

SUPREME COURT OF NIGERIA

16TH JULY, 1999. SC. 196/1994

**CORAM:- A. B. WALL, M. E. OGUNDARE, U. MOHAMMED,
O. ACHIKE, A. O. EJIWUNMI, JJSC**

SOCIETE GENERALE BANK NIGERIA LTD. APPELLANT
AND

1. LITUS TORUNGBENEFADÉ AFEKORO)
 2. INSPECTOR-GENERAL OF POLICE) ... RESPONDENTS
 3. ALLIANCE INTERNATIONAL (NIG.) LTD.)
-

APPEALS - *Leave to appeal - Pursuant to S. 222 (a) of the 1979 Constitution - Legally recognizable interest - Money illegally transferred to the account of the 3rd respondent - Cannot constitute a legally recognizable interest - Of the 3rd respondent in such amount - And cannot rightly be given leave to appeal.*

CONSTITUTIONAL LAW - *Appeals - Right of appeal - "Person having interest" - Under s. 222 (a) of the 1979 constitution - Means a person who has suffered a legal grievance.*

FACTS

At the Lagos High Court, the plaintiff / 1st respondent instituted by originating summons, an action (suit No. M/664/89) against the appellant and the 2nd respondent claiming inter alia that he is entitled to operate and or withdraw from his savings Account with the appellant. The appellant was at all times relevant to this case, a banker to the 1st respondent. Following the report of the Managing Director of the 3rd respondent to the police that the 3rd respondent was defrauded of the sum of seven million Naira (N7m), the police commenced investigation and, in the process, froze the accounts of some persons (including the 1st respondent) in the appellant banker and had the balances on those accounts paid into a suspense account in the bank pending conclusion of their investigations. At the close of their investigations, the police wrote to the Appel-

lant as per Exhibit LTA 5 requesting it to transfer the balance in the suspense account to the account of the 3rd respondent in the international merchant Bank. (IMB). The appellant bank complied after it had obtained an indemnity from the 3rd respondent. Mean while, the 1st respondent attempted to operate his savings account with the appellant but was told that the account had been frozen on the orders of the police. The 1st respondent wrote to the police as per Exhibit LTA 6 requesting that his account be defrozen. The police in Exhibit LTA 7 wrote to the appellant bank defreezing 1st respondent's account because the 1st respondent has been found not to have been involved in the said fraud after completion of police investigation. The 1st respondent was never interrogated or tried in any court as regards any charge of conspiracy and or stealing. It was when the appellant refused to comply with the directive in Exhibit LTA 7 that the 1st respondent instituted the action by originating summons.

The learned trial judge after addresses by learned counsel for the parties, in a reserved ruling held inter alia that the 1st respondent is entitled to operate and withdraw from his savings Account. All parties to the originating summons proceedings appeared satisfied with this decision as none of them appealed. Rather, the appellant sued the 3rd respondent in suit No. LD/856/91 Claiming a refund to it of the sum of N487,539.50 paid to the 1st respondent as a consequence of the decision. This followed unsuccessful demands made by the appellant to the 3rd respondent for payment on the basis of the indemnity the latter gave the former. Thereafter, the 3rd respondent filed a motion in the court of Appeal (Lagos Division) praying for inter alia: leave to appeal pursuant to section 222 (a) of the 1979 constitution as amended as a person having interest in the case (suit No M/664/89). The 3rd respondent's application was successful in that court. Dissatisfied, appellant has now appealed to the Supreme Court raising two issues. The 3rd respondent also raised two issues. The 1st and 2nd respondents did not take part in the appeal. The appeal was however determine on a single issue.

ISSUE FOR DETERMINATION

1. Whether the 3rd Respondent, having regard to the facts of the case is

a person having an interest in the proceedings within the contemplation of the provisions of section 222 (a) of the Constitution of the Federal Republic of Nigeria, 1979 and therefore entitled to be granted leave to appeal.

HELD (Unanimously allowing the appeal per lead judgment of **OGUNDARE JSC**)

Constitutional law - Appeals

1. The law appears to be not in dispute. The 3rd Respondent not being a named party in the proceedings could only appeal with leave of court after showing that it has an "interest in the matter". The phrase "interest in the matter" has been the subject of judicial decisions in a number of cases both here and in England. On the authorities, therefore, the expression "person having interest" is synonymous with "person aggrieved". And a person aggrieved is a person who has suffered a legal grievance, a person against whom a decision has been given which has deprived him of something or refused him something or affected his right or title to something - see: Akande v. General Electric Co. & Ors. (1979) 3 LRN 187. His interest must be one that is legally recognizable such as in Sun Insurance Office Ltd. v. Ojemuyiwa (supra), Ubagu & Ors. v. Okachi & Ors. (1964) NSCC 20, In re Ugadu (supra) and Dairo v. Gbadamosi, In re Afolabi (supra). (pp. 2437 F/2440 B)

Appeals - Leave to appeal

2. I think learned counsel is right. Following 3rd Respondent's report to the Police that he was defrauded of the sum of seven million Naira (N7m), the Police commenced investigation and, in the process, froze the accounts of some persons (including the 1st Respondent) in the Appellant bank and had the balances on those accounts paid into a suspense account in the bank pending conclusion of their investigations. At the close of their investigations, rather than charge to court the persons, if any, against whom any case was made out and leave it to the court to make an order as to the disposal of the amount in the suspense account, the Police wrote to the Appellant bank "requesting" it to transfer the balance in the

suspense account to the account of the 3rd Respondent in the International Merchant Bank (IMB). The Appellant bank complied after it had obtained an indemnity from the 3rd Respondent. I have searched through the Police Act and the Criminal Procedure Act and the Criminal Procedure Law of Lagos State and I can find nothing in them to support the action of the police. Nor has learned counsel for the 3rd Respondent shown to us any authority to back up the Police action. The request for transfer is clearly illegal. And the amount so illegally transferred cannot, in my respectful view, constitute a legally recognizable interest of the 3rd Respondent in such amount. It is noteworthy to observe that there is nothing on the record before us to suggest that anyone has been prosecuted, let alone convicted, in respect of 3rd Respondent's complaint. Neither are we told that anyone, including the 1st Respondent, has been successfully sued by the 3rd Respondent in respect of its complaint. Wherein, then lies its legal interest in the amount of N2,727,655.60 illegally transferred into its account with the IMB at the "request" of the Police. In Exhibit LTA7, the Police wrote to the Appellant bank declaring that Afekoro (the 1st Respondent) -

"..... has found not to have been involved in the said fraud after completion of Police investigation."

This letter debunked the truthfulness of the counter-affidavit of Jacob Ademuyiwa, ASP. Had the Court below adverted its mind to this letter, it would not have found, as it did, that the 3rd Respondent "has sufficient interest in the matter", that is Suit No. M/664/89 involving 1st Respondent's savings account with the Appellant bank. The conclusion I reach is that the 3rd Respondent has no legally recognizable interest in the subject matter of suit M/664/89: Afekoro v. SGBN & Anor. and cannot rightly be given leave to appeal in the matter pursuant to section 222(a) of the 1979 Constitution. (p. 2441 B)

H

NOTABLE POINT OF INTEREST

EJIWUNMLJSC

1. The duty of Police authorities to investigate for the discovery of offenders

My second comment is concerned with the conduct of the officers of the 2nd respondent in this matter. From what can be gathered from the records of this appeal, it became obvious that a gigantic fraud had been committed, with and among the principal parties in this matter. Yet rather than pursue the investigation and the criminal prosecution of those concerned, the police were busy acting illegally to recover the proceeds for the person they perceived as the complainant. I say no more. But it is imperative for the police authorities to investigate, for the discovery of offenders of the system and not be pursuers of money perceived stolen only. (p. 2445 D)

REPRESENTATION

T. Oyetibo for the Appellant

N. Ngige for 3rd Respondent

No appearance for 1st & 2nd Respondents who did not file brief and appear not to take any part in the appeal.

CASES REFERRED TO

Akande v. General Electric Co. (1979) 3 LRN 187

Ubagu v. Okachi (1964) NSCC 20

Sun Insurance Co. Ltd. v. Ojemuyiwa (1965) ANLR 1

Dairo v. Gbadamosi, In re Afolabi (1987) 4 NWLR 18 CA

Fawehinmi v. N. B. A. (No.1) (1989) 2 NWLR 494 at 551

Konne v. C.O.P & Wachukwu (1986) 4 NWLR 473, 497

Ibrahim v. Osim (1988) 3 NWLR (pt. 82) 257

Ogbechie v. Onochie (1986) 2 NWLR 484

Ojeme v. Momodu II (1983) 1 SCNLR 188

Popoola v. Adeyemo (1992) 8 NWLR 1 at p. 33

Ajayi v. Omoregbe (1993) 6 NWLR 512 at p. 530

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979; S 222 (a).

LEAD JUDGMENT BY OGUNDARE JSC

B The Appellant herein was at all times relevant to this case, a
 banker to the 1st Respondent, Litus Torungbenefade Afekoro who had a
 Savings Account No. 07112515193 at the Bank. Sometime in 1986,
 chief John Ekwuba Muoghalu, chairman/managing director of the 3rd
 Respondent reported to the police that a sum of seven million naira
 C (N7,000,000.00) belonging to the 3rd Respondent was stolen by some
 persons in consequence of which report, police commenced
investigations. In the course of police investigations the accounts of
 Farlob (Nig.) Ltd. and Toyem Enterprises Nigeria Limited both with the
 D Appellant, were frozen and the balances totalling N2,727,655.50 were
 transferred into a suspense account with the Appellant.

By a letter Ref. No. CR. 3000/X/C/Vol.42/508 dated 18th
 February, 1988 the Police requested the Appellant "to transfer the amount
 E lodged in the (suspense) account to IMB (International Merchant Bank),
 Victoria Island, Lagos account of Alliance International (Nigeria) Limited
 with account No. 12050220." Before carrying out this request the
 Appellant sought and obtained from the 3rd Respondent an indemnity
 F against claims that might be made on it in respect of the sum of money
 being transferred into the account of the 3rd Respondent.

Meanwhile, the 1st Respondent attempted to operate his savings
 account with the Appellant but was told that the account had been frozen
 on the orders of the police. Thereupon, the 1st Respondent instituted by
 G originating summons, an action (Suit No. M/664/89) against the Appellant
 and the 2nd Respondent claiming -

"(i) *That the directive of the 2nd Defendant to the 1st Defendant
 contained in the letter reference No. CB/300/X/C Vol. 42/508 dated 18th
 H February, 1988, signed by C. T. DUWON (DCP) (for AIG) for the Director
 of Investigation and Intelligence, Lagos, Exhibit 'LTA 5' attached
 herewith, addressed to the Defendant/Respondent directing the 1st
 Defendant to transfer monies in the accounts of TOYEM ENTERPRISES*

(NIG) LTD and FARLOB NIG. LTD. to the account of Alliance International Nig. Ltd. Account No. 120501220 is ultra vires, unconstitutional, illegal and void. The 2nd Defendant has no power and or right to issue such directive.

(ii) *That the directive contained in the letter Exhibit LTA 5 B attached and referred above giving specific companies accounts TOYEM ENTERPRISES NIG. LTD and FARLOB NIG. LTD.) as the subject matter of the said letter was not referable to Plaintiff/Applicant's Private Savings Account Number 07112515193 L. T. AFEKORO and any action C of the 1st Defendant in transferring the amount from the account to the account of Alliance International Nig. Ltd. is ultra vires, unconstitutional, illegal and void, a breach of the Banking rules and practice and a breach of duty of care existing between Plaintiff and 1st Defendant.*

(iii) *That the account of the Plaintiff - that is Savings Account D No. 07112515193 is not affected by the directive contained in the letter reference No. CR/3000/X/C/Vol. 42/508 of 18th February, 1988.*

(iv) *That the Defendant is bound to act on the directive from Commissioner of Police in the letter reference number CR/3000/X/C/ E Vol. T2.16 at March 1989. Exhibit LTA 5 herewith wherein that since investigation revealed plaintiff is not involved in the fraud of seven million naira and that his account be defrozen.*

(v) *That the Plaintiff is entitled to operate and or withdraw F from his savings Account No. 07112515193 which stood at N487,539.00 as at 16/12/86 as per Exhibit LTA and continue to add interests at the Bank's rate till today. And for such further order or other orders this Honourable Court may deem fit to make in the circumstances."*

In the affidavit in support of the summons, the 1st Respondent G deposed, inter alia, thus:-

"1. *That I became a customer in the Defendant's Bank in 1982 when I opened and commenced operation of a personal Savings Account H Number 07112515193 - photocopies of identity Card issued to me and 1982 State (sic) of Account are attached herewith and marked as Exhibits 'LTA 1 and LTA 1a'*

2. *That in the course of the operation of the Saving account, I*

paid on the 27-03-86 a sum of N487,500 photocopy of the teller is attached herewith and marked Exhibit 'LTA 2'

3. That the sum of N487,500 deposited on 27-03-86 in my account referred to in paragraph 2 above was part of the profit due to me on a business transaction with the following persons namely Chief John Moghaolu, Godfrey, Uyi Alemезonu, Alhaji Imam, Dayo and myself.

4. That the business venture yielded a profit of a total sum of fourteen (14) million naira.

5. That Chief Moghaolu, the Principal Business Partner took Seven Million Naira and handed over Seven Million Naira to Godfrey Uyi Alemезonu to be distributed amongst us namely Godfrey Uyi Alemезonu, Alhaji Imam, 'Dayo and myself.

6. That in the course of such distribution, Alhaji Imam was given four million Naira which was paid to his Lobi Bank - Ikeja Branch account. Draft of N600,000 paid to Dayo's account with First Bank of Nigeria Ltd and in addition cash of N125,000, a sum of N487,500 was paid to my Savings Account number 07112515193 as shown on Exhibit 'LTA2'. The remaining amount was in Godfrey Uyi Alemезonu's account with the Defendant's Bank.

7. That Godfrey Uyi Alemезonu was a former Senior Bank Officer in the Defendant's Bank and his Share of the transaction amounting to one million Nine hundred and thirteen thousand naira was paid to defendant's Banks in the name of the Companies, TOYEM ENTERPRISES NIGERIA LTD. and Farlob Nigeria Ltd.

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10. That sometimes around July/August 1986 while attempting to withdraw from my savings Account 07112515193, the assistant Manager in the Savings Department of the Defendants Bank informed me and I believe him that the Assistant Inspector General of Police has instructed them to freeze the account pending investigation.

16. That the Assistant Manager in the Savings Department at the Defendants Bank (Mr. Bruce) told me in the presence of my Solicitor (N. A. B. Animashaun) that my account was frozen from July 1986 because of the directive contained in a letter reference No. CR.300/X/T/ADMN/

177 dated 2nd July 1976 subject matter L. T. AFEKORO SAVINGS ACCOUNT Number 07112515193 to be suspended on account of investigation of fraud of seven million Naira but failed to make a copy available to us.

17. That the Assistant Manager (Mr. Bruce) also informed me and my Solicitor of the letter reference number CR300/X/C/Vol 42/508 dated 18th February 1988 and handed a photocopy to us. The photocopy is attached herewith and marked Exhibit 'LTA 5'.

18. That the Assistant Manager (Mr. Bruce) in the Defendants Bank further told both myself and my Solicitor that the Bank had acted in compliance with the directive contained in the letter referred to in paragraph 17 and exhibited as 'LTA 5'.

20. The Assistant Manager (Mr. Bruce) later told us except a specific letter comes from the Police Office defreezing my suspended account, there was nothing the Defendants Bank could do.

22. That the Commissioner of Police investigation Department forwarded a letter reference number CR 3000/X/C/Vol. 1 T2/16 of 31st March 1989 to the Manager of the Defendants Bank to allow me operate my account as I have been found not to have been involved in the said fraud after completion of Police investigation - photocopy of the letter is attached herewith and marked Exhibit 'LTA 7'.

23. That I was never arrested nor detained and was never interrogated or tried in any Court as regards any charge of conspiracy and or stealing and or fraudulent acquisition of the sum of N487,500.00". A number of documents were attached to this affidavit, among which were Exhibit LTA5 - a letter dated 18th February 1988 addressed to the Appellant by the police and signed by C. T. Duwon, DCP, LTA6 written by the 1st Respondent to the police requesting that his account be defrozen and LTA7 written by the police to the Appellant and dated 31st March 1989 de-freezing 1st Respondent's account. I shall say more on Exhibits LTA5 and LTA7 in the course of this judgment.

The 2nd Respondent filed a counter-affidavit in which one Jacob Ademuyiwa Assistant Superintendent of Police at the Federal Investigation and Intelligence Bureau, Alagbon Close, Lagos deposed:

"2. That I was in the team of officers who investigated this case.

7. That Chief John Moghalu reported to the police that 4 (sic) men namely Alahji Yakubu Iman, Godfrey Uyi Alemezohu, and George Dayo had conspired to defraud him of the sum of 7 million Naira.

B *8. That investigation revealed that the said 3 men (namely Alhaji Yakubu Uamn, Godfrey Uyi Alewezone, George dayo) had obtained the sum of 7 million Naira from Him (complainant) on the pretext that they would open a letter of credit for Mr. John Muohalu for the importation of tobacco leaves.*

C *9. That the sum of 7 million Naira was paid by the complaint to the said 3 men syndicate as follows*

(a) Cooperative and Commerce Bank Drafts Nos. 040057 dated 3/3/86 for N40,000.00 AO 038589 dated 19/2/86 to N1,160,000.00 and D No. 040056 dated 3/3/89 for N2,000,000.00 in favour of Yoyem Enterprises Nig. Ltd. The above mentioned bank drafts are marked exhibits A1, A2 and A3 respectively.

E *(b) Cooperative and Commerce Bank draft No 040055 dated 3/3/86 for the sum of N3,800,000.00 in favour of Farlob Nig. Ltd. Copy of said bank draft is hereby attached and marked exhibit A4.*

10. That the above mentioned cheques were paid by the complainant (Chief Muoghalu) to Toyem Enterprises (Nig) Ltd. and Farlob Nig. on the instructions of the said 3-man syndicate.

F *11. That Toyem Enterprises Nig. Ltd. and Farlob Nig. Ltd. are both customers of societe General Bank, Broad Street Lagos.*

13. That no letter of credit was ever opened by the said 3-man syndicate in favour of Chief J. Muoghalu.

G *14. That the 3 cheques (Exhibits A1, A2, A3) paid by the complainant into the account of Toyem Enterprises Nig. Ltd. totalling a sum of N3,200,000.00 was shared by the said 3-man syndicate including the plaintiff Mr. Litus T. Afekoro.*

H *15. That Mr. Godfrey Uyi Alemezohu gave a detailed account of how the said N3,200,000.00 was shared.*

16. That investigations revealed that Mr. Godfrey Uyi issued a Cheque No. 04315 dated 28/5/86 in the name of Akeem Yinusa for the

sum of N487,500.00 cashed and redeposited in the Applicant's (Mr. Litus T. Afekoro) account with Societe General Bank Broad Street Branch. Copy of the said Cheque for N487,500.00 is hereby attached and marked exhibit A5.

17. *That the cheque paying the sum of N487,500.00 into the Plaintiff's account at Societe general Bank was issued and verified by Mr. Godfrey Uyi Alemezohu.* B

18. *That out of the sum of N487,500.00 paid into the Plaintiff's account by the said Mr. Godfrey Uyi Alemezohu, paid out the withdrawal (SAW) slip No. 438483 dated 1/4/86 leaving a balance of N462,155.60 mentioned in paragraph 24 of the Plaintiff's said affidavit, copy of the said SAW slip is hereby attached and marked exhibit A6.* C

19. *That it was the balance of N462,500 left in the plaintiff's account that was blocked and paid into the account of the Complainant with International M.B."* D

I pause here to observe that some facts deposed to by this deponent could not have come from his own personal knowledge but either hearsay or matter of opinion. Some other paragraphs appear to conflict with Exhibit LTA7. E

The Appellant, seeing itself as a mere stakeholder did not file any counter-affidavit.

The learned trial Judge, after addresses by learned counsel for the parties, in a reserved ruling delivered on 26/1/90, adjudged as hereunder: F

"I hold that sufficient facts and particulars have not been given by the Plaintiff in the Originating Summons and supporting affidavits from which I could infer his locus standi, whereby I could declare the orders of the 2nd Defendant in relation to reliefs I & II as ultra vires, unconstitutional, illegal and void. G

See:-

(1) Bello v. Attorney-General of Oyo State (1986) 5 NWLR (pt. 45) 828; H

(2) Fawehinmi v. Akilu (1987) 4 NWLR (pt. 67) 797;

(3) Egbe v. Adefarasin (1987) 1 NWLR (pt. 47) 1;

(4) Ibrahim v. Osim (1988) 3 NWLR (pt. 82) 257;

The plaintiff's locus standi having not been disclosed, his claim in respect of the reliefs I & II must be dismissed on that ground, and it is hereby dismissed.

In view of Exhibit 'LTA7' his claim in respect of reliefs III, IV B and V, succeeds, and I hold accordingly.

It is hereby ordered that:-

(1) That the account of the Plaintiff that is savings account No. 07112515193 is not affected by the directive contained in the letter C reference No. CR/3000/X/C/Vol. 42/508 of 18th February, 1988.

(2) That the Defendant is bound to act on the directive from Commissioner of Police in the letter reference No. CR/3000/X/C/Vol. T2/46 of 31st March, 1989 Exhibit 'LTA7';

(3) That the plaintiff is entitled to operate and or withdraw from D his Savings Account No. 07112515193 which stood at N487,539.00 as at the 16/12/86, and continue to yield interest at the Bank's rate till today."

All parties to the originating summons proceedings appeared satisfied with this decision as none of them appealed. Rather, the appellant E sued the 3rd Respondent in suit No. LD/856/91 claiming a refund to it of the sum of N487,539.50 paid to the 1st Respondent as a consequence of the decision. This followed unsuccessful demands made by the Appellant to the 3rd Respondent for payment on the basis of the indemnity the F latter gave to the former in March 1988. Pleadings have been filed and served in the case and was yet to be tried when the 3rd Respondent on 13/5/92 filed a motion in the Court of Appeal (Lagos Division) praying for the following orders:

"(i) An order extending the time within which the Applicant can G apply for leave to appeal as a person having interest in the case;

(ii) Leave to appeal pursuant to Section 222 (a) of the 1979 Constitution as amended as a person having interest in this case;

(iii) Extension of time within which the Applicant can file and H serve its Notice and Grounds of Appeal against the decision of Adeniji, J of the Lagos High Court delivered on the 26th day of January, 1990."

In the affidavit in support, Chief John Ekwoba Muoghalu, its Chairman/ Managing Director deposed inter alia as hereunder:

"3. That sometime in 1986, the Applicant through my humble self was duped of the sum of N7, million (Seven Million Naira) by a 4-man syndicate of international dupes which included one Godfrey Uyi Alemezohu, a Manager in the employment of Societe-General Bank of Nig. Limited, the 2nd Respondent in this application (hereinafter referred to as the 'SGBN').

4. That the fraud was perpetrated by the syndicate using the SGBN as their platform.

5. That when I discovered the fraud, I contacted the Federal Investigation and Intelligence Bureau, Alagbon Close, Ikoyi who promptly investigated the case and retrieved part of the money already paid in by the dupes into their various accounts at SGBN under companies and individual names.

6. That among those whose accounts were investigated and frozen by the police was account operated by Farlob (Nig.) Ltd. and Toyem Enterprises Nigeria Limited through the said Manager of SGBN in collaboration with Mr. Afekoro.

7. That in the course of sharing their N7 million loot, the sum of N487,500 cash, among other sums, was paid out of the account of Toyem Enterprises (Nig) Ltd in favour of one "Akeem Yinusa", a fictitious name used by the SGBM Manager/Collaborator. The said sum of money was simultaneously re-deposited in the savings account operated by Mr. L.T. Afekoro, the 1st Respondent in this application, himself a key figure in the perpetration of the fraud.

8. That the police was able to trace this sum of N487,500 in the Savings Account of Mr. Afekoro because they discovered that there was no person that owned up the name "Akeem Yinusa" during their investigation.

9. That upon this finding, the Police then directed the SGBN in writing to transfer all moneys recovered in the bank and place in suspense account and found to belong to the Applicant into an account opened at the International Merchant Bank Limited (hereinafter referred to as the "IMB") Victorial Island, Lagos.

10. That the amount so recovered and placed into SGBN suspense

account was N2,727,655.60

11. That the SGBN agreed to transfer the said sum of money to IMB provided that the applicant gives them an indemnity for the said amount.

B 12. That consequently, the applicant company gave a written indemnify to the 2nd Respondent against actions, proceedings, demands, claims, and expenses which it may sustain by reason of releasing the money to the Applicant's account in the IMB.

C 13. That this indemnity was given on behalf of the Applicant by my humble self under the belief that the bank would notify the Applicant of any action, demand proceeding or claims by any person in connection with the recovered money.

D 14. That on the contrary, one Mr. L. T. Afekoro filed an originating summons, the subject of this application wherein he claimed, inter alia, that (1) the directive of IG of Police to SGBN contained in letter IB/300/X/C/Vol.42/502 of 18/2/88 signed by C. T. Duwon (DCP) (for AIG) D. I. I. Lagos addressed to SGBN directing the Bank to transfer monies in the account of Toyem Enterprises (Nig) Ltd and Farlob Nig. at IMB is Ultra vires, unconstitutional, illegal and void. That IGP has no power and or right to issue such directive. (ii) That the IGP'S letter of 18/2/88 was not referable to Mr. Afekoro's private Savings Account Number 071125193 and that any action of the SGBN in transferring money from the savings account of Alliance International Nig. Ltd. account at IMB is ultra vires, unconstitutional, illegal and void, a breach of the banking rules and practice and a breach of duty of care existing between Mr. Afekoro and SGBN, (iii) That the account of the 1st Respondent was not affected by the directive contained in the Police letter aforementioned and that the bank was bound to act on a letter by the Police directing that the said account be frozen, (iv) That Mr. Afekoro was entitled to operate and/or withdraw from his Saving Accounts No. H 071125193 which stood at N487,539.00 at 16/12/86 and continue to add interests at the bank's rate till date.

15. That the bundle of documents now attached to this affidavit and marked as Exhibit 'A' is the certified true copies of the documents

and proceedings in the said application and numbered from page 1 to 45.

16. *That the 2nd Respondent, SGBN entered an appearance but did not file any counter affidavit to the application nor did it make any other diligent effort to oppose the application.*

B

17. *That the 2nd Respondent did not also notify the applicant about the pendency of the suit knowing fully well that the applicant was a party to be affected one way or the other, by the consequential order to be made by the court in the proceedings.*

18. *That it was only the 3rd Respondent, the Inspector-General of Police that made effort to oppose the application by filing a counter affidavit which the trial judge discountenanced in the course of his ruling (see page 30 of Exhibit 'A').*

C

19. *That in what appeared to be a collusion between Mr. Afekoro (i.e. the 1st Respondent herein) and the SGBN (the 2nd Respondent), the trial judge, Adeniju, J after holding that Mr. Afekoro lacked locus standi to pursue reliefs I and II of his originating summons, strangely granted his other reliefs (iii, iv and v) in the said summons without any regard whatsoever to the Counter-affidavit filed by the Police in opposition to the application or directing that the Applicant be joined as a party in the case. (See pages 44-46 of Exhibit 'A').*

E

20. *That relying on the said ruling the 2nd Respondent (SGBN) purportedly paid Mr. Afekoro the sums of N487,539.50 plus interest of N143,260.19 without informing the Applicant or the Police.*

F

21. *That thereafter on the 26th of March 1990, the 2nd Respondent wrote to the Applicant informing it of the court case and ruling and demanding for the said sum of money to be repaid to it by the Applicant.*

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22. *That this demand was rejected by the Applicant in no unmistakable terms in the various letters it wrote to the 2nd Respondent.*

23. *That the 2nd Respondent has now commenced legal proceedings against the Applicant in Suit No. ID/856/91 at a Lagos High Court claiming the sum of N630,799.69 representing the said sum purportedly paid to Mr. Afekoro in obedience to the judgment of the*

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Lagos High Court in the Originating Summons aforesaid.

26. That arising from the issues joined in the pleadings particularly paragraphs 50, of the Statement of Defence, paragraphs 9 and 10 of the counter claim as well as paragraph 14 of the Reply, I was informed by Emeka Ngige Esq. of counsel and I verily believed him that it has become necessary for the Applicant to seek the prayers mentioned in the motion paper so that the matters in controversy between the affected parties can be fully and finally resolved by the Honourable Court.

27. That consequently, I verily believe that it will be in the interest of justice if this court grants the applicant an order extending the time within which it can apply for leave to appeal as an interested party in this case, leave to appeal as an interested party and an extension of time to file and serve the Notice and Grounds of Appeal."

Annexed to the affidavit was the proposed Notice of Appeal.

There was a further affidavit in which the reason for not bringing the motion was explained. The further affidavit was in response to the Appellant's counter-affidavit. There was yet a further affidavit to which was annexed the letter of indemnity issued by the 3rd Respondent to the Appellant and dated 7th March, 1988.

At the hearing of the motion the 1st and 2nd Respondents were absent and were not represented by counsel. After hearing learned counsel for the 3rd Respondent and the Appellant, the Court of Appeal per Sulu-Gambari JCA (Uwaifo and Ayoola, JJCA as they were then concurring), adjudged as follows:

"I am of the firm view that from the material before us the applicant has sufficient interest in the matter and cannot be said to have no locus standi.

The applicant lays claim to the sum of Afekoro's account for which he was required to enter into an indemnity in order to deprive Afekoro of access to his (Afekoro's) account when an order is made which calls for the indemnity to be enforced the interest of the applicant is affected.

I cannot see how this application can amount to an abuse of court's process in regard to the averment in the counter claim in the case

at the lower court.

In conclusion I think the applicant is entitled to the prayers sought in this application.

Accordingly time to apply for leave to appeal as an interested person is extended till today.

Leave to appeal is granted today. Time within which the applicant may file notice of appeal is extended to 21 days from today."

The Appellant is dissatisfied with this decision and has appealed to this Court upon two grounds of appeal.

The Appellant and the 3rd Respondent filed and exchanged their respective briefs of argument and their learned counsel proffered oral arguments at the oral hearing of the appeal. The 1st and 2nd Respondents did not take part in the appeal.

In the Respondent's brief 3rd Respondent raised objection to the competence of the appeal. It is contended that the two grounds of appeal contained in the Notice of appeal are of mixed law and fact and leave was not sought nor obtained before the appeal was filed, it is incompetent. The following cases are cited in support. Ogbechie v. Onochie (1986) 2 E NWLR 484; Ojeme & Ors. v. Momodu II & Ors. (1983) 1 SCNLR 188; Popoola v. Adeyemo (1992) 8 NWLR 1 at p. 33; Ajayi v. Omoregbe (1993) 6 NWLR 512 at p. 530. Mr. Oyetibo for the Appellant is of the contrary view. He submitted before us that the two grounds of appeal raise questions of law.

I think Mr. Oyetibo is right. In respect of ground 1, the particular (B) which Mr. Ngige, for the 3rd Respondent contends raises an issue of disputed facts, does nothing of the sort. It is a question of the interpretation of the judgment of the High Court whether it deprived the 3rd Respondent of anything. With respect to learned counsel, Mr. Ngige, I do not share his view on ground (2) either. I find the preliminary objection unmeritorious and it is accordingly struck out.

Two issues are framed in the Appellant's brief. The 3rd Respondents also framed two issues but differently worded. Having regard to the decision appealed against and the grounds of appeal I think the two questions arising for determination in this appeal are:

1. Whether the 3rd Respondent, having regard to the facts of the case is a person having an interest in the proceedings within the contemplation of the provisions of section 222 (a) of the Constitution of the Federal Republic of Nigeria, 1979 and therefore entitled to be granted leave to appeal; and

2. Whether the Court of Appeal was right in holding that the 3rd Respondent's application for leave to appeal against the decision of ADENIJI, J. in Suit No. M/664/89 was not an abuse of the process of the court when the 3rd Respondent had contended in suit No. LD/856/91 instituted by the Appellant against the 3rd Respondent that the said decision was void ab-initio and the Lagos High Court was yet to determine the suit.

QUESTION (1):

Mr. Oyetibo, both in his brief and in oral argument submitted that for a person not a party to a suit to be entitled to appeal to the Court of Appeal under section 222(a) of the Constitution he must be a person who has a legally recognizable interest in the proceedings in the High Court. He cited passages in Akande v. General Electric Co. (1979) 3 LRN 187 at p. 192 and Ikonne v. C.OP & Anor. (1986) 1 NWLR 473 at pp 497, 503 in support. He submitted that what is relevant is the court's decision and not the applicant's claim. Applying these tests to the facts of the case on hand, Mr. Oyetibo argued strongly that the 3rd Respondent had no legally recognizable interest in the 1st Respondent's savings account which the Police ordered to be transferred (along with other accounts frozen) into the 3rd Respondent's account in the IMB. He submitted that the action of the police was unlawful as it was not exercised under any provision of the Police Act, Cap 359 Laws of the Federation 1990 nor under the Criminal Procedure Act. He further submitted that none of the grounds of appeal in the proposed Notice of Appeal questioned any order made by the trial high Court.

Mr. Ngige, for the 3rd Respondent, agreed with Mr. Oyetibo as to the law applicable and added a passage from the judgment in In Re Sidebotham, Ex parte Sidebotham (1880) 14 Ch D 458 at 468. He, however, argued that by virtue of the indemnity which the 3rd Appellant

extracted from the 3rd Respondent, any proceedings, actions, claims, demands, expenses taken against the Appellant would invariably or prejudicially affect the interest of the 3rd Respondent. Learned counsel referred to the terms of the indemnity and submitted that the 3rd Respondent was a party who has suffered a legal grievance and whose title to the money transferred to its IMB account has been wrongfully affected by the decision of the trial High Court. He accused the Appellant of colluding with the 1st Respondent in brining the action. Learned counsel likened the position of the 3rd Respondent to that of the Insurance Company in Sun Insurance Co. Ltd. v. Ojemuyiwa (1965) ANLR 1 and In Re Ugadu (1988) 5 NWLR 189. Learned counsel referred to the letter the Appellant wrote to the 3rd Respondent before the latter gave its indemnity and argued that on the strength of that letter there was no coercion on the Appellant before transferring money to the IMB account. Counsel argued that it was premature to look into the grounds of appeal; this would only be relevant at the stage the appeal was being argued. It is also counsel's view that the issue of locus standi is not relevant in this appeal.

Now, section 222(a) of the 1979 Constitution provides:

"Any right of appeal to the Court of Appeal from the decisions of a High Court conferred by this Constitution -

(a) Shall be exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the High Court or the Court of Appeal at the instance of any other person having an interest in the matter,"

The law appears to be not in dispute. The 3rd Respondent not being a named party in the proceedings could only appeal with leave of court after showing that it has an "interest in the matter". The phrase "interest in the matter" has been the subject of judicial decisions in a number of cases both here and in England.

In Exparte SIDEBOTHAM, In re SIDEBOTHAM (1880) 14 Ch. H D 458 at 465 James, LJ declared as long ago as over a century:

"It is said that any person aggrieved by any order of the Court is entitled to appeal. But the words 'person aggrieved' do not really mean

a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something."

In Sun Insurance Office Ltd. Ojemuyiwa (1965) 4 NSCC 6 5 (1965) ANLR 1 this Court applying section 117 (6) of the Constitution of the Federation 1963 (which is in pari materia with section 222(a) under review) following Windsor v. Chalcraft (1938) 2 All ER 751; (1939) IKB 279 accepted the insurers claim that they, being liable to pay under the judgment, had an interest in the matter which enable them to apply for leave to appeal and granted them leave. In Ikonne v. C.O.P & Wachukwu (1986) 4 NWLR 473, 497 Aniagolu JSC delivering the lead judgment of this Court observed, after citing section 222(a) of the Constitution:

"The above provision is almost in identical terms with the provisions of Section 117 (6) (a) of the 1963 Constitution of the Federation under which the cases of Sum Insurance Office Ltd. v. Victoria O. Ojemuyiwa (1965) 1 All N.L.R. 1; and Jamakani Transport Ltd. v. Alhaji Kalia Motion by British India General Insurance Co. Ltd. (1965) 1 All NLR 77 were decided. In the former, the interest of the Insurance Company which had the liability of paying damages under the judgment was recognized as a sufficient legal interest to warrant the Insurance Company appealing against the judgment, while in the latter, the Insurance Company was not allowed to prosecute the appeal because it did not apply for leave to appeal under S. 117 (6) (a) but wanted to prosecute the appeal brought by Jarmakani Transport Ltd., the Supreme Court holding that it would be contrary to the spirit of that provision of the Constitution to authorize a person to prosecute an appeal in the name of a party who did not wish to go on with the appeal.

He then held at p. 497:

"The interest envisaged under s. 222 (a) of the 1979 Constitution is a legally recognizable interest."

Karibi-Whyte JSC in his own judgment in the case observed at p. 503:

"The expression 'person having interest' has been defined as synonymous with 'person aggrieved.' In Re: Sidebotham, Ex. p. Sidebotham (1880) 14 Ch. D. at p. 465, James L.J., said,

'A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.'

In Re: Reed, Bowen & Co. Ex. P. Official Receiver (1887) 19 Q.B.D. at p. 178, Lord Esher pointed out that 'a person aggrieved' includes 'a person who has a genuine grievance because an order has been made which prejudicially affects his interests.'

The respondent must therefore show not only that he is a person interested but also that the order made prejudicially affects his interests."

Again, in Ede v. Nwidenyi & Ors., In re. Ogbuzuru Ugadu & Anor. (1988) 5 NWLR 189, where this issue arose, Karibi-Whyte JSC held at p. 202:

"Concisely stated the interest which will support an application under the provision must be a genuine and legally recognizable interest, in respect of a decision which prejudicially affects such interest - See In re Reed Bowen & Co. Ex P. Official Receiver (1887) 19 QBD 174 at p. 178, A-G for the Gambia v. Njie (1961) 2 All ER. 504.

See also Dairo v. Gbadamosi, In re Afolabi (1987) 4 NWLR 18 CA cited with approval by this Court in In re Ugadu (supra). And in Fawehinmi v. N. B. A. & Ors. (No.1) (1989) 2 NWLR 494 at 551, Oputa JSC reiterated:

"There is also another expression which has to be properly understood and that is "Party aggrieved". Some statutes permit a person or a party aggrieved to appeal. Any person having an interest recognized by law in the subject-matter of a judgment which interest is injuriously affected by the judgment can appeal if he is a party or apply for leave to be heard on appeal not as a party properly so-called but rather as a person interested: - See Section 117(6) (a) of the 1963 Constitution and the case of Sun Insurance Office Ltd. v. Victoria Olayibo Ojemuyiwa (1965) NMLR 451. This case highlighted the point that a party to the original suit either as plaintiff or defendant appeals against the ensuing

judgment as of right while a person interested cannot launch an appeal in the name of the party but must obtain leave to appeal as a person interested:- See also Sections 213 (5) and 222(a) of the 1979 Constitution and the case of Christopher Ede v. Ogenyi Nwidenyi & Ors. In Re Ogbuzuru Ugadu (1988) 5 NWLR (pt. 93) 189 at p. 203 and at 210.

On the authorities, therefore, the expression "person having interest" is synonymous with "person aggrieved". And a person aggrieved is a person who has suffered a legal grievance, a person against whom a decision has been given which has deprived him of something or refused him something or affected his right or title to something - see: Akande v. General Electric Co. & Ors. (1979) 3 LRN 187. His interest must be one that is legally recognizable such as in Sun Insurance Office Ltd. v. Ojemuyiwa (supra), Ubagu & Ors. v. Okachi & Ors. (1964) NSCC 20, In re Ugadu (supra) and Dairo v. Gbadamosi, In re Afolabi (supra).

I now turn to the facts of this case. Can it be said that the 3rd Respondent has such an interest in Suit M/664/89. the proceedings in the High Court of Lagos State (Adeniji, J) between the 1st Respondent as plaintiff and the Appellant and 2nd Respondent, as defendants as to cloth him with locus standi to appeal, with leave of court, against the judgment in the case? The Court below answered this question in the affirmative. But the Appellant is of the contrary view. The reasoning of the Court below goes this way:

"The applicant (that is, the 3rd Respondent) Lays claim to the sum in Afekoro's account for which he was required to enter into an indemnity in order to deprive Afekoro of access to his (Afekoro's) account when an order is made which calls for the indemnity to be enforced the interest of the applicant is affected." (Words in brackets are supplied by me)

Learned counsel for the Appellant argued that whatever interest 3rd Respondent might have in 1st Respondent's account with the Appellant bank was not a legally recognizable interest in that the Police had no power or authority to order or direct or request the Appellant to transfer money from a suspense account in the Appellant bank to the 3rd

Respondent's account with another bank (IMB) and, in any event, the police, having cleared the 1st Respondent in Exh LTA 7 of complicity in the allegation of fraud reported by the 3rd Respondent, the latter no longer had any interest in 1st Respondent's savings account, the subject matter of Suit M/664/89 the judgment in which 3rd Respondent sought to appeal B against as "a person having an interest in the matter".

I think learned counsel is right. Following 3rd Respondent's report to the Police that he was defrauded of the sum of seven million Naira (N7m), the Police commenced investigation and, in the process, froze the accounts of some persons (including the 1st Respondent) in the Appellant bank and had the balances on those accounts paid into a suspense account in the bank pending conclusion of their investigations. At the close of their investigations, rather than charge to court the persons, if any, against whom any case was made out and leave it to the court to make an order as to the disposal of the amount in the suspense account, the Police wrote to the Appellant bank "requesting" it to transfer the balance in the suspense account to the account of the 3rd Respondent in the International Merchant Bank (IMB). The Appellant bank complied after it had obtained an indemnity from the 3rd Respondent. I have searched through the Police Act and the Criminal Procedure Act and the Criminal Procedure Law of Lagos State and I can find nothing in them to support the action of the police. Nor has learned counsel for the 3rd Respondent shown to us any authority to back up the Police action. The request for transfer is clearly illegal. And the amount so illegally transferred cannot, in my respectful view, constitute a legally recognizable interest of the 3rd Respondent in such amount. It is noteworthy to observe that there is nothing on the record before us to suggest that anyone has been prosecuted, let alone convicted, in respect of 3rd Respondent's complaint. Neither are we told that anyone, including the 1st Respondent, has been successfully sued by the 3rd Respondent in respect of its complaint. Wherein, then lies its legal interest in the amount of N2,727,655.60 illegally transferred into its account with the IMB at the "request"

of the Police.

In Exhibit LTA7, the Police wrote to the Appellant bank declaring that Afekoro (the 1st Respondent) -

"..... has found not to have been involved in the said fraud after completion of Police investigation."

This letter debunked the truthfulness of the counter-affidavit of Jacob Ademuyiwa, ASP. Had the Court below adverted its mind to this letter, it would not have found, as it did, that the 3rd Respondent "has sufficient interest in the matter", that is Suit No. M/664/89 involving 1st Respondent's savings account with the Appellant bank.

The conclusion I reach is that the 3rd Respondent has no legally recognizable interest in the subject matter of suit M/664/89: Afekoro v. SGBN & Anor. and cannot rightly be given leave to appeal in the matter pursuant to section 222(a) of the 1979 Constitution. I answer Question 1 in the negative. This conclusion is sufficient to enable me dispose of this appeal. There is no need to go into the other issues raised in the appeal.

For the reasons I give above, I allow this appeal, set aside the decision and orders of the Court below and dismiss 3rd Respondent's application before it for leave to appeal. I award to the Appellant N500 costs in the Court below and N10,000.00 costs in this Court to be paid by the 3rd Respondent.

WALI JSC

I have had the privilege of reading in advance, a copy of the lead judgment of my learned brother Ogundare, JSC, with the reasoning and conclusion of which I entirely agree. I adopt them as mine.

For these same reasons in the lead judgment, I find that the 3rd Respondent has failed to establish by credible evidence that it has any legal interest in the matter or it is a person aggrieved. The simple fact that it had complained to the police against the 1st Respondent who was later cleared by the police that he was not involved in the fraud complained of by the 3rd Respondent, is not sufficient to give the 3rd Respondent a

standing or locus Standi in the matter against the 1st respondent. After the completion of the police investigation, there was nothing to show that the 1st respondent was prosecuted by the police or sued by any body. For a person to put the provision of section 222(a) of the 1979 Constitution in motion in his favour, it must be shown that he has a legal interest in the matter or that he is a person aggrieved. See Sun Insurance Co. Ltd. v. Ojemuyiwa (1965) ANLR 1 and Ede v. Nwidenyi & Ors; In re - Ogbuzuru Ugadu & Anor. (1988) 5 NWLR 189. B

I also therefore allow the appeal and adopt the consequential orders made in the lead judgment including that of costs. C

MOHAMMED JSC

I agree with the opinion of my learned brother, Ogundare J.S.C., in the judgment just read that this appeal has merit and ought to succeed. My learned brother has covered all the salient issues canvassed in this appeal and I have nothing more to add. The appeal is accordingly allowed. I abide by the orders made in the leading judgment on costs. D E

ACHIKE JSC

I have had the opportunity of reading, in draft, the judgment of my learned brother, Ogundare, JSC. I do not think I can usefully add anything, except to say that I agree with his judgment. F

EJIWUNMI JSC

I have the privilege of reading before now, the judgment just delivered by my learned brother Ogundare, JSC. In that judgment, the facts have been carefully set down and the issues raised thereon have been duly considered leading to the success of the appeal. I also uphold the appeal for the reasons given in the said judgment. I will however comment further on two aspects of this appeal. G H

The first is whether the 3rd respondent, having regard to the

facts of the case is a person having an interest in the proceedings within the contemplation of the provisions of section 222 (a) of the Constitution of the Federal Republic of Nigeria, 1979 and therefore entitled to be granted leave to appeal. Section 222(a) of the 1979 Constitution provides:-

B *"Any right of appeal to the Court of Appeal from the decisions of the High Court conferred by this Constitution -*

(a) Shall be exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the High Court or the Court at the instance of any other person having an interest in the matter.

C "

It is manifest from a careful reading of section 222 (a) of the 1979 Constitution that under that section, either party to the action in the High Court has a right of appeal to the Court of Appeal. But where a party, described as an "interested party" wishes to appeal against the decision of the High Court that party is obliged to obtain the leave of the High Court or the Court of Appeal, prior to the hearing of the appeal. But such leave can only be granted to that "interested party", if he could show his interest in the decision for which he is seeking leave to appeal. It is therefore clear, in my respectful view, that a busy body, or a meddler in the affairs of others is not likely to be granted such leave. In other words, a person who wishes to appeal in such circumstances must show that he was aggrieved by the decision, in the sense that he had suffered a legal grievance. He must show that the decision wrongfully deprived him of something, or wrongfully refused him something. It must also be shown that the decision is likely to affect or aggrieve the person seeking for such leave to appeal to the Court of Appeal. See In Ex Parte Sidebotham; In re Sidebotham (1880) 14 Ch. D 458 at 465; Sun Insurance Office Ltd v. Ojemuyiwa (1965) 4 NSCC 65, (1965) ANLR 1. Ikonne v. C.O.P. & Wachukwu (1986) 4 NWLR 473, 497.

Upon the question raised in this appeal as to whether the Court below was right to have held that the 3rd Respondent had an interest of the kind that is envisaged in section 222(a) of the 1979 Constitution, it is the contention of learned counsel for the appellant that the 3rd Respondent had no such interest. His argument simply put is that whatever interest

3rd Respondent might have in 1st Respondent's account with the Appellant Bank was not a legally recognizable interest in that the Police had no power or authority to order or direct or request the Appellant to transfer money from a suspense account in the Appellant Bank to the 3rd Respondent's account with another Bank (IMB) and, in any event, having cleared the 1st Respondent of complicity in the allegation of fraud reported by the 3rd respondent, the latter no longer had any interest in 1st Respondent's saving account, the subject matter of suit M/664/89 the judgment in which 3rd Respondent sought to appeal against as "a person having an interest in the matter."

There can be no doubt that having regard to the authorities referred to above, the submission of learned counsel for the appellant is right. It must therefore follow that this appeal must be upheld.

My second comment is concerned with the conduct of the officers of the 2nd respondent in this matter. From what can be gathered from the records of this appeal, it became obvious that a gigantic fraud had been committed, with and among the principal parties in this matter. Yet rather than pursue the investigation and the criminal prosecution of those concerned, the police were busy acting illegally to recover the proceeds for the person they perceived as the complainant. I say no more. But it is imperative for the police authorities to investigate, for the discovery of offenders of the system and not be pursuers of money perceived stolen only.

As I have said above, this appeal is upheld for the reasons given above and the fuller reasons given in leading judgment. I also abide with the order made as to costs.

G

H