M from the general income. I had left in 2018. But all these while, I was paying staff salaries. In 2012, the salary was not so much with 2 lawyers & 5 or 6 staff, it was about N260,000 per month. For October, November and December of 2012, no kobo was given to me by the Administrators, per **Exhibit P.15**.

These are the certified true copies of part of the cases I handled at the Federal High Court, Lagos.

(Two Federal High Court Lagos processes in Suit No. FHC/L/CS/1416/14 dated 6/03/2014 and 4/12/2015 are **Exhibits D9 and D10 respectively**).

These are cases I handled being Garnishee proceedings. Money was paid by the client. It was against the Cross Rivers State Govt. Our fee was N3M, 10% of N30M.

This is a receipt of the Firm in my name. The original is in the Firm.

(The 1st Defendant's hand-written receipt on the Letterhead of Mogbeyi Sagay & Co. dated 13/11/13 is **Exhibit D11**).

This was money of Construmat Ltd used to help them procure Governor's consent in respect of land at Apapa Awodiora. They paid N10M and later paid N2.230M.

mas

These are other Court of Appeal Processes.

(2 Court of Appeal Processes in Suit Numbers CA/L/95/14 and CA/B/230/2010 and/ Federal High Court Lagos Process – FHC/L/CS/75/2000 are **Exhibits D12, D13 and D14 respectively**).

These are cases that I handled and monies were paid.

This is a copy of the letter from the Administrators of the Estate and the acknowledgement of receipts. I left the original in the office.

(A letter from the Estate of late Mogbeyi Sagay SAN dated 20/11/2015 and a hand-written receipt of a loan of N100,000 by one Tunde Ishola dated 27/04/2015 are **Exhibits D15 and D16 respectively**).

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Tunde Ishola is the Secretary of the Firm and he is even in court now. Nneka Sagay is the wife of my late boss, Mogbeyi Sagay. Cliff Okokogho is one of the Administrators and Monimar Lawson Jack too.

The matter in which N10M was spent for procuring Governor's consent is Construmat Nigeria Ltd. This is the document of City Construction and Real Estate Ltd. It is a sister company to Construmat Nigeria Ltd. Both companies are owned by the changooris.

(A certified true copy of a Supplemental Sublease Agreement dated 12/11/2002 with attachment is **Exhibit D17**).

In **Exhibit D.11**, we issued a receipt for Governor's consent of N10M which covers money paid to the Agent, Registration and for tax matters for the Assignee to the Transaction. Last paragraph is N2,230,000 received as professional fee. **Exhibit P15** is the Access Bank Statement of Account; on 10/04/2012 cash deposit by Tom Awana N2,230,000:00 the professional Fee for procuring **Exhibit D.17**. The Administrators of the Estate are operating the account. PW3 had given evidence about how the Account was opened. The people operating at are;

(i) Mrs. Nneka Sagay (ii) Mr. Cliff Kokogho. (iii) Mr. Monima Lawson – Jack

This document is an email between me and Construmat for the Governor's consent.

(A mail correspondence between the 1st Defendant and Construmat dated 21/02/2013 is **Exhibit D18**).

Yes, I know Nidart Investment, one of the office's clients. It belongs to Pierre Chagoury The Community in Delta State to whom we rendered Legal Professional

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Services, did cases for them at the Court of Appeal, Benin and wrote Briefs to the Supreme Court in respect of their matter; Ekemupolo vs. Edremoda.

Contemporary Design and Associates was one of our clients we did a case for them in Lagos before Justice Okojie when my late boss was alive. Before we filed the case, we argued the issue of jurisdiction. My late boss was of the view that because the company was in Asaba, Delta State and the Judgment creditor was in Lagos, its address should determine jurisdiction. I was of the contrary view that since the Delta State Government and the project were in Asaba, the jurisdiction should be in Asaba. Eventually we filled the case in Lagos and the Court ruled against us that Lagos has no jurisdiction. As at this time, my boss appealed to the Court of Appeal, Lagos. After his death, I approached Mr. Kester Ifeadi, the Managing Partner Contemporary Designs, that instead of continuing in the Appeal, we should transfer the case to Asaba. He agreed and withdrew the Appeal from the Lagos Court of Appeal and I went to Asaba to do the case. Then the Attorney – General of Delta State raised the issue that contemporary Design is not a legal Personality. Then we changed it to E.M. Engineers Ltd in place of Contemporary Designs and we won the case. Our fee was N20,780,000M.

NDIC was one of our clients, for whom we were supposed to recover money from Chief Great Ogboru who took a facility from Metropolitan Bank earlier.

I had to meet the NDIC Management in Lagos and Abuja that we would recover the money and because of my personal relationship with the Debtor, we were able to recover a substantial part of the debt from his company Fiogret Nig. Ltd. NDIC gave us 3.05% of whatever we recovered in 2014 – 2015.

Yes, I dealt with 7-Up Bottling Company. My personal client was involved in an accident with 2 other people 7-Up truck hit their car and 2 people died. They were coming from a wedding. The families of the late victims approached me and I told my late boss about it, of the need to represent them using the Firm and he agreed. I wrote to 7-Up Company of what they caused my clients, a lot of correspondence and eventually, they sought for settlement and agreed to pay N8.5M. It's in the Judgment to settle the families of the 3 victims. This money was written in the name of the Firm, Mogbeyi Sagay & Co. and my late boss endorsed it to me to enable me pay the dependants of the 3 victims. This went into my Ecobank account. The Administrators of the Estate were the people I was relating with. At a point, I placed his children on salary to the extent that when I pay staff salaries, I would pay the first 2 boys, 8 and 9 years old, Anire and Jenige to assist them. But when the Administrators came, they stopped it. None of the 3 Administrators is a lawyer. 

((i) E-mail correspondence between one Rene Antoun and the 1st Defendant dated 29/03/13, 27/03/12 and 28/3/12.

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(ii) A copy of a letter from Mogbeyi Sagay & Co. to the secretary, Omadino community dated 27/01/2015.

(iii) A copy of a letter from the same Firm to 7-Up Bottling Company, Ijora Lagos dated 19/02/2010 with attachments.

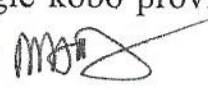
(iv) 2 copies of Deposit slips and a copy of Funds Transfer Form.

(v) Letter from the Firm to NDIC, Lagos dated 14/05/2013 with attachments.

(vi) A Letter from the Firm to Contemporary Designs & Associates dated 8/03/17 with an attachment; are **Exhibits D19 – D24 respectively**).

Mr. Kagho Omomadia testified as PW4 in this proceeding stating that he gave me money; ₦1.4M to give to Mrs. Sagay is not true. It is true he gave me the money but it is money he was owing me. As at that time in 2012, we were looking for money to run the Firm. We had borrowed ₦200, 000 from Prof. Sagay we borrowed from Ken Oraka my friend and Nwachukwu also a friend. I had gone to complain to Prof. Itse Sagay about the lack of funds to run the Firm. He advised me to take cash from Clients. I told him I was not very comfortable with cash, but we would take cash sparingly once in a while from Clients but that it was better to have an Account opened for the Firm. I wrote a letter to him in this regard. I have a copy of it. **Exhibit P.15** Access Bank Account was opened for the Firm by Prof. Sagay. This is the Mandate Form.

(Letter from the Law Firm of Mogbeyi Sagay & Co signed by the 1st Defendant dated 27/08/2012 addressed to Prof. Itse Sagay SAN is **Exhibit D25**).

There was no provision for salaries from October to December, 2012, so the money Omomadie paid us was used to pay salaries. Secondly we paid Prof. Sagay the ₦200, 000 we borrowed from him. We also paid Nwachukwu and Oraka the monies borrowed from them. I was also able to go to Central Bank of Nigeria, Abuja and NDIC because we were looking for briefs from them. I think I went there about 3 or 4 times. We were already doing one case for NNPC that is Dosumu Vs. NNPC pt 1403 NWLR for 7 months in March – December 2013, no fund to pay salaries, but it was paid. In 2014, no single Kobo was provided to run the office, salaries, rents, diesel, January – December but salaries were paid, the office was running smoothly, securities, rents, NEPA Bills, Court appearances. Our rent was ₦4M per annum, I personally brought ₦2M from my personal account to pay the rent and from the account they claim was fraudulent. In 2015, no money for 11 months, they paid only one month. In **Exhibit P.79**, there was single kobo provided for the office in 2014. **Exhibits P15, P16 and D2** buttress this fact. 

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In 2016, they provided money for 2 months from the money which I generated from legal services I rendered from Delta State. In 2017, they provided ₦1, 505M for 3 months. In 2018, the ₦800, 000 I used before I left the place was money I generated from a Lease Agreement for the Administrators. On the allegation of opening 2 Accounts; **Exhibit P1** Account was opened when the 2nd Defendant left the office. Our salaries added up to ₦5.3M per annum. I was paying but they were not interested in how we were getting money. It was from money I generated and not from the account opened by my late boss. In **Exhibit P1** are monies I generated post 2012. See them also in **Exhibits D7, D13**. There is an inflow from NDIC dated 6/2/2015 which I generated for a client. See also **Exhibits P37, P67 and P11**. By **Exhibit D.5**, it was clear that I had the authority to open any account to facilitate the running of the Chambers. Also **Exhibit P2** was opened and the money first paid into it was the money Union Bank was owing us. Also, Bi-Courtney Company limited. In 18/9/2013 monies were paid in, costs awarded in our favour.

I did not conspire with the 2nd Defendant to steal any money from the Firm. After the 2nd Defendant left in early 2013 and cases were clashing, I had to appeal to him to please conclude some the cases the 3 times I gave him money to go to Port Harcourt because I was alone in the Firm before the new lawyers I employed came in. **Exhibit D2** pages 13-18 show who did those cases. **Exhibit D6** shows I paid the rents in 2014 and 2017 from my personal income. It is not true that we stole any money or converted the Firm's monies. The monies did not belong to the Firm or my late boss at all. They belonged to clients.

These are monies I generated to run the Firm. Is that Conversion? All the allegations are not true. I needed money to run the office. I paid in cash into **Exhibit P15** several times which I could have pocketed if I wanted to but I did not. Did they know about it? The money did not come from them. The Firm would have closed down before 2018 because clients wanted to withdraw their files but I appealed to them not to and promised to do them and I did. How can I steal the money that did not belong to them?. I thought I was helping them and for them to now turn around to accuse me? Ecobank Account in **Exhibits D5 and D21** regarding monies paid into my account when my late boss was around. ₦8, 852M on 17/6/2010 which he allowed us to do for private briefs.

Under cross-examination by Ani for the 2nd Defendant, he stated thus:-

Yes, I worked with the 2nd Defendant in Mogbeji Sagay & Co between 2010 and 2013. He left early in 2013. Our boss died 28/02/2012. The 2nd Defendant left barely after a year of his death. After his death, I took over the management of the Firm, including the disbursement and payments of expenses of the Firm. I was also responsible for the employment of the staff. Chris Okafor, PW3, I employed him in

June 2013. He did not meet the 2nd Defendant in the Firm. The 2nd Defendant and I opened a Union Bank Account in the name of the Firm on 24th September 2012. By this time, the Letter of Administration for his Estate was not out. This account was the Firm's Account. It was used to run the affairs of the Firm and it also enabled us to collect the cases we had done earlier. We did a case for Union Bank earlier and they refused to pay us into any other Bank than Union Bank. It was on that basis that we opened the Union Bank Account.

The Letter of Administration was issued after this union Bank account had been opened. Yes, I have seen the Letter of Administration issued in respect of his Estate. The Firm Mogbeyi Sagay & Co. is not part of the assets listed in the Estate Letter of Administration. None of the Administrators of the Estate is a Legal Practitioner. Mrs. Nneka Sagay, his wife is not a Legal Practitioner.

The 2nd Defendant is being charged for the stealing of ₦3.6M as withdrawals in the Union Bank's account in **Exhibit P.2**. I was the one in charge of the disbursements in this account as the head of the Firm. These disbursements made to the 2nd Defendant were made for expenses for the running of the Firm at different times. They were approved and disbursed to him as profit sharing. The assignments for which those funds were disbursed were accomplished. I can confirm that those funds were not diverted by the 2nd Defendant and he handled some matters in Port/Harcourt. I assigned him to Chief Eleko's case at Degama LGA. He was the traditional Ruler Kola in Degama LGA of Rivers State, near Port-Harcourt. Chief Eleko was my late boss's friend. The case was on before my late boss's death before High Court of Rivers State, Degama. The case was being adjourned from day to day so I told him to stay there. There was also another case before Justice Orji Rivers State High Court. I was the one formerly handling it and I sought his assistance 3 times including when he had left.

The withdrawal on 14/12/12 was for compilation of records in Oraka Vs. Oraka, the man came to testify here. The payment was made to the 2nd Defendant for the compilation of records and he did it.

On 19/12/12, ₦210, 000 paid to the 2nd Defendant as Chinmas Welfare Package. That's the practice of the Firm then. Even the family of the late boss benefitted from it including my late boss.

On 1/02/13 and 28/02/13 ₦225, 000 and ₦220, 000 were payments for servicing of A/C's, Computers, Stationeries of the Firm. I was on Abuja at NDIC for a meeting at the time, so I asked him to handle it on my behalf. The purpose for the payment was accomplished.

On 4/03/13, ₦500, 000 paid to the 2nd Defendant was for the Eleko's case, for flight expenses and hotel accommodation for one week. He went as directed because the



To the Access Bank Account, I was not a signatory. Nneka Sagay, Cliff Kokogho, were the signatories to **Exhibit P.15**. **Exhibit P.16** is the Estate's Zenith Bank Account which I opened with my own money ₦500, 000. All the other monies that came in were generated from the Firm through me. I was a nominal signatory and I signed only once, when one of them had a stroke. The case we were doing in Lagos which I transferred to Asaba, ₦20.750M was accrued. On 13/04/2015, in **Exhibit P.1**, ₦2M paid to Felix Boluku and 6/02/15, another ₦500, 000 was paid to the same person. Our rent is ₦4M per annum. I brought ₦2M from my personal account to pay up the rent of the office to add up to the ₦2M from that account in 2014. They had no money to pay their rent. The ₦500, 000 to Chief Boluku, who died recently, told me it was Land Use charge and water rate. I told him I could only pay ₦500, 00 for the Land use charge for 2014. But subsequently I refused to pay Land Use Charge because I said it should be paid by the Landlord. **CERTIFIED TRUE COPY**

₦150, 000 for Pontus Securities Limited was my personal Directorship income, sitting allowance in the company.

U.C. & Sylvester Unuatenonfoh a witness in Court is the MD of UEE & C Limited which were my personal cases I handled which I told him to pay into the account in **Exhibit P.1** even though it is my personal income because that was the only way I could have money to run the Firm. Also, payments by CBN, NDIC and Arbico Plc, as cases we did for them CBN, Part 14.03, Law Report before the Court **Exhibit P.58** Dosunmu Vs. NNPC they paid us NDIC appointed my late boss as Receiver/Manager to recover money from them on debt owed by Newgate from Metropolitan Bank in liquidation. Before he died, he did not recover a dime. After his death, they wanted to take this brief from us and I went to NDIC and met the MD and I was able to recover so much leaving left only about ₦163M out of about ₦900M. This is 3.5% of what we recovered was our fee that is in the account there. They even paid me N177,000 for my transport.

Arbico was owing my late boss and we wanted to wind up the company. Olanihun Ajayi SAN approached us and they started paying us. It was the 2nd Defendant I sent to negotiate the payment. **CERTIFIED TRUE COPY**

Under cross examination by the Prosecution, he stated further thus:-

Yes, my name is Tom or Thomas Sunday Awhana. Yes, I am a legal Practitioner. I have been so since 2004, a very senior legal Practitioner as you say.

Yes, I am aware of the Rules of Professional conduct. I am aware that I am supposed to conduct my affairs with diligence. Yes, I am a very meticulous person. I was employed into Mogbeyi Sagay and Co. in 2004 by the late Mogbeyi Sagay. During his life time he was responsible for my payment as a staff. My salary at the time of employment was either ₦20, 000 or ₦25, 000. But it was later increased. In 2010, the

late SAN Mogbeyi Sagay made me the head of Chambers. While he was alive, I was never the principal partner. As the head of chambers, I took instruction from the late Mogbeyi Sagay. Being the head of chambers, I was still placed on salary. The late Mogbeyi Sagay was the one who assigned matters to me. Correspondences in relation to matters were directed to him when he was around, and not to me. After his death, correspondences of cases were directed to the Firm. Being the head of Chambers, yes, my role was more of administrative. I did not register the Firm, Mogbeyi Sagay & Co. When the SAN was alive the Law Firm had Accounts but I don't know the specific Banks/Clients' Accounts.

I was not a signatory to any of them when he was alive. We were close with respect to the job.

There may be Clients' accounts but I don't know them. Yes, he had a lot of Clients. After his death, the family said I should continue in my role and continue to take charge and run the Firm on their behalf. I suggested a salary to them when the 2nd Defendant left and it was agreed. I was the one paying the salary. At his death my salary had risen to ₦75, 000. Yes, I was placed on ₦200, 000 salary per month. There was an additional expectation of 12% on every case that I did or recovered money.

After his death, the accounts we opened is not a Law Firm/ Clients' Account. There is no such account that was opened in the name of Mogbeyi Sagay & Co after his death. In my statement in **Exhibit P71** Page 5, B18 from line 4, "...4 Accounts were opened ...after the death of ..." yes this is my statement written when the facts were fresh in my mind. The Account that was opened in **Exhibit P15** is M. Sagay & Co. It is a Business Name in Access Bank.

Yes, I owe the Court the duty to tell the truth at all time. I'm aware that I took an oath. Yes, I am a witness of truth. The Account number on **Exhibit P.71**, p.5 line 13, the account number is 0056022045. "Mogbeyi Sagay & Co." It is the same name. It was not a Client Account.

In 2013, Administrators were appointed after his death. I was still under the employment with my remuneration of ₦200, 000. I opened the account in **Exhibit P.16** on behalf of the Administrators. I paid in the first amount of ₦500, 000. The Zenith Bank Account was opened by SAN. I was a nominal signatory. I signed only once when one of the Administrators had a stroke, Allen William Babatunde as PW5 but he is late now. He was one of the Clients of Mogbeyi Sagay & Co. The 2nd credit came from PW5 of ₦5M "FBN Cheque". I paid it in on 2/4/15 on his behalf. I definitely know Contemporary Design Group Limited, a Client of Mogbeyi Sagay. Yes, I know Tunde Ishola, a Secretary in the Firm. **Exhibit P.16** was used for Contemporary Design Fees. So, I was in charge of the Cheque Book though a nominal signatory. No, I did not have full access to the account. The account was in existence during the life of SAN but I assisted them to reactivate it with ₦500, 000. I

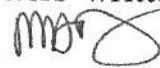
now opened the accounts in **Exhibits P1 and P2**, not because I did not have full access to **Exhibit P16**. I am the only signatory in **Exhibit P1** opened in 2014. I supplied all the information for the opening of that account and page 9 on it was the Information I supplied in opening the account but it is written by Ibukun maybe a staff of the Bank. It is my phone number there under "Client Profile". Yes, I opened the account. The inflows in it are from the Clients of Mogbeyi Sagay most of whom were after he had died and they are cases I did. They were my friends. I was using it to pay salaries and running the Firm. Yes, I opened **Exhibit P2** with the 2nd Defendant. I am a signatory. Yes, I also supplied the Information use to open it.

Exhibit P12 is on a Client I know. It is on the letterhead of Mogbeyi Sagay. **Exhibit P.6** I gave evidence on **Exhibits P4- P7, P9 P.11 and P.12** are correspondences between Mogbeyi Sagay & Co and Clients. We wrote them on behalf of the Firm. Yes, I was still under the employment of Mogbeyi Sagay.

Exhibit D1 is the Analysis of the Union Bank Account and Heritage Bank Account. I supplied the Information used in preparing this document/analysis.

Exhibit P2 – after it was opened by me and yes there were series of inflows into it which were from the Clients of Mogbeyi Sagay and Co and other cases which we did but most were from his clients. Yes, I was still under the employment of Mogbeyi Sagay and Co. **Exhibit D.2** was addressed to Mogbeyi Sagay & Co. the work done in it was made in the name of Mogbeyi Sagay & Co. I was still in the employment of Mogbeyi Sagay & Co when the Agreement, **Exhibit D4** was made. In **Exhibits D7, D8, D9, D10, D.13, D.14**, I was still under the employment of Mogbeyi Sagay & Co when these Court Processes were processed. **Exhibits D18 and D19** correspondences were sent while I was still in the services of Mogbeyi Sagay & Co; they were briefs of the said Firm which I worked under. **Exhibit D.6**; I was also still in the service of Mogbeyi Sagay & Co when the Affidavit were made; the content of the Affidavit is correct. I had left the Firm when the cheques came in. **Exhibits D20 and D21** were letters from the Law Firm of Mogbey Sagay & Co and were signed by me while I was still in the Firm.

Exhibits P4, P8 – P13 are letters from the Firm of Mogbeyi Sagay & Co to Clients but I did not write **Exhibits P9 and P12**. I signed the others. Yes, I was part of **Exhibits P32 – P38, P43, and P59**, except **Exhibit P 59**. They are cases of the Law Firm of Mogbeyi Sagay & Co except **Exhibit P43**. After his death, some of the cases were withdrawn until I met with the Clients to assure them we would do their cases and they were left with us. Most of these cases were from Warri. I left the Firm in 2018. The letter from NDIC **Exhibits P39 and P40** are part of the ones the Clients withdrew after the SAN's death until I went to Abuja to meet with NDIC. Yes, I was still a staff of Mogbeyi Sagay & Co. I was the one paying salaries of the staff, running the office. **Exhibits P38 – P40** were letters written to the Firm Mogbeyi



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Sagay & Co. **Exhibits P32 -P.37** were the cases of Mogbeyi Sagay & Co but I perfected them. Mogbeyi Sagay & Co had died from that date. Originally the cases were given to Mogbeyi Sagay & Co but after his death, they were given to me after I approached them. Yes, the briefs were perfected by me while under the Firm Mogbeyi Sagay & Co, but perfected by T.L Awhana. Mogbeyi Sagay & Co died on 28/2/12. The account in **Exhibit P2** was opened in the name of Mogbeyi Sagay & Co. The last credit lodgment is a case I did. On 31/12/15 ₦952, 380.25 was paid. The case was done after his death. I did it at the Court of Appeal. I opened this Account in **Exhibit P.2** on 19/10/2012 in the name of Mogbeyi Sagay & Co and all these payments came in after his death as the cases were done after his death. I did not consider opening the Account in my own name. It was to assist the young family. None of the correspondences on them were (sic) not directed to me but to the Firm. The Firm was dead but I opened the Account in Union Bank in its name to assist the family of the learned silk. From this Account in **Exhibit P2**, I paid several sums to the 2nd Defendant. On 14/11/12, 4/12/12, 19/12/12, 1/02/13, 28/2/13. I paid ₦520, 000 for Oraka & Oraka to compile records on 14/11/12; the narration 'CWD', I don't know what it is. On 4/12/12 payment was explained in **Exhibit D2**. On 19/12/12, payment also. On 1/2/13 the narration is also 'CWD'. I confirm that **Exhibit P2** was opened by me and 2nd Defendant. **Exhibit P31**. Heritage Account opened in the name of Mogbeyi Sagay. Yes, I was the sole signatory to it. Yes, it was also opened after the death of Mogbeyi Sagay to give life back to the Firm but we were trying to wind up the Firm. All the credits in **Exhibit P1** were made in the name of Mogbeyi Sagay & Co. These clients were writing to the Firm except Arausi in **Exhibit D1** who wrote to me personally; Sylvester As at the time all the payments were made. I was still the head of chambers of Mogbeyi Sagay & Co. Yes, I know Mr. Clifford Okokogho, he is one of the Administrators. The Firm's Access Bank Account was like an Estate Bank Account being run by non lawyers. I was never in possession of the Access Bank Cheque Book. It was with the Administrators. **Exhibit P71**, Page 5, line 8, "The 1st account was opened by Prof. Sagay... in Access Bank... I do not know the signatories..." It was later I knew the 3 signatories who are non-lawyers.

There was no re-examination.

2nd Defendant's Defence as DW9 testified thus:-

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My name is Paul Ojukwu Okoro. I am a Legal Practitioner of 45 Beckley Street, Onikan, Lagos. I am aware that the Firm of Mogbeyi Sagay & Co. wrote a Petition to the EFCC which resulted to the filing of this charge. I was interviewed personally by the late Mogbeyi Sagay himself with his cousin called Mr. Otuedo Sagay who was then also practicing in the Firm. I was placed on a salary of ₦70,000 and an incentive that they would be responsible for my accommodation which is also paid. The practice of the Firm is that they don't usually offer Letters of employment and our salaries were usually cash. I left the Firm in March 2013 after the tragic incident of

February 28, 2012 where our boss, Mogbeyi Sagay SAN was deceased. Other lawyers in the Firm left upon his death, leaving only me and the 1st Defendant. Our clients almost all, came for their files that they are debriefing the Firm. We prevailed on most of them who now agreed on negotiation, for us to continue to handle their matters. I personally did not leave immediately because of the cordial relationship I had with our late boss. He gave us free hand to do our private practice. He personally gave me cases to handle as private practice for which he paid me directly. For instance, a case of Okhepo Farms Limited, Court of Appeal brief in Benin City and many others. I stayed also because my late boss had a young family then. The eldest child was about 8 years old. The young wife had just left the University then and was not working. I felt I could help the young family after his death. When he died the structure automatically changed. When he was alive, he was in charge of everything, though some things were delegated to the 1st Defendant who was the head of Chambers. But upon his death, the 1st Defendant was in charge of running the Firm. There was a letter titled "Incentives" written to us by Prof. Itse Sagay SAN to motivate us to continue to stay in the Firm. Prof. Itse Sagay SAN is the senior cousin of my late boss, Mogbeyi Sagay SAN. Being a very senior lawyer from the family, he was the only family member we could relate with on the running of the Law Firm. I continued to work in the Firm reporting to the 1st Defendant who was in charge of the day to day running of the Firm Mogbeyi Sagay & Co, a sole Proprietorship and business name registered personally by Mogbeyi Sagay SAN.

After his death, the 1st Defendant was responsible for any fund disbursement. If I need to carry out any assignment on behalf of the Firm, I would make requisition to him to approve just like we did when Mogbeyi Sagay was alive.

The ₦3, 660, 000M were withdrawn at various times for carrying out assignments for the Firm and all the assignments were accomplished e.g case I handled in Port Harcourt involving his royal majesty, King Amabibi Kelechi, Chairman of traditional Council where he was dethroned via a Motion Ex Parte granted by the High Court of Rivers State sitting in Degema. I was sent by the Firm as headed by the 1st Defendant who approved Funds for me to travel to handle the matter. He approved ₦1M which instructed me to stay for one week plus because the case was being adjourned every other day. I was there for a week plus until we were able to set aside the Order deposing the King and I came back. There was also the sum of ₦500, 000 which 1st Defendant approved for the company and transmission of the Record of Appeal to the Court of Appeal Lagos in the case of Oraka V. Oraka. It was an Interlocutory Appeal in 2012 against the Ruling of Harrison J. The task was also carried out. Also, one of our litigation officers, Mr. Owolabi involved in a ghastly accident. He was hospitalized in Asaba. The 1st Defendant also approved ₦500, 000 for his treatment which I also took to Asaba, though we lost him. There was another ₦500, 000 approved for one Mr. Isaac who we engaged for the Governor's Consent

in the case of Construmat. He took ill and died and the office approved ₦500, 000 for the family. Other funds variously approved by the 1st Defendant to handle some of our cases in the Court of Appeal in Benin; the case of Edremoda/Ekpemupolo called Omadino case. A sister case at Asaba High Court handled by me before Justice Bubah. Also, a case called Patoski Nigeria Limited involving a royal highness, a king in Port Harcourt handled by me and funds were approved for me by the 1st Defendant to travel which continued till I left the Firm. The 1st Defendant once in a while approached me to assist in handling those cases after I had left the Firm between March and May 2020 or so which I did. Funds were made available for me to do so. I assisted him till he employed some lawyers including PW3 and Mr. John. PW3 never met me in Mogbeyi Sagay & Co. He was employed in the same year after I had left. All the Funds approved to me by the 1st Defendant for each task were all duly carried out.

There is a Court of Appeal decision in Dosunmu's case that was tendered. I did the case not PW3.

The Incentive approved by Mogbeyi Sagay SAN to be responsible for my accommodation of ₦500, 000 for a 3 bedroom I was occupying then continued after his death. But after his death, I was shocked to find out that the said Incentive was part of the things to be carried out. When the office got some funds thereafter, the 1st Defendant effected that payment before I left the Firm. As at the time of his demise, he was supposed to have paid me ₦1M for 2 years as at that time.

It was in 2018 that while in Court, I got a call and when I finished in Court, I returned the call and the person identified himself as Mr. Boniface an Operative of the EFCC. He told me there was a Petition they wanted me to clarify some issues on. That it was just a fact finding Investigation. I asked him if it was a Petition against me? He said no, I attended their office and he handed me a Petition on the letter-head of Mogbeyi Sagay & Co. signed by PW3. I read it and no allegation whatsoever was made against me but only the 1st Defendant. Thereafter, I thought everything was over. Early 2019, I got a call from one of the Administrators of the Estate of late Mogbeyi Sagay & Co. Mr. Clifford Kokoghoho, PW6. He contacted me and told me that they are having issues with the 1st Defendant and they would want me to cooperate with them and be a witness in the case they are charging against him in Court. I told him I had left the Firm for over 7 years and I was not privy to how the 1st Defendant managed the Firm when I wasn't there. He called me twice to be a witness for them which I replied. I was shocked when this matter was charged with my name as a co- Defendant.

While in the Firm, after our boss died, we, 1st Defendant and I opened a Union Bank Account in the name of Mogbeyi Sagay & Co for the running of the Firm because when he died on 28/02/12, no one had access to the existing Account. In March, 2012, the Administrators went to open an account with Access Bank which we were

not too clear whether it was M. Sagay or Mogbeyi Sagay used for receiving money for the Firm.

I know the Administrators were appointed in 2013 after I had left but the account was opened in 2012 and none of them is a lawyer. Some cases we were handling for Union Bank, Hers & co or Lusana, Union Bank insisted we opened an account with them for us to continue to handle their matters. This is one of the reasons that led to the opening of the Union Bank Account. Prof. Itse Sagay SAN was notified by the 1st Defendant. The Union Bank Account was never a fraudulent Account. It was opened in the name of Mogbeyi Sagay & Co, not our names (the Defendants). I had the opportunity to have moved away with a lot of files after the death of Mogbeyi Sagay but I did not. We could have been collecting cash from clients but we did not. We opened an Account in his name to the knowledge Prof. Sagay SAN. Clients' monies were received into the Firm's Account and disbursed for the cases of the Clients.

I left the Firm because of the overbearing interference of members of the family who were not lawyers. The 3 administrators, Nneka Sagay, wife, Monima Lawson-Jack, Clifford Kokogho, uncle Sam, my late boss' brother in Liberia, uncle Joe in Warri almost on a weekly basis, breathing over my neck that I should audit the files I was handling and report to them who are non-lawyers. Our Firm then was majorly a Commercial Litigation Firm. What the family members were interested in was how much we sued as Claimants e.g for recovery of ₦200M; as far as they are concerned that file is worth ₦200M. They believed all the stated claims or defence were monies coming to the Firm, that a Firm was a supermarket where I must remit money on a daily basis. Since I am not permitted to practice law with non – lawyers who do not understand the Rules, I took my leave in March 2013.

The 1st Defendant's counsel, Mr. Adesioye had no questions for him.

Under cross-examination by the Prosecution, he stated thus:-

Yes, I was employed by the Law Firm of Mogbeyi Sagay & Co and placed under salary of ₦70, 000.

I was not the one who neither registered the Law Firm nor was I the Principal Partner in Mogbeyi Sagay & Co. I was not a signatory to any of the Law Firm's Account during his lifetime.

After his death, I know that an Access Bank was opened but I can't confirm the name. All the signatories were not lawyers and had not even obtained the Letter of Administration at the time they opened the Account.

₦20.6M received in the Access Bank of the Firm was money received by the 1st Defendant on behalf of the Firm and they paid it into that account I can't confirm if it

was opened in the name of M. Sagay & Co or Mogbeyi Sagay & Co as we say that the registration was done in 1990 while Mogbeyi Sagay & Co was registered in 1987.

Exhibit P.2 is the Union Bank Account. Yes, I am signatory to it. My late Principal died on 28/02/2012.

Exhibit P75 page 2A, line 4," The first money that was recovered was N20.6M indeed was paid into the Access Bank account. The Incentives promised us was not paid. We had difficulty running the Firm due to lack of funds of which Prof. Sagay was aware. Tom and I deployed our resources at a time in running the Firm..."

Yes at that time, Access Bank Account had been operating. Mogbeyi Sagay & Co was the Firm that employed me. I only got to know "M Sagay" in this Court. Page B2b from line 5, " I am not aware of the deposit of ₦1M of First Bank made on 25/03/13..." This was a deposit, not a withdrawal. Page 2Bc, line 9, "I am not aware of the two withdrawals of ₦500, 000 each made in my name on 4th day of March, 2013..... It is a surprise to me that such huge withdrawals were credited to me. I did not make any withdrawal of N1Million on the 28-03-2013, this was because I was not in the office at that time having tendered my resignation..."

In **Exhibit P.2**, on 4th of March 2013, "cash withdrawal of ₦500, 000 by Paul Okoro" Also the 2nd one was paid to me, when I made my statements, I did not recall this because the figures were hazy to me as I had moved on 7 years after I left the Firm. Line 14 Page B2c, "I did not make any withdrawal on 28/3/13" I confirm that I received ₦1M. On 28/03/13 in **Exhibit P.2** there were 2 withdrawals of ₦500, 000. I left the Firm of Mogbeyi Sagay & Co., I was still signing cheques with the 1st Defendant because he had to run the Firm. I only signed between March and June when he employed other lawyers. I never contemplated that I would have any issue with Mogbeyi Sagay & Co as a result of my stewardship when I was there.

Yes, I now remember the facts now more than when I wrote my statement. Yes, I know Tunde Ishola, our Typist who also ran errands in the office.

The Firm of Mogbeyi Sagay & Co is a sole Proprietorship. The Union Bank Account, **Exhibit P.2** was opened in the name of Mogbeyi Sagay & Co. and there was no Estate of Mogbeyi Sagay & Co as at that time till I left the Firm.

There was personal use of the funds by me and the 1st Defendant and no evidence of same before the Court. No, Prof. Itse Sagay did not give us Defendant employment letters. The 1st Defendant wrote to Prof. Sagay of the intention to open the Union Bank Account in **Exhibit D. 25**. There was neither response nor refusal by Prof. Sagay. The refusal to respond is an admission.

The 1st Defendant was never made a Principal Partner of the Firm. He was the head of Chambers for the day to day entire running of the Firm. After I left the Firm, I saw no reason to recuse myself as a signatory to the Account because the 1st Defendant was

alone until I was eased out after he employed other lawyers. I was not aggrieved when I left the Firm. I was only bereaved when my beloved boss died. I left when non-lawyers were interfering with me on the cases thinking it was like a supermarket.

There was no re-examination and this closed the defence.

The final written address by Oluwatosin Adesioye esq filed on behalf of the 1st Defendant is dated 3rd October, 2025.

This address, he stated, is in respect of the alleged offences contained in the information dated 9th of April, 2019 being counts on alleged conspiracy to steal and stealing pursuant to sections 409, 285, 287 of the Criminal Code Law of Lagos State, 2011 and the Criminal Law of Lagos State, respectively.

Counsel laying the background of the case, quoted the words of Winston Churchill, that, **"Good intentions often bear fruits, but not always the ones we desire"**.

The brief summary of the case is that the sole proprietor, late Mogbeyi Sagay (SAN), a legal practitioner during his lifetime registered the law firm Mogbeyi Sagay & Co., on the 22nd of April, 1987. Then Mogbeyi Sagay (SAN) died on the 28th of February, 2012.

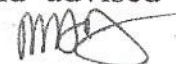
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Upon the demise of the late Mogbeyi Sagay SAN, his own brother, Professor Itsay Sagay, SAN, acted as consultant to the firm. Administrators of the Estate of late Mogbeyi Sagay were eventually appointed.

Consequent on the appointment of the administrators of the estate of the late Mogbeyi Sagay, Professor Itsay Sagay, SAN then handed over the affairs of the firm to the administrators of the estate. However, the administrators of the estate were not legal practitioners and so could not manage a law firm.

Meanwhile, the 1st Defendant, Mr. Tom Awhana had by the year 2012 worked with the Late Mogbeyi Sagay (SAN) for a period of 8 (eight) years and was indeed the Head of Chambers long before the unfortunate demise of his principal, the late Mogbeyi Sagay (SAN) and as such in honour of his late principal, he chose to remain in the law firm, rendering legal services as a private legal practitioner and sustaining the legacy of his late principal. The 1st Defendant encouraged the 2nd Defendant to do the same. To this end, the 1st Defendant was mandated to manage the law firm.

The 1st Defendant in the course of managing the law firm encountered a dire paucity of funds and unease in running the firm. He then held meetings with administrators of the estate and more often with the consultant to the law firm, Professor Itsay Sagay, SAN who at some point suggested and advised the 1st



Defendant to receive cash from clients to run the law firm. This suggestion however would not engender transparency. As such, the 1st Defendant suggested opening of bank account for the law firm. This fact was clearly communicated to Professor Itsay Sagay, SAN, via **Exhibit D25**, a letter dated 27th August, 2012.

From the new accounts eventually opened for the law firm, the 1st Defendant could manage and run the activities of the firm. From the new accounts opened, the family and children of the late Mogbeyi Sagay were supported; salaries of lawyers and support staff were being paid amidst other bills such as the rent for the office, filing of court cases, books and law reports, lawyers' transportation etc.

As a private legal practitioner, the 1st Defendant appeared in Court and conducted several cases in the law firm and in some cases receive independent briefs, instituted several new cases after the death of the late Mogbeyi Sagay and attended to same, all in a bid to keep the firm running to honour his late boss. This continued until the 1st Defendant eventually left the law firm sometimes in 2018.

The 1st Defendant was then subjected to several meetings in attempt to reconcile the accounts of the firm. In one of such meetings, PW3 and PW6 had demanded the 1st Defendant to refund the sum of N10Million naira or risk being reported to the respected Prof Itsay Sagay, SAN. This demand and threats eventually led to a criminal petition by the PW3 against the 1st Defendant, thereby making the 1st Defendant a victim of this process as a sad and unfortunate reward for his honesty, dedication, loyalty and good intentions to the legacy and family of his late principal, the late Mogbeyi Sagay, SAN.

Learned counsel reviewed the evidence of the Prosecution witnesses and that of the defence and on behalf of the 1st Defendant raised an objection to the instant charge as constituted in the following manner

- a. That the Honourable Court lacks the requisite jurisdiction to entertain issues on legal ethics and practice of law of the 1st Defendant.
- b. That the purported criminal petition culminating in the instant charges against the 1st Defendant is incompetent and invalid.

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First, it is submitted that the court lacks the requisite jurisdiction to entertain issues on legal ethics and practice of law of the 1st Defendant. It is established fact that the 1st Defendant is being subjected to a harrowing process of criminal prosecution on account of his dealings and practice of law as head of chambers in the law firm of Mogbeyi Sagay & Co. The perceived or purported case of the Complainant/prosecution is centered on the professional ethics and practice of law of the 1st Defendant with respect to the firm of Mogbeyi Sagay & Co. where he

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practiced as lawyer and as the head of the chambers. This is notwithstanding the mischievous and curious charges of stealing stated therein.

He stated that it is not in doubt that the 1st Defendant is a legal practitioner and indeed a senior member of the bar, having been called to the Nigerian Bar in 2004, so the appropriate avenue to address any perceived professional misconduct or allegations of unethical practices should not have been the way and manner as constituted by and before the court.

Jurisdiction of the Legal Practitioners' Disciplinary Committee

He submitted that indeed, the point was made in **Nwosueke v. Confidence (2024) 9 NWLR (Pt.1943) 385** that the "legal profession is willing and very proud to operate and maintain thorough and effective house-cleansing machinery." To this end, **Section 11(1)** of the **Legal Practitioners Act** established a Committee of the Body of Benchers to be known as the Legal Practitioners Disciplinary Committee which is charged with the duty of considering and determining any case where it is alleged that a person who is a member of the legal profession has misbehaved in his capacity as such or should for any other reason be subject of proceeding under the Act - **Okike vs. L.P.D.C. (2005) NWLR** (incomplete citation).

His further submission is that in the Nigerian legal profession, the desire for thorough and effective house – cleansing machinery is not far fetch. The existence of Nigeria as a nation is a product of law- the Constitution, and this makes the legal profession a unique body whose internal discipline must be taken seriously. Therefore, ample provisions have been made in the corpus juris for the training and controlling of the members of the profession against any perceived unethical practices. Thus, that under and by virtue of **Rules 2A(2) and 3** of the **Legal Practitioners (Disciplinary Committee) Rules** as amended, a complaint received by any of the persons specified in rule 2A(1) shall be forwarded to the Nigerian Bar Association which shall cause the complaint to be Investigated.

In any case, that where in pursuance of **section 10(1)** of the **Legal Practitioners Act**, the **Nigerian Bar Association** is of the opinion that a prima facie case is shown against a legal practitioner, the Association shall forward a report of such a case to the Secretary together with all the documents considered by the Association and a copy of the charges on which the Association is of the opinion that a prima

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facie case is shown. He argued that in the instant case, the totality of the case (if any) against the 1st Defendant is in respect of his professional engagement and dealings both as lawyer and as head of chambers in a law firm. The scope of the duties of the EFCC as encapsulated in **Section 6 of the Economic and Financial Crimes Commission (Establishment) Act** do not extend to any perceived professional misconduct or ethical issues with the practice of a legal professional.

It is submitted that the totality of the perceived allegations of the complainant is no doubt, professional, ethical issues which the court lacks the requisite jurisdiction to preside upon and the EFCC as prosecution is not the appropriate agent to initiate the legal proceedings as constituted.

It is equally submitted that the purported criminal petition culminating in the instant charges against the 1st Defendant is incompetent and invalid. That in **OLADIPUPO vs. FRN(2014) LPELR-23508(CA)**, "petition" according to the New International Webster's Comprehensive Dictionary of the English Language, 2003 edition, page 945, is a formal request, written or printed, addressed to a person in authority and asking for some grant or benefit, the redress of a grievance, etc

In the instant case, he argued that the petition culminating in the charges against the 1st Defendant was authored by PW3, one Chris Azubike Okafor, a legal practitioner who joined the law firm of Mogbeyi Sagay & Co., after the death of the late Mogbeyi Sagay. PW3 is not one of the administrators of the estate of Mogbeyi Sagay and was neither present at the material time in which issues pertaining to what he wrote about took place nor witness the major events such as the inferno that destroyed the entire files, books and records of the firm of Mogbeyi Sagay & Co. As counsel, the petitioner knew well that he ought not to have sent this petition to the EFCC.

That PW3 is said to have been instructed by a Consultant to the firm, the respected Professor Itsay Sagay, SAN who came into the picture only after the death of the late Mogbeyi Sagay, SAN and had relied solely on the information given about the office by the 1st Defendant, especially in resolving the contending issues on management of the law firm. Interestingly, that both the PW3 and the well respected Professional Itsay Sagay, SAN who are instrumental to the charges before the court are neither conversant with the contents of their petition nor are they members of the administrators nor beneficiaries of the estate of Mogbeyi Sagay & Co. 

He argued that the other point about the invalidity of the petition and indeed this whole case is that upon the death of Mogbeyi Sagay, SAN, the law firm died with him, such that it is not possible in law, for the prosecution to prefer charges with the name of the deceased Senior Counsel as the complainant or owner of the law firm. Whatever the 1st Defendant did upon the death of Mogbeyi Sagay, SAN cannot be queried in court in the name of or on behalf of the law firm of Mogbeyi Sagay & Co.

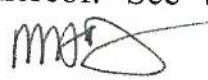
PETITIONER AS EXECUTOR DE SON TORT

It is, according to counsel, interesting to note that none of the beneficiaries of the Estate of Mogbeyi Sagay, SAN have in the entire process and proceedings before the Court accused the 1st Defendant of any wrong doing let alone of a criminal accusation. That evidence adduced before the court in the course of trial indeed indicates that the 1st Defendant secured and protected the welfare and interest of the beneficiaries of the estate. He argued that this being the case, not only can the conducts and actions of especially the PW3 and anyone involved in the petition be recorded and regarded as being adverse to the welfare and wellbeing of the beneficiaries of the estate of Mogbeyi Sagay, such conducts and actions are indeed similar and akin to that of executor de son tort.

He stated that Blacks' Law Dictionary 7th Edition at page 591 defines Executor de son tort as follows:

"(Law French Executor of his own wrong). A person who, without legal authority, takes on the responsibility to act as an Executor or Administrator of a deceased property, to the detriment of the estate's beneficiaries or creditors. Executor de son tort or Executor of his own wrong is he that takes upon him the office of an Executor by intrusion, not being so constituted by the testator."

He submitted that the Nigerian Supreme Court in **Augustine Udensi vs. Alice Mogbo (1976) 7SC 1 at 20** had cause to define Executor de son tort as follows: -

"Now a person who has not been lawfully appointed an Executor or Administrator of an estate may by reason of his own intrusion upon the affairs of the estate be treated for some purposes as having assumed the executorship and in law such a person is called an Executor de son tort. The slightest Interference with the goods or property of the deceased is sufficient to create such liability and such a person (Executor de son tort) is liable to be sued by the rightful representatives of the estates or by a creditor to the estate or by a beneficiary thereof. See also **UGWUNZE vs. ADELEKE & ORS (2007) LPELR-8101(CA)**." 

Even so, that in **Executors of the Estate of Gen. Sani Abacha (Deceased) v. David Eke--Spiff (2009) 2-3 S.C (Pt II) 93**, Mahmoud Mohammed J.S.C encapsulated the law as follows:

A person has no locus standi and lacks competence to bring an action in a representative capacity as an administrator of the estate of the deceased person.

Therefore that PW3 not being administrator of the estate of Mogbeyi Sagay, SAN nor beneficiary thereof and being completely ignorant or mischievous of the contents of the petition to the EFCC, such a petition cannot culminate into a valid charge so as to subject the 1st Defendant to the rigours of unjust criminal prosecution being witnessed for the several years since 2019.

He argued that no doubt, in the instant case, the PW3 learned person also ought to know that frivolous petitions as in the case have dire consequences, per **Kure vs. COP (2020) LPELR-49378 (SC).4.19** Curiously so, that the Prosecution failed to call as witness Professor Itsay Sagay, SAN who had acted as Consultant to the firm and upon his instruction the petition was written against the 1st Defendant. The evidence of the Professor, he submitted is relevant and vital to the prosecution's claim and having failed to bring forth evidence during trial, it would be imputed to have been against the prosecution He cited **Uzoekwu vs. Ifekandu (2001)17 NWLR (Pt. 741) 49**, "A party's failure to produce vital evidence will be used against him by a court". He quoted also from **State vs. Aliyu (2022) 7 NWLR (Pt. 1830) 461**, thus, "A vital evidence is evidence that goes to the root of the ingredients and element of the offence with which the defendant is charged."

He submitted the following issues for determination: -

- i. Whether a legal practitioner within the meaning of **Sections 2(1) and 24 of the Legal Practitioners Act** has corporate implication and what was the legal status of the law firm of Mogbeyi Sagay & Co., upon death of the sole proprietor, the late Mogbeyi Sagay, SAN?
- ii. Whether as a legal practitioner within meaning of **Sections 2(1) and 24 of the Legal Practitioners Act**, the 1st Defendant is entitled to practice law as a business and to earn a living?
- iii. Whether considering the facts and circumstances of this case and the evidence adduced, the prosecution has proven the offences of stealing and conspiracy against the Ist Defendant?

He sought to argue Issues One and Two together:-

Whether a legal practitioner within the meaning of Sections 2 (1) and 24 of the Legal Practitioners Act has corporate implication and what is the legal status of the law firm of Mogbeyi Sagay & Co, upon death of the sole proprietor, the late Mogbeyi Sagay, SAN?

Whether as a legal practitioner within meaning of Sections 2(1) and 24 of the Legal Practitioners Act, the 1st Defendant is entitled to practice law as a business and to earn a living?

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He quoted **Section 2(1) of the Legal Practitioners Act** thus:1

2. (1) Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor, if and only if his name is on the Roll".

Equally, that **Section 24 of the Legal Practitioners Act** defines a legal practitioner as meaning

"a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings".

He submitted that the long and short interpretation of the provision of **section 2(1)** of the **Legal Practitioners Act**, is that a person shall be entitled to practice as barrister and solicitors, and only if, his name is on the roll. He relied on *Buhari v. Adebayo* (2022) 13 NWLR (PL. 1848)533.

He posited that the combined effect of sections 2(1) and 24 of the Legal Practitioners Act is that only lawyers using their professional name can practice law in Nigeria per *Nigerian Navy vs. Samuel* (2013) 14 NWLR(Pt.1375)466.

He submitted it is not in doubt that the sole proprietor of Mogbeyi Sagay & Co, late Mogbeyi Sagay died on the 28th of February, 2012 as the witnesses who testified before the court confirmed. That in **HARUNA vs. STATE (2022) LPELR-58063(SC)**, the fact of death may be proved by production of a post-mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body" That having been confirmed death, the late Mogbeyi Sagay ceases to have any legal personality both as a human and as a legal professional. Indeed, that the settled position of the law, in the days of the yore, is that a dead person loses his legal personality. He relied on **HAND OF GOD ESTATE LTD & ANOR vs. DANKARO & ANOR (2022) LPELR-57157(CA)**.

That it is also not in doubt from the evidence before the court that Mogbeyi Sagay & Company was established as sole proprietor. Although, that the words "and company" suggest a partnership between lawyers and by whatever measures, the



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professional status, contributions and activities of the 1st Defendant in the said law firm can be sincerely likened to that of a partner. That in **OGUNEDE & ORS vs. ANAJUBA & ORS**(2016) LPELR-42118(CA),"I.A. Ahize & Co. "connotes the idea that it is a "firm of lawyers using a firm name such as A.B. & Co., or such other name as may suggest that he is in partnership with others."

But that any event, a sole proprietorship is a business module by which both the business and the owner are the same legal entity - **Network Securities Ltd vs. Dahiru** (2022) 14 NWLR (Pt. 1850) 351 and that in **Cole vs. Martins** (1968) SCNLR 215, the Apex Court made it clear that "the effect however of registering a business name under the Registration of Business name Act 1961, is that where only one person constitutes that business it is correct to describe that person as in terms of the registered business name ".Generally, according to counsel, when a sole proprietor dies, the business legally ceases to exist and all assets/debts become part of their personal estate for probate. Further that Business assets can be inherited but the business itself cannot and that the beneficiaries must create a new business entity with fresh licenses and permits to continue operations. Indeed, that the death of a sole proprietor can have significant implications for the business, its assets, and the people who depend on it.

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He submitted that in considering the facts and circumstances of this case, the implications are dire. First, that the law firm had no assets. The books, files, records etc., were already consumed by an inferno as testified by the witnesses especially the PW5, one Babatunde Allen Williams and the DW7 and that what were therefore left were liabilities. That it is in evidence that the DW7 had to borrow the sum of N200,000 (Two Hundred Thousand Naira) to service the office bills and expenses at some point and that the letter of administration issued by the Lagos State Government in respect of the estate of Mogbeyi Sagay, SAN evidenced paucity in the estate.

Secondly, that the law firm in question could not have been managed by a non-legal practitioners and that issues on this point came to head when Mrs. Nneka Sagay (widow of late Mogbeyi Sagay), a non-lawyer and the late Mogbeyi's cousin, Mr. Utuodo Sagay both clamoured for and struggled to administer the law firm. It was the respected Prof. Itsay Sagay, SAN on whose instruction the petition in this case was written that appointed DW7 to manage the law office. To this end, he argued that the import and potency, the validity and legitimacy, the sustenance and efficiency of the law firm of Mogbeyi Sagay & Co., after the death of the late Mogbeyi Sagay, SAN rested squarely and completely on the 1st Defendant, Mr. Tom Awhana, both as the head of chambers and as a legal practitioner and as well as the other lawyers in the firm under his management. Thus, that the law firm cannot under these circumstances be stolen from nor be conspired against whatsoever. He submitted that it was held in **Nigerian Navy vs. Samuel** (2013) 14 NWLR (Pt.

1375) 466, that it is the law that "name of a legal practitioner has no corporate implication."

He submitted that from the foregoing, what is cognizable to the enabling law is the legal practitioner as defined by the combined provisions of the Sections 2(1) and 24 of the Legal Practitioner's Act - **Buhari vs. Adebayo (2022) 13NWLR (Pt. 1848)533** and not the law firm being used. That in **OGUNEDE & ORS vs. ANAJUBA & ORS** (supra), the point was re-echoed thus:

"Indeed, in a Plethora of cases, it has been established that there is a world of difference between a legal practitioner and his chambers or firm. While a legal practitioner is one whose name is on the call roll, his law chambers is not, more so a total stranger who cannot be identified."

Also that in **Network Securities Ltd. vs. Dahiru (2022) 14 NWLR (Pt. 1850)351**, the court held thus:

"The purpose of Sections 2(1) and 24 of the Legal Practitioners Act is to ensure that only a legal practitioner whose name is on the roll of the Supreme Court signs court processes. A firm of lawyers is not a legal practitioner within the meaning and intendment of section 24 of the Act. Therefore, a law firm cannot legally sign and/or file any process in the courts."

He submitted that it is clearly not in doubt that the 1st Defendant is a legal practitioner and a senior one at that even before the unfortunate demise of the late Mogbeyi Sagay, SAN and that as a legal practitioner, the 1st Defendant is entitled to practice laws and to earn a decent living. The practice of laws as defined by the Black's Law Dictionary, 5th Edition at page 1055 as:

"The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent".

He cited also **R.J. Edwards Inc. vs. R.L. Hart OKL 504 P2d 407,416** and submitted that the practice of law includes but not limited to appearing in court or advising and assisting in the conduct of litigation, preparation of pleadings and other papers incident to actions and special proceedings; conveyancing, the preparation of legal instruments of all kinds, the giving of all legal advice to clients and all action taken for them in matters connected with law - **ATAKE vs. AFEJUKU (1994) LPELR-585(SC)** and **Rhode Island Bar Association v. Lesser 68 P.114 26A 2d.6.7.**

He argued that in the instant case, it is in evidence before the court that the 1st Defendant was actively in the practice of law before and after the death of Mogbeyi Sagay, SAN. He practiced both as a lawyer in the employ of Mogbeyi Sagay & Co and as private lawyer engaging in other private briefs for private earnings. This practice arrangement was also practiced by others lawyers including PW3 in the firm and same was admitted and confirmed by the PW3 on oath during the trial.

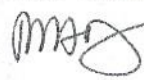
For instance, that the 1st Defendant gave an instance in respect of 7-Up case wherein the late Mogbeyi Sagay, SAN allowed him the use of his office space and facilities to conduct a private brief and payment was made into the account of Mogbeyi Sagay & Co, and that same was remitted to his personal account by the late Mogbeyi Sagay even though he was not signatory to the Mogbeyi Sagay & Co., account at the time.

Further, that it is in evidence before the court that this practice module was being carried out with the knowledge and approval of the late Mogbeyi Sagay, SAN being liberal in nature and having been permitted to do same too during his younger years at the bar. More, according to him, permissive of this arrangement was the fact that it is in evidence before the court that counsel in the law firm of Mogbeyi Sagay & Co., were not only allowed the use of the office space, contact address and letter head papers 'to do their personal briefs', they were at some points permitted to use the firm's bank accounts to receive legal fees and other such payments. And that beyond the liberal and considerate nature of the late Mogbeyi Sagay, SAN in permitting private practice was to obviously compensate the lawyers for the meager salary structure in the firm as revealed by evidence of DW7.

That in other words, apart from being the head of chamber and a lawyer in the employ of Mogbeyi Sagay & Co., the 1st Defendant like other legal practitioners in the firm were permitted to do personal briefs and to represent their clients in court as private lawyers. In **ATAKE v. AFEJUKU** (supra, "The word 'represent' in the context of legal representation means to **act or stand for or be an agent for another.**"

He posited that, no doubt, the 1st Defendant was/is in the practice of laws and he is entitled to earn a living, he renders legal services and indeed represents clients and that in **Oyo v. Mercantile Bank (Nig.) Ltd.** (1989) 3 NWLR (Pt. 108] 213, this point was clearly made thus:

"a legal practitioner has a right to be remunerated for his services. He can either be paid in advance upon named fees or rely on the terms of any agreement reached for his fees, but if he has not received his fees and no



agreement was reached as to what they would be, he must submit his bill of charges."

He submitted that the practice of law is a very serious business and lawyers including the 1st Defendant are entitled to remuneration for their legal services. Indeed, a legal practitioner is certainly entitled to be paid for professional services rendered by him - **EGBE & ANOR v. ODU (2014) LPELR-23805(CA)** and that even so, the position of the Holy Book of the Bible is clear and it is to the effect that "thou shalt not muzzle the ox that treadeth out the corn" and "the labourer is worthy of his reward"- **Deuteronomy 25:4 and 1 Timothy 5:18.**

He therefore submitted that the 1st Defendant, having rendered legal services as a legal practitioner within the provisions of sections 2(1) and 24 of the Legal Practitioner's Act, is entitled to the benefits of his labour of law practice both as a business and as means of his livelihood as derived from **Exhibits D1-D2.**

It is further reiterated by way of legal submission that the import and potency, the validity and legitimacy, the sustenance and efficiency of the law firm of Mogbeyi Sagay & Co., after the death of the late Mogbeyi Sagay rested squarely and completely on the 1st Defendant, Mr. Tom Awhana, both as the head of chambers and as a legal practitioner and as well as the other lawyers in the firm under his management. Further that the law firm's property (if any) cannot under these circumstances be stolen from nor be conspired against whatsoever.

He urged the court to resolve issues one and two in favour of the 1st Defendant.

On Issue three; Whether considering the facts and circumstances of this case and the evidence adduced, the prosecution has proven the offences of stealing and conspiracy against the 1st Defendant?

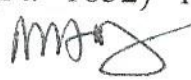
He submitted that the prosecution in attempt to prove the counts of the information against the 1st defendant called eight [8] witnesses, PW1-PW8, who all failed to establish primary or any ingredients of the offences set out against the 1st Defendant.

Also that Exhibits P1-P88 tendered by and through the prosecution's witnesses all sufficiently demonstrated that the prosecution not only failed to establish prima facie evidence of the ingredients of the offences for which the 1st defendant was charged but negated or cast serious and unexplained doubts and gaps in the prosecution's case as lacking merits and firm footing both in law and in logic. 

COUNT 1 CONSPIRACY TO STEAL, he quoted Section 409 of the Criminal Law of Lagos State 2011 and submitted that to establish conspiracy as charged in count 1, the prosecution must prove that there was a meeting of the minds between the 1st and 2nd Defendants to steal property belonging to Mogbeyi Sagay & Co. and relied on **LUCKY v. STATE (2024) LPELR-61783(SC)** and **AFOLABI v. STATE (2013)13 NWLR Pt 1371 pg.292 at 317**.

He argued that through the evidence of PW1-PW8 and Exhibits P1-P88, one cannot find evidence of conspiracy to steal in the evidence of these witnesses who, according to him, gave no evidence of a plan or meeting of the minds of the 1st and 2nd Defendants to steal the property of Mogbeyi Sagay & Co as charged in count 1 or at all.

It is submitted that the count of conspiracy to steal laid out under count 1 is inextricably tied up with the charge of stealing. In other words, proof of the essential ingredients of stealing is a sine-qua-non for a prima facie case of conspiracy to steal. If any element of the charge of stealing is not proved then there cannot be conspiracy to steal. He cited **FRN v. YAKUBU & ORS (2018) LPELR-43930(CA)** per OTISI, J.C.A (P.44, paras.C-E) contending inter alia that PW2, the staff of Union Bank, who merely dumped Exhibit P2 (the bundle of unexplained documents) expressly admitted that he did not know the details of the transactions in Exhibit P2. He gave no evidence of the person who presented, signed, or authored the withdrawal slips or cheques. He did not demonstrate the content of Exhibit P2 in the open court to show which documents proved what. And none of the prosecution witnesses demonstrated in open court or at all the content of Exhibit P2, which is the foundation of the alleged count of conspiracy to steal.

Learned counsel contended that Exhibit P2 was not tied by any witness to any specific charge or any aspect of the case of the prosecution and that there was no evidence from any witness that the inflows into Exhibit P2 were in respect of any case concluded or almost concluded by the Late Mogbeyi Sagay SAN in respect of which fees were being paid. And no such concluded or almost concluded case was mentioned and connected with any inflow in Exhibit P2. Thus that the inevitable consequence is that Exhibit P2, the foundation of the count of conspiracy is worthless and completely bereft of probative value and relied on **BABABE v. F.R.N(2019) 1 NWLR (Pt. 1652) 100 AT 131** per Kekere-Ekun JSC emphasizing this salient principle. 

He relied also on **Ladoja v. Ajimobi & Ors.** (2016) LPELR-40658(SC) @ 48-50, E-B, (2016)10 NWLR (Pt.1519) 87 at 146 paras. H-D, **ABIA v. INEC & ORS.** (2019) LPELR-48951(CA) the Court of Appeal per PEMU J.C.A (Pp. 12-13, paras. D-A) and **MOHAMMADU DURUMINIYA v COMMISSIONER OF POLICE** (1961) NRNLR 70 at 70-72 (infra) and submitted that documentary evidence, no matter its relevance, cannot on its own speak for itself without the aid of an explanation relating to its existence.

Counsel contended that the evidence of PW3, PW6 and PW7 regarding the offence of conspiracy was limited to the opening of the Union Bank account without the authorization of the Administrators and that the 1st Defendant paid monies to the 2nd Defendant from this Union Bank account. That PW6 testified that "Exhibit P2 is Union Bank account and is not one of the accounts in existence during the lifetime of the late principal. This account was not authorized by the administrators neither are we aware of its existence. It was fraudulently opened".

Counsel's contention is that the statement "fraudulently opened" is completely bereft of the particulars of the fraudulent opening and constitutes inadmissible opinion evidence of PW6. He relied on **NWOBASI v. OGBAGA & ORS** (2015) LPELR-40669(CA) per AGIM. J.C.A (Pp.34-40, paras F-A).

He argued that the evidence of PW6 that the Union Bank account was fraudulently opened does not fall into any of the exception to opinion evidence under the Evidence Act 2011. But that same is exclusively within the remit of the court to determine fraud and not that of any witness. It is submitted that the mere fact that Exhibit P2 was opened without the knowledge or authorization of the administrators of the Estate of Mogbeyi Sagay is not prima facie evidence of conspiracy to steal.

That even so, the idea of account opening was discussed and communicated to the Consultant to the firm, Professor Itsay Sagay via **Exhibit D25**, a letter dated 27th August, 2012, which letter was not responded to, lending, according to him, credence to the fact that the account opening was not fraudulent but was meant to enhance transparency and prevent fraud in itself.

He referred to **Tilley Gyado and Co. (Nig.) Ltd. v. Access Bank Plc** (2019) 6 NWLR (Pt.1669) 399 as holding thus:

"Where a party fails to respond to a business letter which by the nature of its contents requires a response or a rebuttal of some sort, the party will be deemed to have admitted the contents of the letter. Therefore, where a bank makes demands for

settlement of debt by letters and the amount of the debt is contained in each letter and the debtor does not query the respective figures written in the letters as the overall debt due, the debtor will be deemed to have impliedly admitted the quoted figures as the amount of debt due. In the instant case, it is not in doubt that the letter was a business letter requiring a response from the appellant. And it was also not in dispute that the appellant did not respond to the letter. [Gwanl v. Ebule (1990) 5 NWLR (PL,149)201".

He posited that to adduce evidence of the offence of conspiracy to steal, the prosecution witnesses had a duty to demonstrate that the intention of opening of the Union Bank account was to steal the monies proved to belong to the late Mogbeyi Sagay SAN, but that the prosecution witnesses however failed to demonstrate this vital element.

Furthermore, that the documents tendered by the prosecution which formed part of the case of the prosecution is also inconsistent with the statement that the Union Bank Account was fraudulently opened as alleged by PW3 and PW6.

First, he argued, the Statement of 2nd Defendant, tendered by the prosecution as **Exhibit P75**, explicitly established without challenge that the monies received by the 2nd Defendant from the 1st defendant on that account was in respect of expenses incurred by the 2nd Defendant in respect of the firm's cases conducted by him outside jurisdiction. That none of the prosecution witnesses gave evidence that the 2nd Defendant did not travel outside jurisdiction to conduct cases on behalf of the firm. And PW3 the lawyer in chambers gave evidence that he did not know the purpose for which the monies were paid to the 2nd Defendant, which he argued, negates the count of conspiracy against 1st and 2nd defendants. And that it even reinforces the statement of the 2nd Defendant that the monies received were for his expenses for cases done outside jurisdiction. Counsel submitted that the prosecution had a duty to debunk the statement of 2nd Defendant in Exhibit P75 that the monies he received from the 1st Defendant were to defray expenses incurred on behalf of the firm. And that the failure to debunk this statement by the prosecution is a tacit acceptance and concession that the state of fact is true.

That in **Ayinde v. State (2018) 17 NWLR (Pt. 1647) 140**, the Supreme Court per Augie JSC restated the law that:

"It is settled that the statement of an accused person to the Police forms part of the case of the Prosecution-**Ikpa v. State (2017) LPELR-42590 SC. (2018)4 NWLR (Pt.1609)175**".

Again, that on the allegation of opening **Exhibit P2** without authorization of the administrators, PW3 conceded that the Union Bank account was opened before the issuance of the letters of administration as there were no Administrators at the time the account was opened. He posited that how the 1st and 2nd defendants could have sought for authorization from a non-existent administrator beats logic and objective thinking?

And that more instructive is that PW3 and PW6 admitted that the law firm and any of its assets was not listed as part of the assets of the estate of Late Mogbeyi Sagay SAN in the letters of administration, Exhibit P31 too suggests that the consent, knowledge or authorization of administrators was a prerequisite for the opening of an account with the name of Mogbeyi Sagay & Co to run the affairs of the office. The law firm from the content of Exhibit P31 the letters of administration was not under administration by the administrators. He urged the court to so hold.

He submitted that the law is clear that the powers of the administrators is strictly limited to items listed in the letters of administration; 'An administrator derives his authority from the letters of administration' and 'a person can only act as an administrator of an estate pursuant to letters of administration granted by the Probate Registrar', per **Bakare vs. Bakare (2012) 16 NWLR (Pt.1325)29at 45; Arije vs. Arije (2011)13 NWLR (Pt.1264)265 at 289 and the Supreme Court per Kekere-Ekun JSC, as then was, in AMOBI VS. NZEGWU (2014)2 NWLR (PT.1392) 510 AT 541.**

That PW3 also admitted that the 1st & 2nd Defendants were allowed to manage the firm, in other words, they were the managers of the firm after the death of the Mogbeyi Sagay SAN. On the definition of managers of a firm, he referred to Garner's Black's Law Dictionary (9th Edition) which defines it as person who administers or supervises the affairs of a business, office or other organization."

Thus that the 1st Defendant was the person who administered or supervised the affairs of Mogbeyi Sagay & Co after the demise of the owner and as the manager of the firm, there was no document, which forbade him from opening an account in the name of the firm in managing the firm.

Counsel reiterated that PW3 and PW6 effectively conceded that there was no document which forbade or precluded the 1st and 2nd defendants from opening an account in the name of the firm. In other words, that the defendants did not contravene any law or directive of the late proprietor of the firm by opening a bank account for the management of the firm. In fact, PW6, according to him admitted that there were

authorizations granted to the 1st defendant but failed to list the authorization or tender any of said authorizations. He submitted that this again is an instance of withholding evidence by the prosecution.

He argued that PW6 who gave evidence as one of the administrators testified in his examination in chief that "... after his death, the two defendants who were lawyers were appointed by the consultant to the firm, Prof. I. Sagay SAN, to carry on the business of the law firm." This, according to counsel, is a further admission that the Defendants had the right to carry on business of the law firm and that this business of the law firm cannot but include managing the firm and opening accounts for the firm. He stated that very instructive is that the prosecution failed to tender the purported appointment letter by the consultant which if tendered would have shown that there was no limit to the right to carry on the business of the law firm. And that the failure to tender this document which was in their possession is a clear case of withholding evidence and this court is enjoined to construe it against the persecution.

He submitted that in **Oduah v. FRV (2020)12 NWLR (Pt 1737) 16 at 32-33**, failure to so call a vital witness would input presumption of withholding un-favourable evidence and that these documents are all flying in the air in the realm of speculations and unwarranted conjectures, with no value in law.

He recalled that PW7 was shown **Exhibit P2** and his testimony on 28th July 2020 as: "The signatory of **Exhibit P2** is Tom S. Awhana and Paul O. Okoro. The account opening date was not clear. There is debit and credit on the account, there are several debit and credit but it is not stated summarily. At the debit column you'll see the name of the 2nd defendant as well as the 1st defendant."

This, according to him was the whole evidence of PW7, which he argued does not establish conspiracy to steal. That the mere fact that there are credits and debits on the account is not prima facie evidence of conspiracy to steal property of Mogbeyi Sagay SAN or proof that the money belonged to Mogbeyi Sagay & Co. or that the monies were not used for the running of the firm.

It is submitted that PW7 cannot legally give evidence of the contents of Exhibit P2 because he is not the maker of the Exhibits and thus his purported allusion to debits and credits is hearsay evidence, which must be expunged by the court. He quoted from **GBADAMOSI vs. WEMA BANK & ANOR (2021) LPELR-53423(CA)** and submitted that PW7's evidence is not legal evidence on which the court can rely on in

proof of conspiracy to steal the property of Mogbeyi Sagay & Co. He urged the court to so hold.

Quoting **Section 280(2)(f)** of the **Criminal Law**, he submitted that there was no evidence of an intent to use the money at the will of the defendants but that the unchallenged and un-contradicted evidence was that the money was used for the business of the law firm practice. That PW7 tendered Exhibit P75 (the EFCC Statement of the 2nd Defendant) where the 2nd defendant clearly stated that the monies, he received from Exhibit P2 were for expenses for the cases he did outside jurisdiction. PW7 did not refute these facts neither did he state that he investigated and found out that the monies were not used as expenses in pursuit of the pending cases of the firm. The failure to investigate the uncontradicted statements in Exhibit P75 puts a death knell on the case of the prosecution; and is inconsistent with the testimony of the prosecution witnesses that the account was opened fraudulently. He urged the court to so hold and cited **BARALOLA & ORS vs. STATE (1989) LPELR-695(SC) Per OPUTA, ISC (P.45.paras.A-E)**.

On Counts 3-19 for Stealing the particulars of which are that the 1st Defendant "dishonestly converted "the "property of Mogbeyi Sagay & Co." Counsel submitted that the allegations of dishonest conversion of the property of Mogbeyi Sagay & Co are essential ingredients of counts 3-19 of the information which the prosecution must along with the other ingredients of Stealing under **Section 280(1) and (2) Criminal Law Cap C17 Laws of Lagos State 2015**.

He referred to PW3's evidence as follows:

"We discovered that most of the monies cleared in those accounts were monies which the late SAN was entitled to for the cases either been concluded or almost concluded before he passed away....."EFCC investigated and from the statement of account it was discovered that almost all the monies received in those accounts were paid by clients for work which they gave to the late SAN some of which he had concluded before his death."

He submitted that so, the basis of the counts of stealing the property of Mogbeyi Sagay & Co is that the monies in the accounts tendered by the prosecution are monies the late Mogbeyi Sagay, SAN **was entitled to for the cases either been concluded or almost concluded before he passed away...**"

Thus that the crux of the allegation of stealing therefore rested on the contention that the inflows into the accounts opened in the name of Mogbeyi Sagay & Co with Heritage Bank and Union Bank were in respect of cases concluded or almost

concluded by the late SAN before he passed away and which the 1st defendant converted [dishonestly] for his personal use.

He sought to point out that the mere opening of the accounts with the name of Mogbeyi Sagay & Co in Heritage Bank and Union Bank of itself and by itself is not stealing. And that it is not also evidence that every piece of money paid into the account is the property of Mogbeyi Sagay & Co or is the proceeds from cases concluded or almost concluded by the Late SAN. He submitted that there was evidence elicited during cross examination of PW3 that client's monies were paid into these accounts and monies in respect of cases that were attracted to the firm after the demise of the Late SAN were also paid into the accounts.

These, he contended were admittedly not property of Mogbeyi Sagay & Co. even though paid into those accounts and that it is also important to point out that the charge against the 1st Defendant is stealing and not fraudulent opening of account, if there is any such crime known to law.

Counsel stated that at the heart of the counts against the 1st Defendant is the allegation that he dishonestly converted to his own use fees due to Mogbeyi Sagay SAN in respect of services rendered fully or almost fully by the late SAN before he died on the 28th of February 2012 and is the basis of counts 1, 3-19 of the Information founding each charge on ".....property of Mogbeyi Sagay & Co."

That at the proceedings of 25th June 2019 and 11th September 2019, PW3, the prosecution's main witness, at the prompting of the prosecution identified the names as persons who purportedly paid fees in respect of services the late SAN rendered fully or almost fully before his death. Conversely also is his, according to counsel contradictory evidence under cross examination demonstrating that these cases were initiated after the death of Mogbeyi Sagay SAN and therefore cannot fall under cases which the late SAN concluded or almost concluded before his death.

He went on to state that quite apposite as well is the prosecution's documentary evidence tendered through PW7 which gave sufficient explanation of these transactions and makes it clear that these are cases which the late SAN could not have concluded or almost concluded before his death, namely;

- a) Omadino Development Association PW3 under examination-in-chief on 25th June 2019 testified that the Omadino Community (which he referred to as Austoju, Austkery or Austin Onieson) "is a client who paid money for work the SAN was

doing for them before he died, which is still going. The matter had gone to the Supreme Court"

1. Though there was no date on Exhibit P30 to establish the contention of the prosecution that this is a case which the late SAN concluded or almost concluded before his death, PW3's evidence was discredited under cross examination by Exhibit P32 (Court of Appeal Ruling delivered on 5th November 2013, which showed the counter affidavit that led to the ruling was argued by the 1st defendant on the 8th of May 2013), Exhibit P33 (Court of Appeal Judgment delivered on 7th July 2014 shows the brief was filed and settled by the 1st Defendant on 4th December 2013 and was argued by him on the 5th of May 2014); Exhibit P36 (Supreme Court brief of Argument was settled by the 1st Defendant on the 4th of March 2015). All these Exhibits contradicted the aforesaid evidence of PW3 that the fees paid were for work concluded or almost concluded by the late SAN. They are cases which post-dated the death of the late SAN. And there was no scintilla of evidence that these were cases that were concluded or almost concluded before the late SAN's death. The evidence showed that the 1st Defendant conducted these cases after the death of the Mogbeyi Sagay & Co. He urged the court to so hold.
- ii. Further contradicting the prosecution evidence is Exhibits P73 and P74, (the 1st Defendant in his statement to the EFCC tendered by the prosecution), in **Exhibit P74** he stated:
- "On Omadino Community, on 29/11/2013 N1,000,000 and 28/1/2014-N500,000. The payments were made in respect of the Omadino Community for the matter we are doing for them. The money was used in the running the affairs of the firm. On Uwatse Benson, 17/8/2014. N2,000,000 and Austin Oniyesan 17/8/2014-N2,050,000 and Keka Erefoluwa 18/9/2013 N2,000,000. These three I think are also of the Omadino matter and the payments were used in the running the affairs of the firm."
- iii. It is submitted that the forgoing statement formed part of the case of the prosecution and effectively embeds in the prosecution's case irreconcilable conflict in the evidence. In *BENSON vs. THE STATE* (2018) LPELR-48458(CA) the Court of Appeal per AKINBAMI, J.C.A P. 52 , paras B-C.
- "Now, it is a well-established principle that the statement of the Accused Person to the Police is considered part of the case for the Prosecution, whether it contains a confession or not, and whether the Accused Person recite it at trial or not - *Egbohonome V. State* (1993)7 NWLR (Pt. 306) 383 SC." 

b.) **Uee & Cee Nigeria Limited, Sahovel Oil & Gas:** PW3's testimony is that they are companies belonging to Mr. Sylvester Unatemfoh, and that "he worked for him on various cases in High Court and Magistrate Court". Since PW3 was employed in 2013 after the death of Sagay SAN in 2012, his testimony of working on these cases demonstrated that the cases were not concluded or almost concluded before the death of Mr. Sagay SAN.

i. Not only that, Sahovel Oil is listed under items 4 and 5 in Exhibit P30 and from the suit number the case was filed in 2016. While though Uee & Cee and Mr. Sylvester Unatemfoh were listed in P30, no suit number was indicated and no evidence was led at all that they were filed before the death of Mogbeyi Sagay SAN.

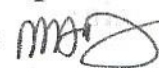
ii. Putting it beyond doubt, under cross examination, PW3 was confronted with Exhibit P48, a letter dated 15th November 2016 written by the client giving the 1st Defendant instruction to provide legal services for him and his companies.

iii. This evidence from the prosecution was corroborated by the prosecution in **Exhibit P73** tendered by them where the 1st defendant stated that:

"On Sylvester Alfred Unuatemon for 3/2/2017- N1,000,000; 28/2/2017 -N200,000, these were professional fee for the cases we were doing for him. **These are also cases I attracted to the firm and the proceeds were used in running the firm.**"

iv. None of the statements made by the 1st Defendant were controverted by the prosecution through any documentary or oral evidence. They are therefore deemed to have accepted same as the truth of his statement.

c) **Bob CJ & Co:** PW3 testified that the Bob CJ & Co is a practicing lawyer who based on the legal services rendered to him by the firm paid N1m to the office as fees. Under cross examination on the 12th of September 2019, PW3 gave more information on the case that "it is a brief that she (Busola Byron) got herself but could not do it and brought it personally to me... We filed a motion. All these happened after the death of SAN"

i. This evidence was again fortified by **Exhibit P44, the letter from Bob CJ & Co attention to the 1st defendant and dated 4th September 2014;** also showing that the matter occurred after the death of the SAN. 

By this testimony from the prosecution, counsel argued that this case has been taken away from the ambit of cases which were concluded or almost concluded before the SAN died.

d.) **Tempo Housing:** PW3 in his testimony of 11th September 2019 testified that the sum of N20.5m which are monies belonging to Tempo Housing was lodged in Exhibit P2. This was further confirmed by the letter of instruction from Tempo Housing which the client specifically instructed that he does not want his monies to be mixed with the estate account. More instructive is that from the exhibit tendered by the 1st Defendant, the legal brief came on the 4th of August 2013 far after the death of Mogbeyi Sagay SAN. It cannot therefore fall within cases which he concluded or almost concluded before his death.

In **Exhibit P73** tendered by the prosecution, the 1st defendant stated:

"Similarly, the Tempo Housing payment of N20, 500,000 was also a client income arising from the lease of his property."

e.) **Emmanuel Chinyere, Olanrewaju Yusuf, Johnscreeek Integrated services Fina Trust Microfinance Bank:** PW3 in his testimony regarding these persons testified that "From the 1st Defendant's admission, he is a client that we worked for to recover money for them and they made those payments. EFCC was involved in that matter. The other party now paid"

i. Under cross examination, he confirmed that the name of the client was Chief Joe Arausi and also confirmed that by Exhibits P41 and P42 dated 18th January 2018, Chief Arausi specifically instructed the 1st Defendant to **"transfer any paid amount into your personal account until further notice when you will send it to me. You are free to deduct your professional fees and other cost as earlier agreed"** This, he stated, is a brief that was handled by the 1st Defendant after the death of Mogbeyi Sagay SAN, and the payments are client's monies paid into Exhibit P2 which do not form part of the property of Mogbeyi Sagay & Co.

i. To further demonstrate that the payments in this case do not form part of the work done by the Late SAN, the 1st Defendant stated in Exhibit P73 which forms part of the prosecution's case that:

On Joe Arausi payment.....**These payments are in respect of two matters I attracted to the firm since they are 2014-2016 matters."**

f) **Allen William Babatunde:** PW3's evidence on him was that Mr. Allen was a client who paid N5m to the family and N10m paid to the firm. N5m was paid into

the estate account while N10m was paid into the Heritage account from where it was allegedly diverted.

i. Totally discrediting the evidence of PW3, Mr. Allen himself who testified as PW5, confirmed that from Exhibits P66 and P67 the sum of N5m was paid directly to the family of Mogbeyi Sagay for the work done for him by the late SAN while the sum of N10m was paid to the firm for the works being handled by the firm headed by the 1st Defendant after the death of Mogbeyi Sagay. [See Record of Proceedings of 7th February 2020]

g) **Chief Registrar of High Court of Lagos State:** He testified that proceeds of the sale of the judgment execution in favour of Mr. Allen were paid into the firm. From his testimony he acknowledged that it was the 2nd Defendant that attended the court and more so that the execution of the judgment was done after the death of Mr. Sagay.

h) **Nucom Engineering:** The evidence of PW3 was that "the late SAN got judgment against Cross River State in favour of Nukon in 2004. Enforcement of that judgment took long before the SAN passed away...."

i. This testimony was contradicted by **Exhibit P37** the Order of the Federal High Court in Suit No: FHC/L/1416/14-Nukom Engineering v Government of Cross River State which from the date on the process was filed after the death of Sagay SAN. And **Exhibit P36**, the letter from Nukom Engineering limited dated 30/3/2015.

ii. Under cross examination on 30th September 2019, PW3 stated "Yes I confirm the name of T.S. Awhana and myself. It coincided with the date Awhana was in court for another matter. It was given to the firm. Sorry this matter was Nucom Engineering. After the death of SAN."

iii. In **Exhibit P73**, the 1st Defendant stated that:

"On Ogbemi Franklin Akomi payment made on 25/09/2013-N100,000, 23/12/2014-N200,000 and 20/2/2015- N100,000. These payments were made to facilitate **the garnishee action** on NUCOM. The monies paid were to facilitate the filing and processing of the garnishee action at the Federal High Court, Lagos and for air transportation from Lagos to Calabar two times. The professional fee in this NUCOM matter was paid and there is a letter to that effect which I have earlier given to the office when I left." 

The Court in **NDIC v TILAD** (Unreported CA/L/732/2012 delivered on 2nd December 2016 per Ogakwu JCA relying on **Ojo vs. National Pension Commission (2013)LPELR – 20812** held that garnishee proceedings is a separate action that requires issuance of fresh pre-action notice.

i) **Construmat:** PW3 in his testimony on the 11th of September 2019 testified that "the SAN had a brief from Construmat to perfect a document. They made a part payment to the SAN so by the time the balance was due the SAN had passed away."

i. On **Exhibit P4**, it was referenced that the sum of N10,500,000 was outstanding balance but from the 3rd and 4th paragraphs the request for N5,000,000 was "to enable us commence action immediately on the new Governor's consent." This new Governor's consent is a brief that came after the death of Mr. Sagay as evidenced on the date of the letter which is 5th April 2012.

ii) To further establish that the payment of N5m was not for work done by late Sagay SAN, in **Exhibit P73**, it was stated as follows:

"On Construmat Nig. Ltd. 29/1/2013 - N500,000;13/11/2013-N1,300,000;13/11/2013-N2,850,000;13/11/2013-N950. These are monies paid by the client to procure Governor's consent for their property. We eventually paid N5, 000,000 to an agent to get out the Governor's consent. The professional fee was N3.5million and was paid into the Access Bank Account."

ii. The aforesaid statement was not contradicted by the prosecution either through oral or documentary evidence. It is deemed admitted and is definitely inconsistent with the evidence of PW3 that this money was fraudulently converted by the 1st defendant.

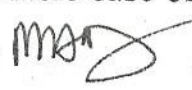
i) **Financial Derivative Company:** PW3 testified that "at the time the SAN passed away judgment had been delivered in that case and Garnishee proceedings were stalled because of the appeal against the judgment debtor. "That I applied to enforce the judgment via Garnishee Proceedings and the sum of N5.5M was to the firm."

i. From the testimony of PW3 that he applied for the enforcement of the judgment through Garnishee proceedings he has conceded that the case came after the death of Mogbeyi Sagay SAN and they do not fall within the cases

which he concluded or almost concluded before his death. Garnishee proceedings as shown earlier is a new suit and entirely different matter - **NDIC vs. TILAD (Unreported CA/L/732/2012 delivered on 2nd December 2016 per Ogakwu JCA.**

Counsel argued that spanning through the evidence of PW3 and indeed the entire prosecution evidence is the obvious fact that the payments on the cases from which the prosecution rests their charge of stealing were cases which came into the firm after the death of Mogbeyi Sagay SAN in February 2012. As shown above, some of these payments were for expenses incurred for the filing and logistics in furtherance of these cases after the death of Sagay SAN. That there is no fact whatsoever from the prosecution that any of these cases were commenced and concluded or that almost concluded before February 2012 and that the absence of this vital evidence casts serious doubt on the case of the prosecution, per Exhibit P30, which, according to him, negated or is inconsistent with the contention that the cases were concluded or almost concluded before the SAN passed away in February 2012. He contended that the cases on Exhibit P30 deliberately, according to him, detached from **Exhibit P3** by the prosecution are cases that came after the death of the SAN.

He submitted that assuming without conceding that the monies even form part of the property of Mogbeyi Sagay & Co, the other condition which ought to be satisfied by the prosecution is to prove that the monies were dishonestly converted to his (the 1st defendant's) own use, that there was no scintilla of evidence from the prosecution that the 1st Defendant converted any of these monies to his personal use, that there was no evidence from any of the prosecution witnesses that the 1st defendant used the monies to purchase anything for his personal use. But that very significant is that the evidence before the court from the prosecution is that these monies were in fact used for the running of the firm and that PW3 and PW6 did not deny that the expenses used in running the office far exceeds the monies given to the 1st defendant from the estate account.

Counsel recalled the evidence of PW3, PW6, PW7 and the 1st Defendant and submitted that the pieces of evidence which form part of the prosecution's case demonstrates that there was no dishonest conversion of any money to the 1st defendant's personal use. This, he argued, confirms that the prosecution has failed to show any prima facie case of "dishonest conversion to his personal use" against the 1st Defendant. 

He submitted that the testimony of PW1 and PW2 did not establish evidence of conversion much less dishonest conversion of the property of Mogbeyi Sagay & Co. That their evidence did not also establish the ownership of the monies that came into the account and merely dumped Exhibits P1 and P2 respectively on the Court and failed to create any nexus to the alleged monies stolen on the information to the contents of **Exhibits P1 and P2**; no effort was made to state the amounts represented in each of the Exhibits or the amounts allegedly diverted. He submitted that their evidence is worthless as the charge is concerned as it is not the duty of the court to delve into the contents of these statements of account (**Exhibits P1 and P2**) in the chambers when there was no oral evidence by the makers to tie them to counts 3-19 on the information.

He relied on **MOHAMMADU DURUMINIYA vs. COMMISSIONER OF POLICE (1961) NRNLR 70 at 70-72**, where the Court expounded on a case where the statement of account was similarly tendered by the prosecution without adducing evidence of the contents:

Thus that **Exhibits P1 and P2** are therefore deemed to have been dumped on this Court without any probative value and that what the foregoing portends is that the evidence of PW1 and PW2 and **Exhibits P1 and P2** tendered through them is not legal evidence on which the court can act, they are worthless and bereft of any probative value, the court does not know which of counts 3-19 **Exhibits P1 and P2** relates to because no witness related them to any count whatsoever. That the court cannot at this or any stage of the proceedings link documents to any aspect of the prosecution's case which is the exclusive responsibility of the prosecution and which they woefully failed to discharge. He urged the court to so hold.

He argued that PW 3 failed to relate his evidence to each head of the counts and he did not tie [and could not tie, not being the maker of the documents] the entries on Exhibits P1 and P2 with any of the monies laid out in counts 3-19 as allegedly stolen by the 1st Defendant. And that no witness identified, related or tied the specific sums charged in those counts to any of the entries on **Exhibits P1 or P2 - ANDREW vs. INEC [2018]9NWLR (PT 1625) 507 at 577-578 per Akaahs, J.S.C.**

It is his further submission that since it is common ground between the parties that cases concluded or almost concluded by the late Mogbeyi Sagay SAN are a matter of court record, the only admissible evidence in proof of the contention that a case was concluded or almost concluded by the late Mogbeyi Sagay SAN are the originals or certified true copies of those cases concluded or almost concluded by the late

Mogbeyi Sagay SAN and so that any other evidence is absolutely inadmissible. *This is so because court records are public documents under the provisions of Evidence Act 2011 and ARAKA vs. EGBUE [2003] 17 NWLR (PT 848) 1 at 19-20 per EDOZIE, J.S.C. at page 26, paras.C-G.*

His submission is that **Section 97(2)(c) referenced in ARAKA vs. EGBUE** [supra] is exactly the same with the provisions of **section 90 (1)(c) of the Evidence Act 2011** and that what this portends is that the entirety of the evidence of PW3 in relation to cases concluded or almost concluded by the late Mogbeyi Sagay SAN is inadmissible. He urged the court to so hold.

He contended against PW4, O.C Kagbo Omomadia's testimony thus; that the Late Sagay SAN led him in filing a debt recovery action, for which he was briefed by Union Bank, but the matter was settled out of court and payment came after the death of Sagay SAN. He testified that a cheque was "issued in the name of the 1st Defendant and I specifically indicated that the proceeds be given to Mr. Sagay's wife and children for the services rendered." PW4 did not tender the record of the case in respect of which he was led. He did not also tender the terms of settlement or the cheque alleged issued in the name of the 1st Defendant. And no statement of account of the 1st Defendant was tendered in evidence to show that a cheque from PW4 cleared into the account.

It is, according to counsel, significant to note that PW4 did not give evidence that the 1st Defendant did not carry out his instructions or that he received any complaint from the wife of the late Mogbeyi Sagay SAN in consequence of the purported cheque issued in the name of 1st Defendant. The wife of the late SAN was not called and thus gave no complaint let alone any evidence that she did not receive the proceeds of the purported cheque. He urged the court to hold that the evidence of PW4 does not rise up to the level of prima facie evidence of any of the essential ingredients of the offences for which the 1st defendant was charged in counts 3-19 of the Information.

Counsel posited further that from the statements obtained by the EFCC from the 1st Defendant [**Exhibits P71-P74**] no question was put to the 1st Defendant on the issue the subject matter of PW4's evidence at all; it was simply not the subject of investigation by the EFCC and the evidence of PW4 is basically at large.

Also that PW5, Babatunde Allen, was a client of Mogbeyi Sagay SAN before his demise and instead of taking his cases to another firm; he kept his cases with the 1st Defendant as the lead counsel in the firm. His testimony was that during the lifetime of Late Sagay SAN he did not pay for his legal services but after his death he went to

the firm and gave the 1st defendant "a total of almost N18m" for "the cases done and the ones to be concluded.". He further instructed part of the money be given to the widow of Mogbeyi Sagay. This evidence remains unchallenged. This was the scenario with respect to the various sums of money including the sums of money in *Nidart v. Bayelsa State Government*.

Under cross-examination, that he confirmed that the total amount paid which included payment for the family of Late Sagay SAN, default fees, filing fees, etc. was N16.2m contrary to the N18m he testified under examination-in-chief.

That he also confirmed under cross examination that the monies paid were in accordance with **Exhibit P.67** which stipulates that aside the N5m given to the family for the outstanding jobs done by the Late SAN before he died, the other sums paid were for default fees, filing fees, and other fees incurred with respect to the new cases being prosecuted on his behalf after the death of the SAN.

It is counsel's position that the evidence of PW5 rather than support the prosecution's case negated the evidence of PW3 that monies that flowed into the account were in respect of cases concluded or almost concluded by the late SAN before his death. PW5's evidence cemented the fact that the monies he paid in the name of the firm were in respect of ongoing cases that were being handled by the 1st Defendant.

That PW5's evidence showed a clear distinction between the property of Mogbeyi Sagay & Co which the witness paid to the wife and the fees and expenses for the witness' outstanding cases which he paid to the firm, no evidence whatsoever was established of any of the ingredients of the offence of stealing, his evidence did not establish dishonest conversion of property of Mogbeyi Sagay & Co particularly with the evidence that he paid the family N5m directly for the work done by the Late SAN before he died. But more importantly, according to counsel, is his evidence that this arrangement of paying the family directly and paying the firm separately was at the insistence of the 1st Defendant who drew up **Exhibit P.67** which PW5 signed. This piece of evidence of PW5, he contended, is inconsistent with the charge of dishonest conversion levelled against the 1st Defendant but established the 1st Defendant's bona fides and that from Exhibit P67; a receipt issued in respect of cases that included two cases that clearly arose after the death of Mogbeyi Sagay & Co.; CA/L/705M/2014 and ID/269M/13 and the late Mogbeyi Sagay SAN could not have participated in any of these cases since he died on the 28th of February 2012. This, he stated explains the penultimate paragraph of **Exhibit P.67** where it was jointly

declared as follows "The above fee covers already completed matters and ongoing matters."

He stated that the 1st Defendant was in-charge of PW5's cases and the monies were used for the running of the firm and the witness' ongoing matters. He urged the court to hold that the evidence of PW5 did not establish prima facie the essential ingredient of the charge of stealing against the 1st defendant and is inconsistent with the evidence of PW3 and an essential ingredient of the charge of stealing.

That **PW6, Cliff Kokogho**, testified as one of the Administrators of the Estate of Late Mogbeyi Sagay appointed on 28th October 2013 by a Letter of Administration together with Mrs. Sagay (the wife of the deceased) and Monima Lawson-Jack [See **Exh.P31**]. Under examination in chief PW6 during the proceedings of 7th February 2020 stated that no money came from the firm to the family making it difficult to cater for the needs of the wife and the education of the children. However, under cross examination, PW6 agreed that on **Exhibit P15** [Access Bank Statement of Account], which he said was opened after the death of Mogbeyi Sagay SAN to receive monies generated from the running of the firm, there was an inflow of N 686 million between 2012-2018. He confessed that he personally withdrew at several times a total sum of N1, 296,350.00 from this account while a total of N43,632,015.00 was given to Mrs. Sagay between 2012-2018 and the sum of N10,849,000 was paid as school fees for Mrs. Sagay's children

He submitted that this glaring evidence negates PW6 testimony and diffuses any iota of dishonest conversion of the property of Mogbeyi Sagay & Co by the 1st defendant particularly when one juxtaposes Exhibit P15 with **Exhibit P.31**, the CTC of the letter of administration, which showed clearly that the bank balance of Mogbeyi Sagay SAN at his death was the sum of N 66,793.34.

Also that the fact that the 1st Defendant was directing and making payments into **Exhibit P.15** from which PW6 personally withdrew N1,296,350.00, the wife of the late SAN withdrew N43,632,015.00 and the sum of N10,849,000 was paid as school fees for Mrs. Sagay's children is decisively inconsistent with the case of stealing levelled against the Defendants. And that this explains why the prosecution withheld Exhibits P15 and P31 from its evidence and had to be tendered during cross-examination.

He contended that the evidence of PW6 provided no prima facie evidence of the essential ingredients of the counts of stealing against the 1st defendant. Cross examination of this witness, according to him, has so devastated his testimony that it

cannot be relied on by any Tribunal in proof of the essential ingredients of the charge of stealing.

He submitted that the evidence of PW7 on the contents of the audited reports admitted as **Exhibits P77-P84** are inadmissible as hearsay evidence and cited **OSUOHA vs. THE STATE (2010) LPELR-4669 (CA)** where the Court of Appeal held that "The content of a document can only be proved by someone who can give direct oral evidence of the content of such a document."

Also in **Obot vs. The State (2014) LPELR-23130(CA)** page 36 the Court limited admissibility of the evidence of an Investigating Police Officer "...to what he has done during the Investigation of the crime..." and held at page 35 that "It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and admissible when it is proposed to establish by evidence not the truth of the statement but the fact that it was said - **Kala vs. Potiskum (1998) 3 NWLR (pt.540) 1 SC.**"

He therefore urged the court to expunge from the records the inadmissible evidence of PW7 on the contents of **Exhibits P77-P84**.

That assuming without conceding that the court may validly consider the evidence of PW7 on the contents of **Exhibits P77-P84**; he submitted that his evidence is patently inconsistent with the contents of the exhibit. For instance, that he testified that on **Exhibit P.78** page 5 "The heading is Mogbeyi Sagay Estate Account for 31st December ending 2018 the total amount received by the firm is N241,339,096.59." Contrary to his testimony, on the **Exhibit P.78** the law firm received N3,385,000.00 and not N241M. These, he contended are just a few of the several instances of false testimonies by PW7 on the content of the audited report, and a valid reason for the court to discountenance same. Very vital is that attached to **Exhibit P.83** were 12 Internal Memos which are request for funds from the estate. 11 out of the 12 of these Memos were signed by Nneka H. Sagay (wife of the Late SANV) while the last one was signed by Cliff Kokogho (PW6). There was no memo whatsoever from the law firm requesting for any monies from the estate. There is also no specific place in the audited report which shows inferentially or directly that the 1st and 2nd Defendants diverted any monies as alleged in the Counts of the Information, a fact PW7 could not deny at all! This, according to him, demonstrates that there is no iota of evidence to support the charge of stealing or conspiracy against the Defendants and that there is no case established for them to answer!!!

He submitted that the law is well settled that every document, including the written statements of the Defendants, tendered by the prosecution during the presentation of their case forms part of the case of the prosecution. That **Exhibit P71-P76**

(statements of the defendants) tendered by the prosecution forms part of the evidence of the prosecution and should be treated as such relying on **Ayinde v. State (2018) 17 NWLR (Pt. 1647) 140**, the Supreme Court per erudite Augie JSC restating the law that: "It is settled that the statement of an accused person to the Police forms part of the case for the prosecution- **Ikpa v. State (2017) LPELR-42590(SC);(2018)4 NWLR(Pt.1609)175.**"

Under cross examination PW7 identified **Exhibit P71-P74** (statements of 1st defendant with EFCC) and confirmed that the 1st Defendant specifically mentioned the names of persons who paid monies to him, the amounts paid and the legal expenses or legal services performed by him for these persons. These names include Mr. Albert Ikomi, Contemporary Group, Nduka Nwachukwu, Chief Great Ogboru (Fiogret Limited), Quantum Securities, Oraka Ken Uche, Babatunde William Allen, Clement Illoh, Joe Arausi, Peter Ishaka, Softimars, Ogbemi Franklin Akomi, Nucom, KBL/ABU & Sons Trading, Whaytem, Union Bank, NDIC, Dick Stephen Chimezuru, Roseline Aderounmu, Uee & Cee, Omadino Development Association, Financial Derivatives Company etc. After giving a brief description of the transaction and the legal services he rendered to them, he consistently stated these persons "are available to throw more light on these monies".

He argued that the prosecution who bore the burden to investigate and debunk these testimonies neither investigated nor did they challenge the statement by providing contrary evidence against it. These statements, according to him were wholly unchallenged and are diametrically inconsistent with the case of the prosecution thereby raising specter that the prosecution presented fundamentally inconsistent and contradictory evidence and that the vital witnesses were not called. He relied on **ALADE v. ADEKANYE & ORS (2021) LPELR-55749(CA)** "a vital witness is a witness whose evidence may determine the case one way or the other, and failure to call a vital witness may be fatal to the party's case. "In **ALIYU v. RUWA (2019) LPELR-46475(CA)**" where a party to a case failed, refused or neglected to call a vital witness whose evidence may help the Court., it will be presumed that the evidence of that witness would have been unfavourable to that person who refused to call him." In **MIRACLE v. STATE (2022) LPELR-58563(CA)** "The fact that the prosecution failed to call a vital eye witness should have been followed by the lawful consequence of such abstinence".

He submitted that the failure to invite these named persons and/or investigate the veracity of these statements is fatal to the case of the prosecution as the 1st Defendant furnished all the necessary particulars of these persons at the earliest time in his statement before the EFCC and that the failure to investigate cast serious doubt on the case of the prosecution against the 1st defendant and rendered it untenable.

That in **PATRICK IKEMSON Vs THE STATE [1989]NWLR (Pt110) 455;[1989]6 S.C.(PT D) 114at 117** per BELGORE, JSC delivering the judgment

of this court held that "If there are contradictions in the evidence of the prosecution, and the contradictions go materially to the charge, doubt will be created and benefit of it must be given the accused person, in which case he will be discharged."

He submitted that in *PRINCENT & ANOR v. STATE* (2002) LPELR-2925(SC) Per IGUH JS.C (Pp.28-29, paras.C-A) held thus, "The law is firmly settled that for any conflict or contradiction in the evidence of the prosecution witnesses to be fatal to its case, such conflict or contradiction must be material, substantial and fundamental to the main issues in controversy between the parties before the court thus creating some doubt that the accused is entitled to benefit from. See *Nasamu v. The State* (1979) 6-9 SC 153, *Onubogu v. The State* (1974) 1 All NLR(Pt2) 5; *Ibe v. The State* (1992) 5 NWLR (Pt 244) 642 at 649; *Azu v. The State* (1993) 6 NWLR (pt 299) 303 at 316; *Wankey v. The State* (1993) 5NWLR (pt 295) 542 at 552 etc."

It is submitted that the conflict identified in the case of the prosecution against the 1st Defendant supra is "material, substantial and fundamental to the main issues in controversy between the parties before the court. He urged the court to so hold.

CERTIFIED TRUE COPY He observed that when confronted with the apparent failure to investigate the statement of the 1st Defendant concerning persons he specifically named on the critical issue of the ownership of monies in the accounts, PW7 kept retorting that it is duty of the 1st Defendant to bring these persons. But that these persons were vital witnesses in the determination of the ownership of the monies and the constitutional presumption of innocence in favor of the 1st defendant cast an unremitting burden on the EFCC to interrogate these persons, elicit statements from and call them as witnesses. That there was no burden on the 1st Defendant to call these persons to prove his innocence and that in *OGUDO v. THE STATE* [2011] 18 NWLR (PT 1278) 1 at 31-32 the Supreme Court per Rhodes-Vivour JSC, failure to call a vital witness by the prosecution is fatal to the prosecution's case and raises the presumption under **Section 149 (d) of the Evidence Act 2011** that had he been called the evidence he would have led would have been unfavourable to the prosecution.

In conclusion, he submitted that the evidence of PW7 did not establish the offence of stealing and that there was no evidence of any of the ingredients of the offence neither was there any evidence of the property of Mogbeyi Sagay & Co being dishonestly converted by the 1st defendant. The whole evidence of PW7 is, according to him, based on mere suspicion and hearsay but nonetheless and as an act of overkill, the 1st Defendant led an avalanche of evidence via DW1, DW2 and DW3

showing there was no dishonest conversion or stealing of any monies by the 1st Defendant.

He stated that PW8, Ben Daminabo, was subpoenaed to give evidence. He testified that he saw two letters from AMCON both dated 27th August 2012 [**Exhibits P6 and P7**] but they looked at their records and found **Exhibit P6** while "we could not trace **Exhibit P7** in our records". He testified that after correspondences with the firm, it was agreed that the sum of N1, 000,000 be paid to the firm on quantum meruit before the case file was returned to AMCON. Under cross examination, PW8 gave oral evidence confirming all the contents of Exhibit P7 which he had alleged they could not trace in their records. He agreed that it was not the business of AMCON to know how monies of a law firm were expended in running the firm. In **Exhibit P74**, the 1st Defendant had testified the monies were used for running the firm and this was not disputed by any of the prosecution witnesses.

He stated that a cursory look at the evidence of PW3, PW4, PW5 and PW6 demonstrates patent contradictions between the evidence during examination-in-chief and evidence during cross examination. That it is trite law that where witnesses of a party give inconsistent and/or contradictory evidence on material facts, their evidence on the point must be rejected in its entirety. He relied on ADEBAYO v. IGHODALO (1996) 5 NWLR (PT.450)507 AT 516, per Onu JSC.

He contended further that in legal parlance, the administrators do not have legal authority over the law firm having not been included in Letters of Administration. And that the contention of the prosecution, through the evidence of PW3, PW6 and PW7 that the opening of the accounts, **Exhibits P1 and P2**, by the 1st defendant allegedly without authorization equated to the 1st Defendant stealing the property of Mogbeyi Sagay & Co cannot be correct.

Firstly, that the 1st Defendant was not charged with a criminal offence of opening a fraudulent account neither was he charged with the offence of opening an account without authorization. There is no particular of the Counts 1-19 of the Information that directly or indirectly posits that the opening of the accounts without authorization was the crime upon which the 1st defendant was charged. He submitted that the prosecution is not at liberty to lead evidence in respect of what the defendant is not charged with, any such evidence led is irrelevant and goes to no issue.

These pieces of evidence establish the absence of prima facie evidence against the defendants.

Furthermore, that PW7 testified in relation to **Exhibits P1 and P2** that "the account is a suspicious account, so payment from a suspicious account are all suspicious

transaction" in other words, from the evidence of the investigator, Exh. P1 and P2 are nothing but suspicious accounts. The case against the 1st defendant is according to him, therefore rooted in suspicion because the accounts were opened without authorization. This, he submitted, is the heart and soul of the prosecution's case against the 1st defendant. In law, suspicion without proof is worthless - **BABALOLA & ORS vs. STATE (1989) LPELR-695(SC) and Abieke v. The State (1975) 9-11 S.C. 97(1975) 9-11 S.C. 97.** He however argued that indeed, the defence of the 1st Defendant not only clarified the perceived grounds of suspicion in the prosecution's case, it put an adverse end to the entire allegations and claims of the prosecution. He cited also **AYENI v. PEOPLE OF LAGOS STATE (2016) LPELR-41440(CA), Per GEORGEWILL, J.C.A.(P.50,Para.E).**

That also important is that PW3 admitted under cross examination that Clients' monies were paid into the accounts; the client's monies include Tempo Housing and Chief Joe Arausi. Also admittedly paid into the accounts were numerous monies which were proceeds from cases that were generated long after Mogbeyi Sagay SAN died and which are cases he could not have concluded or almost concluded before he died.

It also counsel's contention that there was no evidence from any of these clients that their monies were diverted or converted by the 1st defendant and that for the prosecution to raise a prima facie case against the 1st defendant, they had the duty to specify the client who paid for work concluded or about to be concluded by Mogbeyi Sagay SAN before he died, tender the letters of instructions written to the Late SAN, connect the payments to **Exhibits P1 and P2** and show how the money was dishonestly converted by the 1st Defendant for his personal. But that there is no such evidence from the prosecution who, according to him failed woefully to demonstrate any of these elements but merely lumped up everything expecting this court to sieve through the evidence to connect inflows in **Exhibits P1 and P2** to the specific counts in the information.

Very instructive, he stated that, from the evidence of PW1-PW8 is that all their testimonies were totally discredited under cross examination such that no tribunal would rely on their evidence to establish a prima facie case of stealing, relying on **DANLADI vs. STATE (2017) LPELR-43627 and Adeosun v. Governor of Ekiti State (2017)4 NWLR (pt. 1291) p. 1 & 2.**

He quoted **Section 280 Criminal Law of Lagos State 2011** and submitted that it is clear beyond any iota of doubt that the elements of the offence of stealing under the Law are dishonest taking or conversion of the property of another person. But that the 1st Defendant earned fee as a private legal practitioner to the law firm of the Mogbeyi Sagay & Co and shouldered the responsibilities of the young family of his

late principal. Actions as such should, according to him be rewarded with gratitude and honest commendations and referred to OTTI v THE STATE [1997] 1 NWLR (PT 207) 103,118. He submitted that the law is elementary that the general constitutive elements of crime are the actus reus i.e. the guilty act and the mens rea (the guilty mind). And that where there is a failure of the prosecution to establish the unlawful criminal act as well as the failure to establish the criminal mind of committing the act, the attitude of the court is to discharge and acquit the defendant - NJOKU vs. STATE (2013] 2 NWLR (PT.1339) 548 at 571, per Muhammad, JSC, George v. F.R.N. (2014)5 NWLR (Pt. 1399) 1 at 24 per Fabiyi JSC and Maideribe v. F.R.N. (2014) 5 NWLR (Pt. 1399) 68 at 96, also per Fabiyi JSC.

He further submitted that there is to nexus whatsoever between the Counts of the information and the evidence adduced before by the prosecution- Abondejo vs. FR.N. (2013) 7 NWLR (Pt. 1353) 285 at 318, per Pemu JCA and SHANDE v. STATE (2005)12MISC 152, (2005) LPELR-3035(SC) at page 19 per Pats Acholonu, JSC.

He submitted that the evidence led by the prosecution is not one that can be said excluded every reasonable hypothesis except that which is wholly consistent with the guilt of the 1st Defendant but is consistent with the innocence of the 1st defendant in several material respects already set out supra. He quoted Eko JSC in EDUN V. FRN 2019 13 NWLR PT. 1689, 326 @ 356-357 thus:

"I agree with the learned counsel for the accused/appellants as owners of their money, out of which the N14,000,000.00 was paid out, are entitled, in their discretion, to deal with the money in any lawful or legitimate manner."

He submitted that a burning legal question raised by the evidence of the prosecution is whether a sole proprietorship (Mogbeyi Sagay & Co) can acquire property after the death of its owner (Late Mr. Sagay SAN)? He submitted that it cannot acquire fresh property after the death of the sole proprietor not being a limited liability company with perpetual succession and that a firm has no perpetual succession but dies with the death of the sole proprietor.

Further that the property if any was even stolen (as none was shown by the prosecution) is not the property of Mogbeyi Sagay & Co which had died with his sole-proprietor on the 28th of February 2012. He urged the court to so *hold*.

These monies as, according to counsel, demonstrated above are monies for which he 1st Defendant worked in his capacity as a legal practitioner and for which he is entitled to *the fees* while others *are* expenses in furtherance of cases which came

after *the* death of Sagay SAN. In the light of the above it is his submission that the 1st defendant has the bonafide claim of right over these monies and cannot be charged with dishonest conversion of monies belonging to himself. He referred to **C.O.P. v AMUTA** (2017) LPELR-41386(SC) per Aka'ahs JSC which relied on the case of **Nwakire v COP** (infra) and **STEPHEN NWAKIRE v. C.O.P.** (1992) 5 NWLR (Pt. 241) 289 AT 301-303, where Ogundare JSC relying on Section 23 of Criminal Code held that:

"A person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by him with respect to any property in the exercise of an honest claim of right and without intention to defraud."

In conclusion, he urged the court to uphold the argument and submissions of the 1st Defendant and dismiss the case of the prosecution with cost.

The Final Written Address of the 2nd Defendant, by his counsel, Ani Uchechukwu is dated 10th February, 2026.

He submitted that the background facts of this case have been comprehensively set out in paragraphs 2.01- 2.09 of the 1st Defendant's Final Written Address dated 3rd October 2025, and the 2nd Defendant hereby adopts same. But that it suffices to state, however, that ab initio the petition which triggered the investigation was not directed against the 2nd Defendant.

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He posited that indeed, PW3, the Prosecution's star witness, testified that the nominal complaint did not implicate the 2nd Defendant and that the 2nd Defendant's inclusion was solely a decision of the EFCC. But that at the trial, PW7, the EFCC officer was unable to give any satisfactory explanation for the 2nd Defendant's inclusion as an accused person in this matter.

He argued that at the conclusion of the trial, it became evident that the circumstances leading to the joinder of the 2nd Defendant were most unfortunate, not because there was any evidence of criminal conduct against him, but, as the 2nd Defendant testified, as a consequence of his refusal to testify for the Prosecution against the 1st Defendant.

He stated that the 1st Defendant has raised substantial jurisdictional and ethical issues which strike at the root of the entire proceedings and that the 2nd Defendant hereby adopts and aligns himself with the preliminary Objections canvassed in

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paragraphs 4.00-4.20, as well as issues One and Two (paragraphs 6.00-6.22) of the 1st Defendant's Final Written Address dated 3rd October, 2025.

Without prejudice to the foregoing adoption, he further submitted that the prosecution's case was fundamentally premised on an erroneous legal assumption. He stated that the prosecution proceeded on the basis that two senior legal practitioners who continued the legal practice of Mogbeyi Sagay & Co. after the demise of their principal the late Mt. Mogbeyi **Sagay, SAN**, were required to take directives and instructions from administrators of the deceased estate who are not legal partitioners.

Indeed, that the Prosecution's witnesses went as far as to characterise the firm's bank account opened and operated by the Defendants as fraudulent solely on the ground that the said administrators did not authorise the opening of the account. This position, according to counsel raises a fundamental legal question: whether a law practice can be subjected to estate administration by persons who are not legal practitioners? Put differently, can non-lawyers lawfully administer a legal practice as part of the estate of a deceased person? More specifically, can the Defendants qua legal practitioners called to the Nigerian Bar lawfully take instructions from non-lawyers and jointly manage a law firm with them as though it were an ordinary inheritable asset?

He answered these questions in the negative virtue of **Sections 2(1) and 24 of the Legal Practitioners Act**, only persons called to the Nigerian Bar are entitled to practise as legal practitioners in Nigeria, and the business of legal practice is not a transmissible chattel capable of administration by non-lawyers. Consequently, the law office of a deceased sole practitioner cannot be treated as an estate asset to be managed, controlled, or administered by administrators who are not legal practitioners. Instructively, that under Rules 4 and 5(5) of the Rules of Professional Conduct of Legal Practitioners, it would, in fact, have been professionally improper and legally impermissible for the Defendants to collaborate, partner, or take instructions from the purported administrators of the estate of the late Mr. Mogbeyi Sagay, SAN, in the running of the legal practice. In any event, that the law firm of the deceased Mogbeyi Sagay **SAN was not listed in Exhibit P31 as one of the properties of Mr. Sagay to be administered by the Administrators.**

He submitted that in *The Executors, the Estate of Efejuku v. Aziza (2013) 11 NWLR (Pt.1365) 307*, one of the four interim administrators was a Senior Advocate of Nigeria while others were non-lawyers, the Court of Appeal was called to consider the question of whether a firm of legal practitioners can be controlled or exploited by lay agency, personal or corporate. The Court of Appeal held as follows in that case:

"By virtue of Rules 4 and 5(5) of the Rules of Professional Conduct of Legal Practitioners, a lawyer shall not permit his professional services to be controlled or exploited by any lay agency, personal or corporate, which intervenes between him and the client. Equally, it shall be unlawful to carry out legal practice as a corporation. In the instant case, the order made by the trial court that the firm of Fred Egbe & Co should be under the control of the interim administrators, most of whom were not lawyers offends the Rules of Professional Conduct of Legal Practitioners".

The implication of this position, according to counsel is decisive. He submitted that the prosecution's theory of wrongdoing, particularly the alleged impropriety in opening and operating the firm's bank account without the consent of the administrators, is founded on a legally untenable premise. That the Defendants, as legal practitioners responsible for the conduct of matters in court and the handling of clients' briefs, were entitled, and indeed professionally obliged, to operate a firm account for the purpose of carrying on legal practice. There was therefore nothing unlawful, irregular, or fraudulent in the decision of the Defendants to open and operate the firm's account without the authorisation of the said non-lawyer administrators.

What is more? That the evidence before the court shows that the 1st Defendant in fact wrote to Prof Sagay, who is a lawyer and a senior member of the deceased family who appointed the administrators, on the need to open bank accounts when necessary. He referred to **Exhibit D.25** as unchallenged and uncontradicted which ought to be accorded full probative value by the court.

He submitted one central issue for determination to wit:

Whether from the evidence adduced in this case, the prosecution has established the guilt of the 2nd Defendant for the offence of Conspiracy and Stealing alleged in Counts 1 and 2 of the Information beyond reasonable doubt.

He answered the question in the negative and stated that, the State did not only woefully fail to establish the elements of the offences of Conspiracy and Stealing against the 2nd defendant but this case represents perhaps one of the shambolic attempts, by a prosecuting authority to prove a criminal charge. But that there is absolutely no evidence adduced by any of the eight prosecution's witnesses to establish the statutory ingredients of the two-count information against the 2nd defendant. *ma*

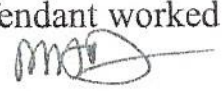
He submitted that it is now an acceptable policy in criminal justice administration that when a defendant is charged with a substantive offence and conspiracy, it is always preferable to first determine the culpability of the defendant in respect of the substantive offence, in this case stealing, before considering the subsidiary charge of conspiracy. This is because, a defendant acquitted of the substantive offence cannot be convicted for conspiracy to commit the substantive offence, except in a case where he confessed to the offence of conspiracy:- **ABIOYE V. THE STATE (1987) 7 NWLR (Pt. 58) 645 and AMADI Vs. THE STATE (1993) 8 NWLR (Pt. 313) 664.**

He stated that the principal charge against the 2nd defendant in Count 2 is the alleged dishonest conversion of the sum of N3,660,000.00 (Three Million, Six Hundred and Sixty Thousand, Naira) alleged property of Mogbeyi Sagay & Co. That the said offence was alleged to have occurred between 14th day of October, 2012 to 28th June 2013 pursuant to **Section 280(1) and (2) Criminal Law Cap C17 Laws of Lagos State 2011.** But that these allegations were never proved.

He also relied on **OTTI vs. THE STATE [1997] 1 NWLR (PT 207) 103, 118** and did an analysis of the evidence of the Prosecution witnesses submitting inter alia thus:-

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- i. There is no aspect of the evidence of the PW1 that is relevant to prove the charge against the 2nd Defendant.
- ii. The entire evidence of PW2 has no relevance as it relates to the charge against the 2nd Defendant as he admitted that he could not testify as to the purpose of the withdrawal made in Exhibit P2 and merely dumped the Statement of account on the court and could not explain how the funds allegedly withdrawn could remotely amount to evidence of stealing or conspiracy to commit stealing. Also, that he admitted that Exhibit P2 which he tendered cannot comfortably show or prove that the 2nd Defendant signed or authored the withdrawal slips with which the withdrawals were made. That the prosecution failed to produce the withdrawal slips and therefore that the entire evidence of the PW2 is irrelevant to the charge against the 2nd Defendant.
- iii. The evidence of PW3, the star witness for the prosecution was irrelevant and could not sufficiently establish the charge against the 2nd Defendant. Beside the fact that majority of the evidence he gave against the 2nd Defendant were hearsay as he admitted that he had not been employed when the 2nd Defendant worked in Mogbeyi Sagay & Co and could not testify as to the state of affairs during the period the 2nd Defendant worked



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with the firm. It was largely hearsay because he said his evidence was based on what he read in the office without tendering any documents or source to support his assertion. Counsel urged that his evidence should therefore be discarded and contended that from the entire evidence before this court, it clear that the only thing established against the 2nd defendant is the fact that he was a signatory to the Union Bank account. He stated that during their testimony in court, PW3 and PW7 repeatedly parroted that "the accounts were fraudulent", "the accounts were suspicious" but failed to justify why they characterize the Union Bank account "fraudulent" or "suspicious". And that there is also no evidence as to how the opening of the so-called "fraudulent" or "suspicious" account established a charge of stealing. But that it is however instructive to state that the charge against the 2nd defendant is stealing and that there is no crime in our laws as "offence of opening of account".

- iv. **Even that PW3's** hearsay evidence negates the count of conspiracy and stealing against the 2nd defendant which, according to him reinforces the statement of the 2nd Defendant that the monies received were for his expenses for cases done outside jurisdiction-KAKIH V PDP (2014) 15 NWLR (PT.1430)374 AT 418-419 per Galadima JSC.

Overall, he submitted that the 1st and 2nd Defendants are in consensus that the 2nd Defendant was at the time the payments in Exhibit P2 were made to the 2nd Defendant, a counsel in the firm and handled most of the cases within and outside jurisdiction and that those payments were to enable him defray expenses. And that all the prosecution's witnesses admitted that they could not authoritatively testify as to whether the money which was credited to the 2nd defendant in the statement of account was for expenses or for what purpose. The PW3 specifically admitted that it is usual for a counsel in chambers to receive money from the 1st defendant to cover various expenses arising in the handling of cases in court.

He argued that there is no contrary evidence from the prosecution's witnesses to show that the monies credited to the 2nd defendant in Exhibit P2 was converted and used for the personal enrichment of the 2nd defendant outside chamber work. And that the court cannot convict the 2nd defendant for conversion without strong evidence by the prosecution to prove "dishonest conversion" of the alleged money.

He urged the court to hold that Exhibits P1 and P1 have no probative value in establishing the culpability of the 2nd defendant.

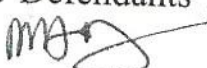
He further submitted that the evidence of PW7 on the contents of the audited reports; Exhibits P77 - P84 are inadmissible as hearsay evidence. He relied on OSUOHA v THE STATE (2010) LPELR-4669 (CA) where the Court of Appeal

held that "The content of a document can only be proved by someone who can give direct oral evidence of the content of such a document (the maker)". The Audited Reports Exhibits P77-84 were largely hearsay because the maker of the report was never called to tender, speak to his report and be cross examined. PW7 who tendered the report was **not the maker of the report. i.e urge the court to expunge Exhibit P77-P84** from the records for being in admissible and hearsay evidence.

He stated that another salient point that is instructive in this case is that even the mental element of the allegation in counts 1 and 2 were not established and that there was simply no evidence from the prosecution to show the criminal and dishonest intents of the 2nd defendant in respect of the alleged offences pursuant to Section 280(2) of the Criminal Law.

Relying on **ADEPOJU v. STATE (2018) 15 NWLR (PT. 1641) 103 at 124 per PETER-ODILI JSC** he submitted that from the testimonies and exhibits tendered by the prosecution's witnesses, there is no iota of evidence establishing even prima facie case of a plan or a meeting of the minds of the 1st and 2nd defendants to steal the property of Mogbeyi Sagay & Co as alleged in count 1 and that no single document suggests or remotely shows that there is any prima facie proof of conspiracy to steal the property of Mogbeyi Sagay & Co as alleged in count 1.

It is submitted that the count of conspiracy to steal laid out under count 1 is *inextricably* tied up with the charge of stealing. In other words, proof of the essential ingredients of stealing is a sine-qua-non for a prima facie case of *conspiracy to steal*. And if any element of the charge of stealing is not proved then there cannot be conspiracy to steal - **FRN vs. YAKUBU & ORS (2018) LPELR-43930(CA) per OTISI, J.C.A (P.44, paras. C-E).**

Learned counsel submitted that the 2nd Defendant, in his own defence, also gave cogent and detailed evidence explaining the purpose of all monies received by him as reflected in Exhibit P2 (the Union Bank Statement of Account) which none of the Prosecution's witnesses contradicted or rebutted, being the evidence of both the 1st and 2nd Defendants regarding the reason for the payments made to the 2nd Defendant. 

In conclusion, he submitted that the case of the prosecution against the two Defendants was poorly presented and that the 2nd defendant was neither linked to the alleged crime nor did the State establish vital elements of the offences alleged. Moreover as ab initio, the petition upon which the investigation was predicated was never directed against the 2nd Defendant. The investigation itself did not disclose any act of criminality attributable to him. None of the Prosecution's witnesses was able to explain or give evidence in support of the allegation contained in the charge that the 2nd Defendant stole or conspired to steal the sum of N3,660,000.00.

Furthermore, that the 2nd Defendant stated during his testimony that he was joined as a defendant after he declined the prosecution's attempt to make him a prosecution's witness against the 1st Defendant. This, he stated shows the vindictive injustice that robbed the 2nd Defendant as an accused in this case. He relied on **Abondejo v. F. R. N. (2013)7NWLR (Pt. 1353) 285 at 318** and urged the court to discharge and acquit the 2nd defendant in respect of counts 1 and 2.

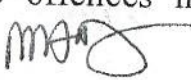
The Prosecution's Final Address in opposition to the 1st Defendant's Final Address, by an unnamed counsel is dated 12th February, 2026.

He gave a brief introduction of the Prosecution's case and its 8 witnesses, to be;

1. Mr. Soridei Akene (PW1)
2. Mr. Charles Ahubelen (PW2)
3. Mr. Chris Azubiuke Okafor (PW3)
4. Mr. O.C Kagho Omomadia (PW4)
5. Mr. Willams Babatunde Allen (PW5)
6. Mr. Clifford Kokokgho (PW6)
7. Mr. Dan Ekpar Azibagiri
8. Mr. Ben Daminabo

A total of 88 Exhibits were tendered by the Prosecution, tagged Exhibits P1-P88. The defendant opened its defence, called witnesses and tendered several documents. He thereafter formulated one issue for determination; viz:

Whether in view of the facts, circumstances and evidence led by the Prosecution in this case, it can be said that the prosecution has not proved the allegations contained in the 19 Count Information dated 9th April, 2019 against the Defendant.

He submitted that the Prosecution has sufficiently proved beyond a reasonable doubt that the Defendants committed the offences in the Information and should be convicted accordingly by this Court. 

He conceded that the prosecution carries the evidential burden of proving alleged offence against the Defendants beyond reasonable doubt but definitely not beyond all shadow of doubt and relied on **Alake vs. State (1997) 7 NWLR (Pt.205)567 at 591 per Justice Niki Tobi**. That was the position I took in **Sanni Adisa v The State (1991) 1 NWLR (Pt168)490** and **Miller Vs. Minister of Pension (1947) 2 ALL ER 373 H- per Denning J** (As he then was).

He argued that the defendant is charged for the offence of stealing property belonging to the estate of Mogbeyi Sagay and Co by opening a Heritage bank account in the name of the law firm of late Mogbeyi Sagay and Co to give impression as though funds which were deposited in the said Union bank account belong for the law firm of late Mogbeyi Sagay and this pretence has let so many clients of late Mogbeyi Sagay to confidently make several deposit in the said account. It is worthy, he stated, to note that at the time the 1st defendant fraudulently opened the said Heritage bank account the Law firm of Mogbeyi Sagay and Co had a known Zenith Bank account which wherein the 1st defendant was a co signatory alongside some administrators of the estate of the late Mogbeyi Sagay, however, that in a bid to carry out his unlawful act he chose to open the said Heritage bank account to cover his unlawful dealings. He stated that evidence during cross examination of the defendant shows from the mandate of the said Heritage bank statement of account that the 1st defendant described himself as the promoter of Mogbeyi Sagay and co. He stated that the 1st Defendant also fraudulently opened a Union Bank account wherein he conspired with the 2nd defendant to be a co signatory. Therefore, the question, he posed here is where do staff lawyers employed in a law firm and under salary from same law firm get the authority to maintain an account in the name of the said law firm while putting themselves out as the promoters of the said law firm?

On the offence of stealing he cited **EBUBEDIKE Vs. FRN & ORS (2013) LPELR 22061** and submitted that a person can only be charged with stealing what is in existence. Therefore that before a Court of law can convict an accused person for stealing, the prosecution must prove the existence of the thing allegedly stolen - **MUMUNI VS. THE STATE (1975) 6 SC 79; DR. OLU ONAGORUWA VS. THE STATE (1993) 7 NWLR (PT.303) 49 AT PP 88 - 89. MUSTAPHA TIJANI VS. COMM. OF POLICE (1994) 3 NWLR (PT.335) 692 AT PP.703-794," FRN V IKPE (2005) 2 QCCR 155, AT 196, CHIANUGO VS. STATE (2002) NWLR (PT.**

750) 225 AT 235; MOHAMMED VS, STATE (2000) FWLR (PT.30) 2623 AT 2626; (2000) 12NWLR (PT.682)596.

He quoted Section 280 of the Criminal Laws of Lagos State and the court in **OYEBANJI VS. STATE (2015) 14 NWLR (PART 1479)270 AT 290 C-D**, per **GALADIMA, J.S.C** in reiterating the elements of the offence of stealing stated thus: (i) That the thing stolen is capable of being stolen; (ii) That the accused has intention of permanently depriving the owner of the things stolen; (ii) That he was dishonest and (iv) That he had unlawfully appropriated the thing stolen to his own use.

He submitted that **Section 281(2)** defines property to include money and all other properties real or personal including things in action and other intangible property which is the property of another while Section 289 of same law is the punishment section.

It is his humble submission that the evidence adduced by the prosecution is on all fours with the provision of the afore-cited sections of the Criminal Law of Lagos State, which is to the effect that the Defendants fraudulently stole the total sum of money contained in the instant charge as it relates to the 2nd defendant for surreptitiously opening Union bank account which sum belonged to the law firm of Mogbeyi Sagay and Co with the intention to permanently deprive the said owner of same.

Counsel argued that the Defendants dishonestly and fraudulently converted the total sum as contained in the said charge before this court, property of late Mogbeyi Sagay the proprietor of Mogbeyi Sagay and co. with the pretence that he opened the said bank account for the purpose of receiving client funds which representation was false as the law firm had in existence a Zenith bank account which was known to the administrators of the estate of Late Mogbeyi Sagay and Co.

It is further submitted that the Prosecution has been able to successfully prove the count of stealing by the combined testimony of PW1-PW8 who were not discredited neither did the defendants during its defence offer credible evidence to counter the allegations before the court. He contended that the first witness called by the first Defendant was an auditor who gave evidence that this court cannot rely on, the evidence of the said auditor was that he carried out an audit report of the expenses and income received by the defendant while drawing funds from funds

belonging to the client of Mogbeyi Sagay and co, during cross examination it was revealed that the said source of his audit report were not from an independent sources but from data supplied to him by the 1st defendant. The question, he posed is will that pass the test of a proper audit report? He argued that the auditor's report must consist of independent sources like the payment data receipts and others not figures of expenses supplied to the auditor by the Defendant.

He posited that it is worthy to note that the evidence of the other witness who claimed that the first defendant was engaged by him also failed when he presented the correspondence between them and he was confronted that all the correspondence to the 1st defendant was addressed the law firm of Mogbeyi Sagay and co which affirms the evidence of the prosecution that the Defendants were both employees of the firm of late Mogbeyi Sagay.

He stated that it is clear that the 2nd defendant is co signatory to the Union bank account opened by the 1st defendant and could not distant himself from the said fraud carried out by the 2nd defendant as its clear from the statement of account that he benefited the sum of money as contained in count 2 of the charge which were funds contained in the Union bank account of the Law Firm of Mogbeyi Sagay and Co.

In relation to Counts 2 to 19 for Stealing under **Section 280 of the Criminal Laws of Lagos State, 2015** to the effect that the Defendants fraudulently stole the total sums contained in count 1 to 19 of the charge which sums were funds received from the clients of the late Mogbeyi Sagay, SAN, being **N188,776,342.0 (One Hundred and Eighty Eight Million, Seven Hundred and Seventy Six Thousand, Three Hundred and Forty Two naira)** property of Mogbeyi Sagay & Co. with the intention to permanently deprive the estate of Mogbeyi Sagay & Co. of the use of same.

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On the elements of Stealing, he relied on **FRN vs. Ikpe (2005) 2 QCCR 155, at 196, Chianugo vs. State (2002) NWLR (Pt.750) 225 at 235; Mohammed vs. State (2000) FWLR (Pt.30)2623 at 2626;(2000) 12 NWLR (Pt.682)596 and Oyebanji vs. State (2015) 14 NWLR (Part 1479)270 at 290 C-D.**

He submitted that it is not in doubt that the property alleged to have been stolen by the Defendant is money (legal fees due to the late Mogbeyi Sagay), property of Mogbeyi Sagay and Co., the subject being money in counts 1-2 valued at **N188,776,342.0(One Hundred and Eighty-Eight Million, Seven Hundred and**

msd

Seventy-Six Thousand, Three Hundred and Forty Two naira) is capable of being stolen and; (Humbly see Section 280 of Criminal Law of Lagos State).

He submitted that the taking and subsequent conversion of the property of the nominal complainant by the 1st Defendant was dishonest and fraudulent considering the antecedent of the Defendant; being that the 1st defendant fraudulently and furtively opened Bank accounts with Heritage Bank Plc (Exhibit P1) and Union Bank, Plc (Exhibit P2) where he was a signatory and in full control of the said fraudulently opened account without the knowledge of the Administrators of the Estate of Mogbeyi Sagay or the consultant to the firm of Mogbeyi Sagay & Co.,(Prof. Itse Sagay). He stated that it is in evidence and not in doubt that the firm maintained an access bank account and Zenith bank account which was known to the administrators and the consultant to the firm of Mogbeyi Sagay and co but the defendants choose not to use the known account but to rather use Exhibit P2 which was unknown to anyone but them all these act of opening the said P 2 were all shrouded in secrecy and was the intermediate steps the Defendants took to actualize their fraudulent intention to convert funds belonging to the law firm of Mogbeyi Sagay and Co.

According to him, the 1st Defendant supplied the said fraudulently opened accounts, ie **Exhibit P2** to clients of Mogbeyi Sagay & Co., in order to receive the funds and sometime lodge cheques in the said accounts, **Exhibits P1 and P2** contained in counts 4-19, being briefs which the late Senior Advocate of Nigeria (Mogbeyi Sagay) had perfected before his death and some still ongoing). He argued that the 1st Defendant on his part fraudulently converted to his own use the sum of **N188,776,342.0 (One Hundred and Eighty Eight Million, Seven Hundred and Seventy Six Thousand , Three Hundred and Forty Two naira)** contained in Count 4-19 of the charge and none of the money was paid to the Estate of Mogbeyi Sagay and Co., That the 1st and 2nd Defendants secretly operated the said Heritage and Union Bank accounts in total pretence to the clients of Mogbeyi Sagay & Co., with the intent to fraudulently convince them to pay their legal fees due to late Mogbeyi Sagay, owner of the firm to the said accounts thinking same were the firm's (Mogbeyi Sagay & Co.,) genuine account. He argued that it is not also hidden that the 1st defendant while opening exhibit P1 filled the mandate card wherein he represented himself as T. S Awhana, promoter of Mogbeyi Sagay and co, which pretence the 1st defendant relied on to get the heritage bank account opened.

It is further submitted that PW2 tendered account statements of Union Bank, which were accounts opened secretly without the consent of the administrators and is not

without doubts that the 1st and 2nd Defendants jointly opened the Union Bank account having established that the two Defendants are signatories to the said Union Bank account, thus all the funds which came into the said account are stolen as they opened the said account with the intentions to permanently deprive the estate of late Mogbeyi Sagay and co.

He further argued that the said fraudulently opened accounts were used as conduit through which funds which were due to the late Mogbeyi Sagay were diverted by the two Defendants who conspired to open **Exhibit P2**, thus not only did the first Defendant open **Exhibit P2** after the death of the Mogbeyi Sagay, he also opened **Exhibit P1**.

He stated that PW7, the investigating officer went ahead to analyze the account statement and mandate card before the Court, wherein he clearly stated that **Exhibit P1** was opened in the name of Mogbeyi Sagay and Co., by the 1st Defendant, while **Exhibit P2** was also opened by both the 1st and 2nd defendants in the name of Mogbeyi Sagay & Co., and further analysed the statement of account in **Exhibits P1 and P2**, showing the various credits and debits in the various accounts, thereby revealing that the Defendants withdrew most of the funds in cash and converted same for their use.

He submitted that PW7 is an Investigator and what he discovered in the course of his investigation and his attempt to analyze the statements of account contained in Exhibits P1 and P2 are not hearsay, but rather findings of his investigation per **BRILLA ENERGY LTD VS. FRN & ORS (2018) LPELR-45651(CA)**.

On the 1st Defendant's objection to the jurisdiction of this court on the bases that they are legal practitioner and the legal practitioner disciplinary committee should rather handle such issues, he submitted that the 1st defendant in a desperate attempt to run away from justice has decided to resort to self help, because the charge was brought pursuant to a section under the Criminal laws of Lagos State.

He submitted that when a crime is committed, it is immaterial whether that offence is created for under the exclusive list or concurrent list or there is a tribunal that can offer disciplinary measure to such offence once the law provides for the offence and the law that provides for the said offence, then this court will be clothed with the jurisdiction to hear and legislate. He submitted that no part of the Legal Practitioner Act states that a lawyer cannot be prosecuted unless and until the said lawyer is tried and released by the disciplinary committee. He thus submitted that the contention and objection of the 1st defendant is unheard of and therefore not the law but merely

the defendant's way of trying to hide from justice. He urged the court not to be persuaded by, according to him the 1st Defendant's attempt to pull wool over the judicial eyes of this court.

He relied on **UGO-NGADI Vs. FRN (2018) LPELR-43903(SC)** where **Per PETER-ODILI, JSC (Pp. 31-39, paras. D-A)** on - Jurisdiction of the State/Federal High Court to hear and determine criminal offences created by an Act of the National Assembly.

On the 1st defendant's argument that he is likened to a partner of the law firm of Mogbeyi Sagay and co, counsel submitted that the first defendant at no time during the trial or his defense tendered any document to show that he was in partnership with the late Mogbeyi Sagay rather documents were tendered to show that he was in the employment of the law firm wherein he drew salary and did not lead evidence to show that he was the promoter of the law firm or at anytime the registration of the law firm was reviewed to add him as a partner.

He urged the court to look into, according to him, the fraudulent perceptions aimed at beclouding the reasoning of this court and submitted that the totality of the evidence led by the prosecution has clearly revealed the mens rea of the Defendant.

Lastly on issue of conspiracy as in count 1 of the charge, the question he posed is whether there was a meeting of the mind between the 1st and 2nd defendant to commit the said offence charged? And his answer is in the affirmative that evidence of the prosecution witnesses is that the 2 defendants were signatories to the fraudulently opened union bank account. That the 2nd defendant was fully aware that the 1st defendant was never a partner of the law firm of Mogbeyi Sagay and co haven worked in the said law firm and was also under salary from the said law firm when he agreed to append his signature to the mandate card of the said account

The Prosecution's Final Address against the 1st Defendant's Final Address also by an unnamed Prosecutor is dated 17th March, 2026.

Suffice it to state that the Address is a reharsh of the above Address against the 1st Defendant's Final Address which virtually incorporated the 2nd Defendant, at least on Count 1, while also touching on Count 2 levelled against the 2nd Defendant.

He submitted it is clear that the 2nd defendant is co signatory to the Union bank account opened by the 1st defendant and could not distant himself from the said fraud carried out by the 2nd defendant (?) as its clear from the statement of account that he benefited the sum of as contained in count 2 of the charge which was funds contained in the Union bank account of the Law Firm of Mogbeyi Sagay and Co.

It is his submission that the totality of the evidence lead by the prosecution has clearly revealed the mens rea of the Defendants and that contrary to the contention of the 2nd defendant in paragraph 1.11 to 1.14 of his Final Address, the **Efejuku vs. Aziza (2013) 11 NWIR pt13650 307** cited does not apply.

He contended that the issue at hand is the issue of crime and criminally and that the question that this court is to ask is not whether the administrators of Mogbeyi Sagay and co are lawyers but whether the funds that belongs to the late Mogbeyi Sagay and co was stolen and his answer is in the affirmative.

Counsel stated that every evidence that needed to be placed before the court is manifestly before the Court to show that the law firm belonged to Mogbeyi Sagay and the 2 defendants were never appointed as owners of the law firm.

He stressed that it is also worthy to note that the law firm of Mogbeyi Sagay and co had a consultant in the person of Professor Itse Sagay who is a lawyer and member of the family of the late Mogbeyi Sagay.

Lastly on issue of conspiracy as in count 1 of the charge, he submitted that the evidence of the prosecution witnesses is that the 2 defendant herein were signatories to the fraudulently opened union bank account. And that the 2nd defendant was fully aware that the 1st defendant was never a partner of the law firm of Mogbeyi Sagay and Co haven worked in the said law firm and was also under salary from the said law firm, when he agreed to append his signature to the mandate card of the said account

The 1st Defendant's reply on point of law by Oluwatosin Adesioye is dated 23rd March, 2026.

He contended that the Prosecution's submission that it had established the offence of Stealing beyond reasonable doubt is misconceived, legally untenable and unsupported by credible evidence on record hence the citation of **Alake vs. State (supra)** and **Miller vs. Minister of Pension (supra)**.

He argued that the prosecution's argument fundamentally conflates **proof of a prima facie case** with **proof beyond reasonable doubt**, which are distinct legal thresholds. That whereas to constitute a prima facie case, the proofs of evidence must merely link the accused to the offence he is alleged to have committed, however proof beyond reasonable doubt can only come much latter after evidence has been adduced by both parties at which the court is obliged to examine thoroughly the evidence of the

prosecution against the evidence of the Accused to see if any form of doubt or possible/ scenario has been casted against the charge - **Ehindero vs. FRN (2018) 5 NWLR (pt. 1612) 301 and Yav v. State (2005)5NWLR (pt.917) 1.**

He submitted that in contrast to the wrong footing in the commencing and ending argument of the Prosecution's address, reliance on the cross examinations led against the Prosecution witness and uncontroverted evidence of the 1st Defendant's testimony cast serious doubt in the mind of anyone standing by on the guilt of the 1st Defendant.

Failure of Prosecution to take into account the holistic evidence elicited from witnesses

In reply to paragraphs 6.3 - 6.6 of the prosecution's address, counsel sought to point out that the facts as narrated by the prosecution deliberately failed to take note of the evidence elicited from the prosecution's witnesses which, according to him totally discredited the prosecution's evidence such that no reasonable court of law can convict the 1st Defendant on the offences charged - **Onagoruwa vs. State (1993)7NWLR (pt. 303) 49 at 95 per the erudite Tobi JCA Oshodin vs. State (2001) 12 NWLR (pt. 726) 217 at 231.**

On what counsel tagged **failure to discharge onus of proof of stealing itemized/particularized monies** counsel argued that it will appear the linking evidence on which the Prosecution is clamouring for a verdict of guilt against the 1st Defendant is that the bank accounts were opened in the name of Mogbeyi Sagay & Co by the 1st Defendant without authorization and through which the 1st Defendant received funds some/most of which allegedly belonged to late Mogbeyi Sagay SAN. The said case of the Prosecution (assuming if true) without more, is however, counsel stated not a discharge of the specific and particularized sums alleged to have been stolen by the 1st Defendant.

That having particularized the exact amount and period within which the monies alleged in each specific-count charge was allegedly stolen by the 1st Defendant; the Prosecution had the onus of leading evidence linking each specific count to the specific evidence establishing the said offence without reasonable doubt.

He submitted that the appellate courts have remained consistent on the principle of law that where an accused is charged with stealing a specific amount, the prosecution has the burden to prove that the amount alleged was stolen - **Onagoruwa vs. State (1993) LPELR-43436(CA) and the Apex Court in Idowu v State (1998) 11**

NWLR (pt. 574) 354 is most apposite in this regard Per Onu, JSC at p. 368, para. F – G.

It is submitted that in the absence of a forensic audit distinguishing and severing the said some/ most of the funds allegedly belonging to late Mogbeyi Sagay SAN from the monies of the 1st Defendant received in the said bank accounts, the Prosecution created a fatal evidential gap.

The question, learned counsel sought to be answered therefore is not whether the 1st defendant opened Exhibit P1 and P2 (secretly or otherwise) to receive clients funds belonging to the law firm of Mogbeyi Sagay and Co., but rather how did the Prosecution arrive at the specific sum of N2,810,824.70, N20,868,083.60, N5,062,500, N12,993,570.00, N1,500,000.00, N20,973,000.00, N5,878,117.20, N3,383,000.00, N21,350,000.00, N7,700,000.00, N16,434,742.10, N7,203,104.70, N18,068,000.00, N23,870,000.00, N9,319,000.00 and N6,203,400.00 all alleged to have been stolen and dishonestly converted by the 1st defendant at a particular period of time.

In effect, that the evidence that needs to be established beyond reasonable doubt in the extant case has do with the nature, number and identity of the specific amount stolen at specific period in time - **State vs. Onwueriaku & anor (2017) LPELR-42613(CA)**: "It therefore behoves on the prosecution to present a complete and full picture of the result of investigation in order not to give room for reasonable doubt as to the guilt of the accused.....An incomplete investigation creates room for reasonable doubt as to the guilt of the accused."

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He submitted that the law is settled that a criminal investigation must be thorough, unbiased and directed at discovering the truth not merely confirming allegations/ raising suspicions. It is trite law that suspicion no matter how grave it may be, cannot found a conviction - **Idowu vs. State (supra) at pp.365; Ubochi vs. State (1993) 8 NWLR (314) 697.**

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He submitted that the testimony of PW3 is full of material contradictions - **Magaji vs. Usman (2025) LPELR-80695(5C) pp, 44** that where there are material contradictions in the evidence tendered by a party oral or documentary, they must be resolved against such a party. In other words, where there are unexplained material or fundamental contradictions in the evidence of a party to case, it will go to the root or substance of the case, and therefore fatal, In such circumstances, the case of the affected party becomes weakened, unreliable and fatal to the party's case.



The further contention is that whereas it is evident the Prosecution does not understand whether there is a difference between Austoju Nigeria Lid and Omadino, on the other hand there was no matter or case handled on behalf of a client in the name Financial Derivative Company. At no point did the Mogbeyi Sagay & co conduct or handle any case for Austoju Nigeria Ltd. Austoju Nigeria Ltd was an instrument used to pay professional fees for cases conducted by the 1st Defendant in **Exhibits P32, P33 and P36** for the Omadino Community.

For the matter on Metropolitan Bank, he argued that **Exhibit D23** clearly shows the indebtedness of Fiogret Limited to Metropolitan Bank by the letter dated 14/5/2013 which the 1st defendant rendered legal services in recovery of the said monies post the demise of Late Mogbeyi Sagay SAN. On the services however rendered for the Omadino community by the Late Mogbeyi Sagay SAN, the professional fees were paid directly to his family through **Exhibit P15**.

Counsel stated that apart from the fact that it is not in dispute that most of the monies paid into **Exhibits P1 and P2** were generated from services rendered after the demise of Late Mogbeyi Sagay & co., from **Exhibits P1 and P2**, it was also established by the 1st Defendant and through the case of the Prosecution that part of the monies consisted as clients' monies belonging to the clients to wit: Chief Arausi - DWI, Ken Oraka - DW3. The presumption that all the monies in the **Exhibits P1 and P2** were monies of Late Mogbeyi Sagay SAN is therefore a rebuttable presumption and it is the duty of the Prosecution to state expressly the true position of things instead of giving the impression that all monies in the two accounts belong to the firm. This, according to him, is where the Audit Report admitted as **Exhibit D2** becomes very relevant.

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He submitted that from the evidence adduced by the Prosecution it is not in dispute that monies belonging to clients known as client monies were also paid into **Exhibits P1 and P2** and that the Prosecution thus appears to be losing touch with its duties of bringing a comprehensive discovery of sorting the exact amounts dishonestly converted from the sum total of monies paid into Exhibits P1 and P2. There thus ought to have been produced an analytic and comprehensive dissection by which each amount of monies alleged to have been dishonestly converted belonged to Late Mogbeyi Sagay SAN. 

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He wondered if this court then can be made to carry out the duty of the duty of the Prosecution in extracting the source of the funds in **Exhibits P1 and P2** in order to determine which monies belonged to the 1st Defendant or otherwise?

He stressed that the Prosecution cannot dump evidence before the court and expect the court to sift the chaff from the wheat - **Bababe vs. FRN (2019) 1 NWLR (Pt 1652) 100 at p 131 and Duruminiya v. COP (1961) NNLR 70.**

His further contention is that the 1st Defendant's independent control, management, and operation of the law firm-including the opening and operation of the accounts in question-were not only lawful but in strict compliance with the regulatory framework governing legal practice in Nigeria. He argued that the attempt by the Prosecution to characterize such professional autonomy as evidence of fraudulent intent is both legally unsustainable and fundamentally misconceived. Indeed, he argued, that conduct which is expressly sanctioned by law cannot, without more, be transmuted into an element of criminality and that the allegations of concealment and fraud, predicated solely on the absence of involvement of the estate administrators, are therefore devoid of legal foundation and ought to be discountenanced by this court- **Igbodim vs. Obianke & ors (1979) LPELR-1448(SC).**

On whether the 1st Defendant's evidence is unreliable, with reference to the prosecution's contention in its paragraph 6.8 of its address that the Auditor who testified for the 1st Defendant had his sources from the 1st Defendant, counsel stated that surprisingly the sources of documents used by the Auditor were tendered on the 31st January 2022 by Rotimi Oyedepo (now SAN) of the prosecution during the trial and duly admitted in evidence as **Exhibit D2** bundle and that the prosecution is now asking if that "can pass the test of proper audit". His question he asked is; can a tenderer of a document admitted in evidence by court challenge such document which forms part of his own evidence/case? His answer is no and that in legal proceedings a party, particularly in this instance, the prosecution must be consistent with his case; a party cannot be heard to complain against a document they themselves put in evidence and a party cannot approbate and reprobate -essentially blowing hot and cold at the same time - **A.-G., Enugu State vs..Avop Plc. (1995) 6 NWLR (Pt. 399) 90 at 120 - 121 where Tobi, J.C.A (as he then was), U.T.C (Nigeria)Plc. vs. Lawal (2014) 5 NWLR (Pt.1400) 22, Ladgroup Ltd V. FBN Plc (2017) 12 NWLR (Pt. 1580) 464.**

Oderah Inv. Co. Ltd. V. Ecobank(Nig)Plc (2020) 10 NWLR (Pt.1731) 65 Yau V. Dikwa (2001) 8 NWLR (pt. 714) 127 and Oando (Nig) Plc v. Adjere (W/A)Ltd(2013)15NWLR(Pt.1377)374 t.

On the evidence of PW7 who sought to adduce evidence on the contents of an audited report which he did not make even when he admitted under cross-examination that he is not an auditor neither was he an accountant, learned counsel contended that the cases cited by the prosecution are clearly distinguishable from the facts of the instant case. really is a beacon to highlight the evidence proffered and when no evidence is available the address is a muted trumpet."

In conclusion, he invited the court to dismiss the charge against the Defendant and enter a verdict of discharge or discharge and acquittal in his favour.

There is no reply on point of Law from the 2nd Defendant.

Let me start my conclusion as to whether the Prosecution has established any of or all the charges against the Defendants jointly or severally.

The two Defendants were jointly charged for Conspiracy in Count 1 on the Information dated 9th April, 2019.

The Particulars of Count 1 state that the two Defendants sometimes between year 2012 and 2013 conspired to steal the sum of N3,660,000 (Three Million, Six Hundred and Sixty Thousand Naira).

While only the 2nd Defendant was charged under Count 2 for Stealing the sum of N3,660,000 (Three Million, Six Hundred and Sixty Thousand Naira) property of Mogbeyi Sagay & Co.

Only the 1st Defendant is charged for Stealing of various sums under Counts 3-19.

To briefly respond to the Preliminary Issue of objection to the Jurisdiction of the court canvassed by the defence on the basis that the entire case leads to the issues on legal ethics and practice of law, my rejoinder is that the objection is misconceived both in law and in fact.

The entire case is built on Stealing and Conspiracy to steal simpliciter. There is no allegation on any legal ethics and practice of law by the Prosecution against the Defendants. The fact that the allegations are made against practicing lawyers in Chambers does not make the case subject to the Legal Practitioners' Act or rob this court of Jurisdiction.

The objection is therefore unmeritorious and hereby discountenanced.

It is only when the Count of Stealing in Count 2 upon which Count 1 is premised, is settled before Conspiracy can be determined.

The fact is clear that the facts and evidence upon which the totality of this case is based are so interwoven that they are inseparable, therefore the whole 19 Counts will be considered together.

Section 36 (5) of the Constitution provides that, "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty"

The law is well settled that the burden of proving the guilt of an accused person beyond reasonable doubt is fixed on the Prosecution.

PW3 who authored the Petition in Exhibit P3 from the Law Firm of Mogbeyi Sagay & Co admitted that there was an Agreement that the 1st Defendant would be entitled to 12% and the 2nd Defendant 10% of the profit of the Firm had the responsibility for showing what the profits of the Firm were and what the Defendants should have been severally entitled to and exactly how much they allegedly fraudulently converted to their personal use from the relevant Statements of Accounts.

The evidence before the court includes that after the late SAN passed and before the Letters of Administration were issued to enable the Administrators of his Estate access the Account of the Firm where the late SAN was the sole signatory, some monies were due to some clients, e.g from Bayelsa State and the clients did not want their funds mixed up with the Estate of the late SAN, which necessitated the opening of new Account still in the name of the Firm but with the 1st Defendant and the 2nd Defendant as either sole or co-signatories.

The opening of some of these accounts were said to have been with the knowledge and approval of Professor Itse Sagay SAN, the Firm's long time Consultant and who specifically instructed the 1st Defendant to assume the role of head of the Chambers.

More important is the proof that the 1st Defendant seemed to have indeed been authorized by the Administrators of the Estate in their letter, tagged "To Whom It May Concern" dated 20th November, 2015 attached to Exhibit D2. It states thus,

"We the undersigned being the administrators of the above estate hereby state that Mr. Tom Awhana is the Head of Chambers of Mogbeyi Sagay & Co. He is in charge of the day to day running of the law firm.

Please extend to him all necessary assistance"

The letter was signed by Mrs. Nneka Sagay, Mr. Cliff Kokogho (PW6) and Monima Lawson-Jack, the three Administrators of the Estate. 

The evidence of the Defendants that because of the Issue of money being mixed up with the Estate of the late SAN administering clients' account, the need to open another Union Bank Account was birthed. In fact the alleged Union Bank Statement of Account attached to Union Bank's letter to the EFCC dated 12/11/2018 in **Exhibit P2** is a mere photocopy which is not certified by any officer of the Bank and therefore has no probative value.

PW3 also admitted that the Firm did not identify any wrong doing against the 2nd Defendant in the Firm and hence his Petition did not include him. This is inspite of the fact that certain monies were observed to have been paid to the 2nd Defendant from the disputed Union Bank Account in the name of the Firm. PW3 stated that he did not know what the payments to the 2nd Defendant were for and at the same time, he admitted that the 2nd Defendant handled some cases for the Firm outside jurisdiction after the demise of the late SAN and he, 2nd Defendant, had exited the Firm. This belies PW3's testimony that he did not know what the 2nd Defendant was paid for. There is no evidence that the 2nd Defendant was paid for these services from the Estate Account of and by the Administrators or that contrary claims were made for them. PW3 or any other Prosecution witness did not testify as to what the 2nd Defendant should have been paid against the allegation in Count 2.

It therefore aligns with reason why no infraction was found against him by the Firm sequel to the Petition.

What this however seems to confirm is the evidence of the 2nd Defendant that he was charged along with the 1st Defendant because he refused to bow to pressure to make him one of the Prosecution witnesses. The allegation of PW3 that it was the 1st Defendant that implicated the 2nd Defendant before EFCC does not lie in his mouth because he was not there when the 1st Defendant was being interrogated. There is also no such implication in any part of the extra judicial statement of the 1st Defendant.

PW6's evidence included that the 2nd Defendant left the Firm in 2013 after the demise of the late SAN and then the Mandate of the 1st Defendant to continue running the Firm was renewed before PW3 was employed. PW6 stated that it was actually Professor Itse Sagay SAN that opened another Access Bank Account for the Estate in the name of 'M. Sagay & Co' after the demise of the late SAN and before the issuance of the Letter of Administration. PW6 stated that he and two others were the signatories to that Account. He said it was expedient to open the said Account because the Firm was recovering Clients' monies from Bayelsa State Government and that it was the 1st Defendant that Professor Itse Sagay sent to go and collect the cheque. 

PW6, a former Accountant to the Firm before leaving to start his own Accounting Firm and later one of the Administrators of the Estate of the late SAN, testified that it wasn't until 2018 when it became difficult to sustain the family of the late SAN, that the 1st Defendant was asked to hand over the Firm to the Estate before the end of May, 2018. But that in fact the 1st Defendant handed over before the end of May, precisely on 28/05/2018 with sheets of papers consisting of the Firm's cases, meanwhile the Professor had employed PW3.

PW 6 stated that the Administrators asked the 1st Defendant to do a proper handing over which led to a series of meetings in order to reconcile figures. No evidence was led to show the outcome of the alleged reconciliation exercise. The issue is left to mere conjecture which is not the duty of the court. This already cast a foreboding shadow on the case of the Prosecution as to how it arrived at the figures in Counts 2-19 of the Information.

PW6 also testified that the 1st Defendant approached the Administrators with a Proposal to open a Zenith Bank Account and that before the demise of the late SAN, there were several Accounts operated in the name of the Firm but the new Accounts in Heritage Bank and Union Bank in Exhibits P1 and P2 were not to the knowledge of the Administrators.

It is noteworthy that apart from denial of the knowledge of the opening of **Exhibits P1 and P2**, there is no allegation that after or during the alleged reconciliation with the 1st Defendant, any money was alleged to have been stolen by him or any one else. As a matter of fact, the evidence of PW7 who tendered Exhibit P31 was that no money was alleged to be missing, but that the activities of the Defendants were suspicious and the reason for filing the action against them.

It is therefore admitted by the Prosecution that the entirety of this case is based on suspicion which can never ground conviction no matter how presented.

As stated earlier, it is the responsibility of the Prosecution to prove the case against the Defendants beyond reasonable doubt and not for the Defendants to prove their innocence.

The time-tested dictum of Lord Denning in **MILLER V. MINISTER OF PENSION 1947, 2 ALL ER 373 H** ably cited by the Prosecution and the defence on what proof beyond reasonable doubt is, is apposite.

It behoved the Prosecution to tie each of the allegations against the Defendants to the evidence in proof of same. I dare say in this instance, there is none. 

It appears the court has been plunged into the dark to be groping for what it did not loose.

The Prosecution should have been able to separate what exactly should have been for the benefit of the Firm, what went into the running of the Chambers and what should have been the percentage of the profits accruing to the Defendants. It is immaterial that the Defendants were being paid salaries or not. What is important is that even PW3 admitted that lawyers in chambers were at some point permitted to do Private Practice even though earning salaries until the Administrators kicked against it. This admission by PW3 and the evidence of PW6 that the family of the late SAN was being hardly sustained is a tacit admission that the Estate was also finding it difficult to assist in the running of the Chambers which of course would come after taking care of the late SAN's immediate family.

This therefore does not confirm the evidence of PW3 that the Estate was the one that was running the Chambers all along and therefore that there was no need for the 1st Defendant to claim to be the one paying for services and maintenance of the Firm from the monies that were coming in from 2012 to 2018.

As I stated above, PW6 was the Firm's former Accountant in the lifetime of the late SAN and was brought in as an Administrator of his Estate after his demise. He admitted his personal benefit from the Firm's income and that within the period, over N43M had been released to the wife of the late SAN. There is no special heads for these expenses, no account of how much the Estate is alleged to have expended for the running of the Firm and how much actually came into the several Accounts after the demise of the late SAN. All these facts are locked up in murky waters which the court is expected to dive into and fish out without getting soiled?

There is no evidence from the Prosecution that since 2012 till date, any client whose monies were collected on their behalf by the Defendants or either of them has been withheld from them. Perhaps if this were so, there should have been an allegation of stealing specific sums but what the court is being faced with, is the fact that none of the specific sums in the 18 Counts has been tied to any particular infraction by any of the Defendants by separating same from clients' monies, what the Defendants ought to have earned as salaries and interests as agreed with the Firm on specific profits of the Firm.

BABABE VS. FRN 2019 1 NWLR PT. 1652, 100 @ 131 ably referred to by the 2nd Defendant's counsel as being very apposite.

The rest of the arguments of counsel on the ownership of the allegedly stolen money as being dead with the death of its sole Proprietor and not justiciable in the

circumstance are mere academic exercise. This is because nothing has been proved to have been stolen before looking for who the owner is and so on. As rightly submitted by the Prosecution, another important ingredient of Stealing is the existence of the thing stolen and that a person can only be charged with stealing what is in existence. Therefore a court of law can only convict an accused person for stealing if the Prosecution proved the existence of the thing allegedly stolen. See **MOHAMMED VS. STATE 2000, 12 NWLR PT. 682, 596.**

The proof presented by the Prosecution in this case carries no degree of probability. There is dearth of evidence to dislodge the doubt created in the totality of the case against the Defendants which therefore carries a high degree of possibility in their favour under which the Prosecution's case crumbles fatally. See **SHANDE VS. STATE 2005 LPELR-3035 (SC)** where **Pats Acholonu, JSC**, held as follows, "Although the standard of proof is not that of absolute certainty (that should be in the realm of heavenly trials) the Court seized of the matter must convince itself beyond all proof that such and such had occurred. It is essential to stress times without number that the expression proof beyond all reasonable doubt-a phrase coined centuries ago and even ably applied by the Romans in their well-developed jurisprudence and now verily applicable in our legal system, is proof that excludes every reasonable or possible hypothesis except that which wholly consistent with the guilt of the accused".

What a waste of time and life!

The totality of the case against the two Defendants therefore fails woefully and is hereby dismissed.

The two Defendants are accordingly discharged and acquitted on all the 19 Counts preferred against them.

This is the Judgment of the court.

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HON. JUSTICE M.A. DADA (MRS.)
JUDGE
(04/06/2026)

Defendants present

A. O. Mohammed for the Complainant.

Oluwatosin Adesioye for the 1st Defendant.

Kemi Afesojaiye with B.C. Alekeh for the 2nd for Defendant.

Bakarey Kemi

Commissioner For Oaths

High Court, Ikeja

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