

SUPREME COURT OF NIGERIA
29TH SEPTEMBER, 2006. SC. 125/2005
CORAM:- I. L. KUTIGI, U. A. KALGO, N. TOBI,
M. MOHAMMED, W. S. N. ONNOGHEN, JJSC

FELICIA AKINBISADE	APPELLANT
V.		
THE STATE	RESPONDENT

STEALING - Proof - Ownership of money stolen - Was clearly proved - To belong to Ogun State Government - As properly found by the two lower courts (H1)

EVIDENCE - Reliability - Documents - Stealing - Proof - Documentary evidence being most reliable - Abound in this case - To prove ownership of the stolen money (H2)

EVIDENCE - Criminal procedure - Expert opinion - Or direct evidence - Where lacking on a subject - Trial court can rely on cogent inferential evidence (H3)

CRIMINAL PROCEDURE - Uttering a document - Proof - Where there is no evidence of a handwriting expert - Court can rely on strong circumstantial evidence (H4)

CRIMINAL PROCEDURE - Uttering a bank cheque - Expert opinion - Appellant's move to rely on only favourable part of the Exhibit - Is plain mischief - As the entire document must be interpreted as a whole (H5)

FACTS

The appellant and Mr. Okusanya were staff of the Internal Revenue of the Ministry of Finance, Abeokuta, Ogun State. Appellant was the cashier at the Capital Gains Tax Section, in charge of withholding tax, being tax deducted from monies paid to contractors by Contract Award-

ing Agencies. The prosecution alleged that appellant together with Mr. Okusanya fraudulently opened an Account No. GA 400004 at the Cooperative Bank Ijebu-Igbo on the false of authority of PW1, the Director of Internal Revenue, Ministry of Finance, Abeokuta. PW1 denied giving such authority to open the account. The account was operated by the appellant and Mr. Okusanya in different assumed names. The authorities of the Bank became suspicious that the said account was fraudulent. The Bank Manager, PW2, made some inquiries at the Internal Revenue office, Abeokuta. On 15-4-1992, appellant was arrested in the Bank with three cheques totalling N915,000.00 with which she wanted to withdraw from the Account.

Appellant was arrested and charged along with Mr. Okusanya. While she was charged with conspiracy to steal, stealing and uttering a document, Mr. Okusanya was charged with uttering some Cooperative Bank Cheques. Appellant told a different story in denial of the charge. The trial judge convicted the appellant as charged. He discharged Mr. Okusanya of the only charge preferred against him. Appellant's appeal to the Court of Appeal was dismissed. She has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“(A) Whether the N1,802,920.41 was proved to belong to the Ogun State Government and, if not, whether the affirmation of the judgment of the trial court was justified.

(B) Whether the court below was right in law in affirming the conviction of the appellant for uttering Exhibit S in the absence of credible evidence.

(C) Whether the fact that Exhibit XIV, which is the Report of the Handwriting Expert, did not state that the appellant wrote the mandate in the face of Exhibits IX1, IX2, IX3, IX, I is a justification to discharge and acquit the appellant of the charge of uttering of the said exhibits.”

HELD (Unanimously dismissing the appeal per **TOBI JSC**, Kalgo & Mohammed JJSC dissenting on Issue 2)

STEALING - Proof - Ownership of money stolen

1. Dealing with the ownership of the money and the wider aspect of the matter, the learned trial judge said at page 155 of the Record:

“The money in Account GA400004 belongs to the Ogun State Government. It was fraudulently deposited there. The money deposited into the account came into the 1st accused’s possession by virtue of her employment as a cashier in the Capital Gains Tax Section of the Department of Internal Revenue, Ogun State.”

On the same issue of ownership, the Court of Appeal said at page 258 of the Record:

“I have carefully considered the copious submissions of the learned counsel for the parties and since I am seised of all the facts of this appeal as culled from printed record, I am of the strong view that the main contention is the ownership of N1,802,920.41. The argument of the learned counsel for the appellant that the cheques by which the various sums were paid in favour of Ogun State Government are not in evidence is ill conceived. There is instead evidence that thirty-four Co-operative Bank Ltd., tellers marked Exhibits VIII, VIII to 33 for which the total sum of N1,802,920.41 was lodged into the Co-operative Bank Ltd. in Account No. GA 400004 in favour of the Director, Internal Revenue Division, Ministry of Finance, Abeokuta. The question is: What further evidence of ownership of the sum of N1,802,920.41 does any reasonable person need? There is uncontroverted evidence that the Account No. GA400004 or GA 4 in the Co-operative Bank Ltd. Ijebu-Igbo belongs to the Internal Revenue Division of the Ogun State Ministry of Finance, Abeokuta. Whatever money was paid into it whether validly or otherwise apparently belongs to Ogun State Government until the contrary is proved. The appellant did not do anything of the sort.”

I cannot improve on the above findings of the two lower courts. They are clearly borne out of the evidence before the court and I cannot tamper with them. (p. 3316 D)

EVIDENCE - Reliability - Documents

2. The most reliable if not the best evidence in most cases is documentary evidence. I say so because it is, in most instances, more reliable than

oral or parol evidence. Although documentary evidence could be victim of forgery, by human conduct, act or intervention, the instances of forgery are less when compared with oral or parol evidence, where witnesses tell lies with ease. In the instant case, there is a plethora of documentary evidence to prove that the money was the property of the Ogun State Government. And here I join the Court of Appeal in asking the question: "What further evidence of ownership of the sum of N1,802,920.41 does any reasonable person need?" I do not have an answer to the question in favour of the appellant. (p. 3317 D)

Expert opinion - Or direct evidence - Where lacking on a subject

3. The Court of Appeal said at page 256 of the Record:

"I have carefully considered the learned counsel's submission made on Issue No. 2, I am wary to agree with argument on behalf of the appellant that the inability of the P.W. 9 giving expert evidence or expert opinion on the ownership of Exhibit S is fatal. It is instead settled law that where direct evidence or expert opinion is lacking on a subject, the trial court that is seised of the entire case can source for cogent inferential evidence from other facts adduced at the trial of the matter to establish the guilt of an accused person. See *Adepetu v. The State* (supra) page 207. In the instant case, I agree with the instances portraying that the appellant had sufficient knowledge of Exhibit S highlighted in the submissions of the learned counsel for the respondent."

I have the difficulty to disagree with the positions taken by the two courts as they are clearly borne out of the evidence before the trial court. (p. 3318 C)

Uttering a document - Proof

4. There is overwhelming evidence that the appellant operated the fraudulent account. How could she have done this without knowledge of the existence of the account? I entirely agree with the learned trial judge that if the appellant did not open the account personally, she must have aided, counselled or procured someone to open the account and that brings her in terms with section 7 of the Criminal Code of Ogun State. It is not in all

cases that absence of evidence of handwriting expert is prejudicial to the case of the prosecution. While such evidence could be a desideratum in some cases, it is not invariably so. Where there is a very strong connecting link between the accused and the document to the extent that the circumstances zero on the commission of the offence by the accused, B the court is entitled to draw the inference circumstantially that the accused was the author of the document and therefore the author of the crime. It is because our adjectival law realizes that it is not in all cases that direct evidence of an eyewitness is possible that the law has carved C out a niche to assimilate or accommodate circumstances surrounding the commission of an offence, a position which leads to the admission or admissibility of circumstantial evidence. (p. 3318 F)

Uttering a bank cheque - Expert opinion

5. The case of the appellant in a nutshell is that “the report of the signature expert did not in any way show that it was the appellant that wrote the mandate on the cheque.” To counsel, since the report was silent on who wrote the mandate on the cheques, that piece of evidence made the E whole evidence of the prosecution as it relates to the commission of the offence of uttering the exhibit doubtful. Counsel for the respondent described the submission as “plain mischief as appellant’s counsel only picked a part of the expert’s report in favour of his argument.” He pointed F out that the handwriting expert found that all the writings on the reverse side of the exhibit (i.e. the cheques) were made by the appellant who presented them to the Bank for purposes of payment.

I am in grave difficulty to agree with the submission of learned G counsel for the appellant. It is the law that for the purposes of obtaining a balanced picture in documentary evidence the entire documents must be interpreted as a whole and not in parts or pockets convenient to a party. In other words, a party cannot pick and choose extract from a document that is convenient to his case. That will be tantamount to shut- H ting out the truth searching process in the matter before the court. And reading Exhibit IX1, IX2, IX3, IX and 1, I am in agreement with the submission of learned counsel for the respondent. (p. 3319 E)

NOTABLE POINTS OF INTEREST

KALGO JSC

1. Circumstantial evidence - When trial court's evaluation of evidence may not be disturbed

B While I agree with the Court of Appeal that a trial court judge is the master of the facts of the evidence given before him, and his inference, evaluation or assessment of the evidence should not ordinarily be faulted that by an appeal court, such inference, assessment or evaluation of the evidence must be properly based on the available evidence given before him and not outside it. It is also necessary to ensure that there are no co-existing circumstances which would weaken or destroy the inference, evaluation or assessment. It is also well settled that for any circumstan-

C

D tial evidence to support the conviction of the offence charged, that evidence must be credible, cogent, consistent, and unequivocal and leads to no conclusion other than the guilt of the person charged with the offence. Circumstantial evidence is evidence of surrounding circumstances

E culled from credible evidence in court and which, by undersigned coincidence, is capable of proving a preposition with the accuracy of mathematics. It can be used to convict an accused person charged with a criminal offence but in such circumstances, the court must be sure that the evidence is cogent, consistent, irresistible, rational and compelling

F and leads to the guilt of the accused person and leave no degree of possibility or chance that other person could have been responsible for the commission of the offence.

G Circumstantial evidence cannot be raised on speculation or suspicion however strong, and it must always be narrowly construed and examined as to prevent being fabricated to cast suspicion on innocent persons. (p. 3328 B)

H 2. Finding that appellant uttered Exhibit S is wrong

In the final analysis it is my humble and respectful view that the finding by the learned trial judge by circumstantial evidence that the appellant uttered Exhibit 'S' which was affirmed by the Court of Appeal, is wrong

and perverse and cannot be supported by any evidence at the trial. An appeal court can interfere with the evaluation of evidence of a lower court in circumstances such as this. (p. 3330 C)

ONNOGHEN JSC

3. Inference that appellant was maker of Exhibit S is right

Though appellant denied issuing exhibit S with which the account in issue was opened and operated and alleged that Messrs Amure and Adeboye knew about the opening of the account, there is evidence accepted by the trial court and confirmed by the Court of Appeal to the effect that on different occasions and with different names the appellant made withdrawals from the said account. There is evidence before the court that the only bank account operated by the Ogun State Government at Ijebu-Igbo is with WEMA Bank and not Co-operative Bank and that money can be paid into the said government account and not withdrawn therefrom. I hold the view that with the circumstances of this case, the court was right in inferring that appellant knew about exhibit S and was the maker thereof. The trial court found thus:

“I found as a fact that she know something about the account. From available evidence the 1st accused has been operating the account. Exhibit XIV paragraph 4(1) pointed to the 1st accused as the writer of certain cheques which were presented by the 1st accused under some assumed names to withdraw at different occasions from the fraudulent account..... I believe that the 1st accused opened the account herself or aided, counseled or procured someone to open the account for her else she could not have operated.” (p. 3339 H)

REPRESENTATION

Joseph Nwobike, for the appellant.

A. A. Babawale (Mrs.), Director Public prosecution Lagos State, for the respondent.

CASES REFERRED TO

Udedibia v. The State [1976] 11 SC 133

- Fatoyinbo v. A-G. Western Nigeria [1966] WNLR 4
 Omogodo v. The State [1981] 5 SC. 5
 Ojioffor v. The State [2001] 9 N.W.L.R. (pt. 718) 371
 Adeniji v. The State [2001] 13 N.W.L.R. (pt. 730) 375
 B Akpan v. The State [2001] 15 N.W.L.R. (pt. 737) 745
 Adepetu v. The State [1998] 9 N.W.L.R. (pt. 565) 185
 Ahmed v. The State [2001] 18 N.W.L.R. (pt. 746) 622
 Onyenankeya v. The State [1964] I All NLR 151
 C Nnorodim v. Ezeani [2001] 5 N.W.L.R. (pt. 706)
 Fagbenro v. Arobadi [2006] All F.W.L.R. (pt. 310) 1575
 Atano v. Attorney-General of Bendel State [1988] 12 S.C. 59
 Obiakor v. State [2002] F.W.L.R. (pt. 113) 299 at 313
 Idowu v. State (supra); Ahmed v. State [1999] 7 N.W.L.R. (pt. 612) 641
 D Amusa v. State [1986] 3 N.W.L.R. (pt. 30) 536
 Nnolim v. State [1993] 3 N.W.L.R. (pt. 283) 569
 Nwosu v. State [1986] 4 N.W.L.R. (pt. 35) 380.
 Alonge v. I.G.P. [1959] 4 F.S.C. 203
 E Ilori v. State [1980] 8-11 S.C. 81
 Onafowokan v. State [1987] 3 N.W.L.R. (pt. 61) 536
 Odibe v. Agege [1989] 9 N.W.L.R. (pt. 259) 279
 Izirem v. The State [1995] 9 N.W.L.R. (pt. 420) 389 at 390
 F
STATUTE REFERRED TO
 Criminal Code of Ogun State 1978 ss. 1, 7, 390 and 468

LEAD JUDGMENT BY TOBI JSC

- G The case of the prosecution is as follows: The appellant and Mr. Okusanya were staff of the Internal Revenue of the Ministry of Finance, Abeokuta, Ogun State. The appellant was the cashier at the Capital Gains Tax Section,. Mr. Okusanya worked in the Litigation Division of the Department. The appellant was in charge of withholding tax, being tax deducted from monies paid to contractors by Contract Awarding Agencies.
 H
 The appellant together with Mr. Okusanya fraudulently opened an Account No. GA400004 at the Co-operative Bank Ijebu-Igbo on the

false if authority of P.W.1, the Director of Internal Revenue, Ministry of Finance, Abeokuta. P.W.1 denied giving such authority to open the account. There were several lodgments and withdrawals from the said account. The account was operated by the appellant and Mr. Okusanya in different assumed names. B

The authorities of the Bank became suspicious that Account No. GA400004 was fraudulent. P.W.2, the Bank Manager, went to the Internal Revenue office at Abeokuta on 14th April, 1992 to make enquiries. Following the result from the enquiries, the Bank became discreet about honouring the cheques drawn on the Account. On 15th April, 1992, the appellant was arrested in the Bank with three cheques totaling N915,000.00 with which she wanted to withdraw from the Account. She called herself the false name of Mrs. S. B. Arowolo. C

She was duly arrested and charged along with Mr. Okusanya. D While she was charged for conspiracy to steal, stealing of the sum of N1,802,920.40 and uttering a document, Mr. Okusanya was charged for uttering some Co-operative Bank Cheques.

The defence of appellant was that on 15th April, 1992, she went to E Co-operative Bank, Ijebu-Igbo to see the Bank Manager, Mr. Adeboye in respect of an allocation paper for cement which she got from WAPCO, Sagamu Depot. She wanted to sell the allocation paper to Mr. Adeboye. It was while she was waiting for Mr. Adeboye in the Bank Hall that she F was accosted by P.W. 5 (the Bank's Inspector) who asked her about what she came to do at the Bank. It was at that juncture that P.W. 5 gave her a bank draft and asked her to sign a record book. When she refused to sign, P.W. 5 gave her some slaps and she had to sign. That is her story G and so be it in her own way.

The learned trial judge convicted the appellant as charged. He discharged Mr. Okusanya of the only charge preferred against him. The Court of Appeal dismissed the appeal of the appellant. She has come to us. Briefs were filed and exchanged. The appellant formulated three issues for determination: H

“(A) *Whether the N1,802,920.41 was proved to belong to the Ogun State Government and, if not, whether the affirmation of the judg-*

ment of the trial court was justified.

(B) Whether the court below was right in law in affirming the conviction of the appellant for uttering Exhibit S in the absence of credible evidence.

B (C) Whether the fact that Exhibit XIV, which is the Report of the Handwriting Expert, did not state that the appellant wrote the mandate in the face of Exhibits IX1, IX2, IX3, IX, I is a justification to discharge and acquit the appellant of the charge of uttering of the said exhibits.”

The respondent also formulated three issues for determination:

C “(i) Whether the N1,802,920.41 lodged into the fraudulent Account No. GA400004 was proved to belong to the Ogun State Government and, if so, whether the affirmation of the judgment of the trial court was justified.

D (ii) Whether the court below was right in law in affirming the conviction of the appellant for uttering Exhibit S, which was the false mandate used to open the fraudulent Account No. GA400004.

E (iii) Whether there is justification to discharge and acquit the appellant on the charge of uttering Exhibits IX1, IX2, IX3, IX and I simply because Exhibit XIV being the Handwriting Expert Report did not state that appellant wrote the mandate on the said Exhibits IX1, IX2, IX3, and I.”

F Learned counsel for the appellant, Mr. Joseph Nwobike, submitted on Issue No. 1 that the prosecution did not prove that the money belonged to the Ogun State Government. The identification of the ownership of the money purported stolen is very critical to the establishment as whether the money was stolen in the first place, counsel argued. He G relied on section 138(1) and (2) of Evidence Act and the following cases, Alonge v. I.G.P. [1959] 4 F.S.C. 203; Ilori v. State [1980] 8-11 S.C. 81; Onafowokan v. State [1987] 3 N.W.L.R. (pt. 61) 536; Odibe v. Agege [1989] 9 N.W.L.R. (pt. 259) 279 and Idowu v. State [1998] 9-10 S.C. 1 H at 5.

On issue No. 2, learned counsel submitted that the Court of Appeal was wrong in law in affirming the conviction of the appellant by the trial judge for uttering Exhibit S in the absence of credible evidence.

He said that failure on the part of the prosecution to send the exhibit to the handwriting expert to determine the maker of it was prejudicial to the case of the prosecution. To learned counsel, there was no credible evidence linking the appellant with the uttering of Exhibit S and to that extent the prosecution did not discharge the burden placed on it. He relied on *Atano v. Attorney-General of Bendel State* [1988] 12 S.C. 59; *Obiakor v. State* [2002] F.W.L.R. (pt. 113) 299 at 313. *Idowu v. State* (supra); *Ahmed v. State* [999] 7 N.W.L.R. (pt. 612) 641; *Amusa v. State* [1986] 3 N.W.L.R. (pt. 30) 536; *Nnolim v. State* [1993] 3 N.W.L.R. (pt. 283) 569; *Nwosu v. State* [1986] 4 N.W.L.R. (pt. 35) 380.

Taking Issue No. 3, learned counsel submitted that the prosecution did not prove the uttering of Exhibits IX1, IX3, IX and 1 by the appellant. He argued that the report of the signature expert did not in anyway show that it was the appellant that wrote the mandate on the cheque. He relied on section 149(d) of the Evidence Act. He urged the court to allow the appeal.

Learned counsel for the respondent, Mrs. A.A. Babawale, submitted on Issue No. 1 that the prosecution proved that the money belonged to the Ogun State Government. She relied on the decision of the Court of Appeal and pointed out that the fraudulent Account No. GA 400004 was opened in the name of Ogun State Government and the names lodged into the account were purportedly lodged on behalf of the Ogun State Government. Except when required for the purpose of describing an offence depending on any special ownership of property, allegation concerning ownership of stolen property are treated as immaterial, but where the owner is known, it is more satisfactory if he is named as such in the charge. She relied on *Adewusi v. The Queen* [1963] 1 All N.L.R. (pt. 316) at 319-320.

On Issue No. 2, learned counsel quoted from the judgment of the two lower courts and urged this court not to disturb the concurrent findings of the courts. On whether one Mr. Amure ought to have been called as a witness, counsel contended that the prosecution is not bound to call every available witness. She relied on *Izirem v. The State* [1995] 9 N.W.L.R. (pt. 420) 389 at 390.

Taking Issue No. 3, learned counsel argued that it is plain mischief for appellant's counsel to only pick a part of the expert's report in favour of his argument that Exhibit XIV did not indicate the mandate on the face of Exhibit IX1, IX2, IX3 and 1. She pointed out that the handwriting expert found that all the writings on the reverse side of the exhibits (i.e. cheques) were made by the appellant. She relied on section 1 of the Criminal Code of Ogun State on the definition of utter and the relevant portion of the decision of the Court of Appeal.

Reacting to the submission of learned counsel for the appellant that the prosecution should have gone the extra mile to prove who wrote the cheques and not who endorsed them, learned counsel submitted that the law does not place such onerous burden on the prosecution, which is to prove its case beyond reasonable doubt and not beyond any shadow of doubt. She relied on *State v. Aibangbee* [1988] 3 N.W.L.R. (pt. 84) 548 at 551. She urged the court to dismiss the appeal.

Dealing with the ownership of the money and the wider aspect of the matter, the learned trial judge said at page 155 of the Record:

"The money in Account GA400004 belongs to the Ogun State Government. It was fraudulently deposited there. The money deposited into the account came into the 1st accused's possession by virtue of her employment as a cashier in the Capital Gains Tax Section of the Department of Internal Revenue, Ogun State."

On the same issue of ownership, the Court of Appeal said at page 258 of the Record:

"I have carefully considered the copious submissions of the learned counsel for the parties and since I am seised of all the facts of this appeal as culled from printed record, I am of the strong view that the main contention is the ownership of N1,802,920.41. The argument of the learned counsel for the appellant that the cheques by which the various sums were paid in favour of Ogun State Government are not in evidence is ill conceived. There is instead evidence that thirty-four Co-operative Bank Ltd., tellers marked Exhibits VIII, VIII to 33 for which the total sum of N1,802,920.41 was lodged into the Co-operative

Bank Ltd. in Account No. GA 400004 in favour of the Director, Internal Revenue Division, Ministry of Finance, Abeokuta. The question is: What further evidence of ownership of the sum of N1,802,920.41 does any reasonable person need? There is uncontroverted evidence that the Account No. GA400004 or GA 4 in the Co-operative Bank Ltd. Ijebu-Igbo belongs to the Internal Revenue Division of the Ogun State Ministry of Finance, Abeokuta. Whatever money was paid into it whether validly or otherwise apparently belongs to Ogun State Government until the contrary is proved. The appellant did not do anything of the sort.”

I cannot improve on the above findings of the two lower courts. They are clearly borne out of the evidence before the court and I cannot tamper with them.

The most reliable if not the best evidence in most cases is documentary evidence. I say so because it is, in most instances, more reliable than oral or parol evidence. Although documentary evidence could be victim of forgery, by human conduct, act or intervention, the instances of forgery are less when compared with oral or parol evidence, where witnesses tell lies with ease. In the instant case, there is a plethora of documentary evidence to prove that the money was the property of the Ogun State Government. And here I join the Court of Appeal in asking the question: “What further evidence of ownership of the sum of N1,802,920.41 does any reasonable person need?” I do not have an answer to the question in favour of the appellant. Perhaps the appellant has and if so, what is the answer?

That takes me to Issue No. 2. It is on Exhibit S, the letter allegedly or purportedly written by P.W. 1 by which the fraudulent account was opened. It was the letter that authorized the opening of Account No. GA400004. What did the lower courts say on or about the Exhibit?

The learned trial judge said at page 151 of the Record: “*The 1st accused must be lying when she said she knew nothing about the account. If the 1st accused knew something about the account, then she must be able to say how the account was opened at the Bank. I believe that the*

Ist accused opened the account herself or aided, counselled or procured someone to open the account for her else she could not have operated it. If the Ist accused did not open the account by herself but aided, counselled or procured someone to open the account she is deemed to be guilty of the offence and may be charged with actually committing it. (Section 7 of the Criminal Code of Ogun State 1978; Yakubu Mohammed and Anor. V. The State [1980] 1 N.C.R. 140). I hold that the prosecution has proved the 3rd count against the 1st accused. The 1st accused is found guilty as charged on that count.”

The Court of Appeal said at page 256 of the Record:

“I have carefully considered the learned counsel’s submission made on Issue No. 2, I am wary to agree with argument on behalf of the appellant that the inability of the P.W. 9 giving expert evidence or expert opinion on the ownership of Exhibit S is fatal. It is instead settled law that where direct evidence or expert opinion is lacking on a subject, the trial court that is seised of the entire case can source for cogent inferential evidence from other facts adduced at the trial of the matter to establish the guilt of an accused person. See Adepetu v. The State (supra) page 207. In the instant case, I agree with the instances portraying that the appellant had sufficient knowledge of Exhibit S highlighted in the submissions of the learned counsel for the respondent.”

I have the difficulty to disagree with the positions taken by the two courts as they are clearly borne out of the evidence before the trial court. There is overwhelming evidence that the appellant operated the fraudulent account. How could she have done this without knowledge of the existence of the account? I entirely agree with the learned trial judge that if the appellant did not open the account personally, she must have aided, counselled or procured someone to open the account and that brings her in terms with section 7 of the Criminal Code of Ogun State. It is not in all cases that absence of evidence of handwriting expert is prejudicial to the case of the prosecution. While such evidence could be a desideratum in some cases, it is not invariably so. Where there is a very strong

connecting link between the accused and the document to the extent that the circumstances zero on the commission of the offence by the accused, the court is entitled to draw the inference circumstantially that the accused was the author of the document and therefore the author of the crime. It is because our adjectival law realizes that it is not in all cases that direct evidence of an eyewitness is possible that the law has carved out a niche to assimilate or accommodate circumstances surrounding the commission of an offence, a position which leads to the admission or admissibility of circumstantial evidence.

The appellant was most miserly with the true position and refused to tell the truth when she was shown Exhibit S and said at page 85 of the Record: *"I do not know anything about it."* The truth is that she knew so much about Exhibit S. It was convenient for her to deny knowledge of the exhibit and so she denied. Unfortunately for her, the evidence before the learned trial judge hooked her in the crime and in a most outrageous way. She could not get out of or from it, whatever the best she tried.

Let me take the third and final issue. It is on a number of exhibits. They are five in number. They are the cheques, the conduit through which the money was siphoned from the Bank. **The case of the appellant in a nutshell is that "the report of the signature expert did not in any way show that it was the appellant that wrote the mandate on the cheque."** To counsel, since the report was silent on who wrote the mandate on the cheques, that piece of evidence made the whole evidence of the prosecution as it relates to the commission of the offence of uttering the exhibit doubtful. Counsel for the respondent described the submission as "plain mischief as appellant's counsel only picked a part of the expert's report in favour of his argument." He pointed out that the handwriting expert found that all the writings on the reverse side of the exhibit (i.e. the cheques) were made by the appellant who presented them to the Bank for purposes of payment.

I am in grave difficulty to agree with the submission of

learned counsel for the appellant. It is the law that for the purposes of obtaining a balanced picture in documentary evidence the entire documents must be interpreted as a whole and not in parts or pockets convenient to a party. In other words, a party cannot pick and choose extract from a document that is convenient to his case. That will be tantamount to shutting out the truth searching process in the matter before the court. And reading Exhibit IX1, IX2, IX3, IX and 1, I am in agreement with the submission of learned counsel for the respondent.

The appellant who had a stable tenure appointment as a civil servant in the Ministry of Finance, Internal Revenue Division, Abeokuta, was not satisfied with her monthly salary. She therefore tried her hands and her head on quick but fraudulent way of making money. Unfortunately for her, she was caught in the process and had to face charges. In order to exculpate or exonerate herself from criminal responsibility, she embarked on telling lies and lies. Her fabricated cement business and deal, which has nothing to do with her theft, took centre stage in her defence, all to hide her criminality. She said in evidence that P.W. 5, the Bank's Inspector, forced her to sign the Bank's Book. The implication of the statement is that appellant was made to sign Bank's Book incriminating her in the commission of the crime. That is the meaning I can get from the word "forced."

Contrary to that, P.W. 5 said in his evidence in chief that the appellant signed for the cash. The witness said at page 47 of the Record:

"She later signed our cash book for a sum for N385,000.00. In respect of the draft for N250,000,00. she also signed our record as having received the draft for N250,000.00."

Because she needed money outside or beyond her legitimate earnings very badly she told a lie when asked by P.W. 5 what she wanted to use the money for. She told P.W. 5 that she worked at Apoje Farm settlement and that she wanted to use the money for the payment of salaries of Apoje Farm settlers. By this statement, she hid her identity as a staff of Inland Revenue Department of the Ministry of Finance, Abeokuta.

That was not the end of her lies. She gave herself a new name to

enable her commit the crime without trace. That name was S. B. Arowolo.

I see the appellant as a most ambitious woman, who had all the ambition and gluttony for money and more money. Unfortunately, she found herself in a web and she must pay for criminal propensity. In other words, the appellant tried her hands and her head on short cut of making quick and cheap money but she found herself in prison. She has not my sympathy, as she deserves every bit of the pain she has gone through or she is going through.

Accordingly, I dismiss this appeal as it lacks merit. I affirm the decision of the Court of Appeal, which affirmed the sentence of the trial court.

KUTIGI JSC

I have had the privilege of reading in advance the judgment just rendered by my learned brother, Niki Tobi, J.S.C. I agree with his reasoning and conclusions. The appeal has no merit whatsoever. The appellant was properly convicted on all counts and her appeal to the Court of Appeal was rightly dismissed. I also dismiss the appeal and affirm her convictions as well as the sentences.

KALGO JSC

This is an appeal against the decision of the Court of Appeal holden at Ibadan in a judgment delivered on 2nd December 2004. The appellant, Felicia Akinbisade was charged, tried and found guilty and convicted of the offences of stealing, uttering a false document (two separate charges) contrary to sections 390(9) and 468 respectively of Criminal Code Law Cap. 29 Vol. II Laws of Ogun State of Nigeria 1978. The charges, as amended, read thus: -

COUNT II STATEMENT OF OFFENCE

“Stealing, contrary to section 390(9) of the Criminal Code Law Cap. 29 Vol. II Laws of Ogun State of Nigeria 1978.

PARTICULARS OF OFFENCE

FELICIA AKINBISADE (F) and Kayode Okusanya between the months of June 1991 and April 1992 at Ijebu-Igbo in the Ijebu-Igbo Judicial Division stole the sum of One Million eight hundred and two thousand, nine hundred and twenty Naira, forty-one kobo
 B *(N1,802,920.41k) property of the Ogun State Government.*

COUNT III STATEMENT OF OFFENCE

Uttering a false document, contrary to section 468 of the Criminal Code Law Cap. 29 Vol. II of Ogun State of Nigeria 1978.

PARTICULARS OF OFFENCE

C *FELICIA AKINBISADE (F) between the months of June and July 1991 at Co-operative Bank Ijebu-Igbo Judicial Division knowingly below and fraudulently uttered a certain letter of authority purporting same to have been issued by one Mojeed Oladele Akinyinka, as Director*
 D *of Internal Revenue, Ogun State.*

COUNT IV STATEMENT OF OFFENCE

Uttering false documents, contrary to section 468 of the Criminal (I Code Law Cap. 29 Vol. II Laws of Ogun State of Nigeria 1978.

E PARTICULARS OF OFFENCE

FELICIA AKINBISADE (F) between the months of August 1991 and April 1992 at Ijebu-Igbo in the Ijebu-Igbo Judicial Division knowingly and fraudulently uttered some Co-operative Bank's cheques Nos.
 F *GO - 49L 069772, GO - 49L 069758, GO - 49L 069764, GO - 49L 069770, GO - 49L 069772, GO - 49L 069773, GO - 49L 069754 and GO - 49L 069752 purporting the cheques to be the mandate of the Director of Internal Revenue, Abeokuta Ogun State whilst holding herself out at different occasion as Mrs. S. B. Arowolo, Mrs. C. O. Adegoke and Mrs.*
 G *Comfort Adegoke"*

The learned trial judge, Sodeke J. at the end of the trial and in a considered judgment delivered on 5th October 1995 convicted the appellant of the 3 counts and sentenced her to a term of 4 years imprisonment
 H for each of the three (3) offences to run concurrently. She appealed against the conviction to the Court of Appeal. The Court of Appeal found no merit in the appeal and it dismissed it.

The appellant now appealed to this court on 4 grounds of appeal.

As required by the rules of this court, the appellant filed a written brief of argument in which 3 issues were raised for the determination of this court. These issues are:

“(A) *Whether the N1,802,920.41 was proved to belong to the Ogun State Government and if not, whether the affirmation of the judgment of the trial court was justified.* B

(B) *Whether the court below was right in law in affirming the conviction of the appellant for uttering Exhibit S in the absence of credible evidence.*

(C) *Whether the fact that Exhibit XIV, which is the Report of the Hand-writing Expert, did not state that the appellant wrote the mandate on the face of Exhibits IX1, IX2, IX3, IX, I is a justification to discharge and acquit the appellant of the charge of uttering of the said exhibits.” C*

The respondent also filed a brief and raised the following issues D which are in all respects similar to those of the appellant but are set out below for the avoidance of doubt:

“(I) *Whether the N 1,802,920.41 lodged into the fraudulent Account No. GA 400004 was proved to belong to the Ogun State Government and if so, whether the affirmation of the judgment of the trial court was justified.* E

(II) *Whether the court below was right in law in affirming the conviction of the appellant for uttering Exhibit S which was the false mandate used to open the fraudulent Account No. GA 400004.* F

(III) *Whether there is justification to discharge and acquit the appellant on the charge of uttering Exhibit IX1, IX2, IX3, IX and I simply because Exhibit XIV being the Handwriting Expert Report did not state that appellant wrote the mandate on the said Exhibit IX1, IX2, IX3, and I.” G*

Let me now take and consider the appellant’s issues one by one ad seriatim.

ISSUE 1: This issue questioned whether the amount of H N1,802,920.41 paid into the fraudulent Account No. GA 400004 in the Cooperative Bank, Ijebu-Igbo at the material time belongs or was proved to belong to the Ogun State Government. Learned counsel for the appel-

lant submitted in his brief that there was no such evidence. Counsel specifically referred to the evidence of P.W.1, the Director of Internal Revenue of Ogun State whom he referred to as key witness, who testified that the source of the money alleged to have been stolen was to the best of his knowledge from withholding tax but that the “paper money register” in respect of the same, was at the material time, in order. He then submitted that the identification of the ownership of the money purportedly stolen is very crucial to the establishment as to whether money was stolen at all, and the fact that the cheques paid into the Account were written in the name of the Director of Internal Revenue of the Ministry of Finance, Ogun State is not proof that the money involved belonged to Ogun State Government. Counsel finally submitted that the Court of Appeal concentrated its finding on this issue merely on what transpired on 15th April 1992 when the appellant was arrested and acted purely on speculative evidence. He urged the court to find that this was fatal to the case of the prosecution and consequently allow the appeal and discharge and acquit the appellant.

For the respondent, it was submitted that the fraudulent Account No. GA400004 was opened in the name of Ogun State Government and that all money paid into the account belonged to the said government unless the contrary is proved. In fact, counsel for the respondent pointed out in the brief that when the appellant was asked about the fraudulent account, she simply denied knowledge of the account, and that there was no other evidence to show that the money in the said account belonged to any Other person. The learned counsel strongly submitted that this issue was thoroughly considered by the Court of Appeal in its judgment before resolving it against the appellant. In this respect counsel argued, the Court of II Appeal referred to the 34 Co-operative Bank Limited tellers (Exhibits VIII, 1 - 33) for which N1,802,920.41 was lodged into the fraudulent account, in favour of the Director of Internal Revenue Division, Ministry of Finance, Abeokuta and concluded that this was more than ample evidence to prove that the money involved belonged to the Ogun State Government. Counsel further pointed out that the trial court also made similar findings and submitted on this issue, that there

was sufficient proof of evidence establishing that the amount lodged in the fraudulent Account No. GA400004 belonged to the Ogun State Government.

As I understand it, the only point or question to be resolved in this issue is whether the total amount of N1,802,920.41 lodged in the fraudulent Account No. GA 400004 in the Co-operative Bank Limited, Ijebu-Igbo belonged to Ogun State Government. The main argument of the appellant's counsel as to whether the money was stolen or not is not relevant here. His reliance on the evidence of P.W.1 that "the paper register was in order" up to the time the appellant was arrested was of no moment. In fact P.W.1 made it clear that the fraudulent Account was opened without authority at all and either by him or the Accountant-General of the State and that the money paid into the said account were cheques for the State Withholding Tax Section which came into the appellant's hand as the cashier of that section. From the evidence of P.W. 1, the source of the money is very clear, and that all the cheques involved were in the name of Director of Internal Revenue, Ministry of Finance, Ogun State. The evidence at the trial shows clearly that there were 34 of these cheques lodged into the said fraudulent account. These have been admitted as Exhibits VIII, VIII –1 to 33 and the total amount of money in them, added up to the sum of N1,802,920.41. There was no iota of evidence challenging or contradicting this evidence on the record. Therefore since the said cheques were all in the name and in favour of the Director of Internal Revenue of the Ministry of Finance, Abeokuta, I have no doubt in my mind, that the proceeds of those cheques wholly belonged to the Ogun State Government. I entirely agree with the Court of Appeal when it stated in its judgment while considering this point on page 258 of the record that:

"There is instead evidence that thirty-four Cooperative Bank Limited tellers marked Exhibits VIII, VIII-1 to 33 for which the total sum N 1,802,920.41 was lodged into Cooperative Bank Limited in Account GA 4 (sic) in favour of the Director, Internal Revenue Division, Ministry of Finance, Abeokuta. The question is: What further evidence of ownership of the sum of N 1,802,920.41 does any reasonable person

need? There is uncontroverted evidence that the Account No. GA400004 in the Cooperative Bank Ltd., Ijebu-Igbo belongs to the Internal Revenue Division of the Ogun State Ministry of Finance, Abeokuta. Whatever money was paid into it whether validly or otherwise apparently belongs to Ogun State Government until the contrary is proved.”

I cannot agree more with the above statement in respect of this issue. It cannot therefore be correct to say, as was submitted by the appellant’s counsel that the lower courts acted on purely speculative evidence in this matter or were influenced by what happened on 15th April 1992 when the appellant was arrested. I therefore find no substance in the appellant’s submissions in this issue and I resolved the issue against him.

ISSUE 2: This issue challenges the justification of affirming the conviction of the appellant by the Court of Appeal for the offence of uttering Exhibit ‘S’. What then is Exhibit ‘S’ in this case? Exhibit ‘S’ is the handwritten letter dated 25/6/91 addressed to Cooperative Bank Limited Ijebu-Igbo and purportedly written by P.W. 1 Mr. Mojeed Oladele Akinyinka the Director of Internal Revenue, Ogun State Ministry of Finance authorizing the opening of an account in favour of State Internal Revenue Division as a result of which fraudulent Account No. GA400004 was opened. P.W.1 in his testimony in court unequivocally denied writing Exhibit ‘S’. The important point to consider in this issue, in my view, is whether the appellant was proved to have either directly or indirectly uttered the letter Exhibit ‘S’ for the opening of the fraudulent account. The appellant bluntly denied making Exhibit ‘S’ or indeed having anything to do with it. There was no evidence on the record to show or prove that the appellant made Exhibit ‘S’, or conspired with anyone to make it. There was also no evidence to show or prove that she used it to open the fraudulent account. The Branch Manager of the bank concerned (P.W.2) did not connect the appellant with the letter Exhibit ‘S’. With all this evidence in favour of appellant, it cannot in my view, easily be said that the appellant uttered Exhibit ‘S’. There is no doubt in my mind, that the fact that the appellant made repeated fraudulent transactions in dealing with the said fraudulent account in the said bank, did not automatically

mean that she uttered Exhibit ‘S’. It can only mean that she was fully aware that the said account was opened and available for business. The only way, by which it cant shown or presumed that the appellant uttered Exhibit ‘S’ is to prove she actually wrote Exhibit ‘S’ or used it to open the fraudulent account This can be done by the opinion of a handwriting B expert or by a court on reasonable comparison of other handwriting of the appellant before it court. See Queen v. Wilcox [1961] All NLR 631.

In this case, the learned counsel for the respondent conceded that there was no opinion given by a handwriting expert in respect of Exhibit ‘S’ because it was not submitted to the handwriting expert for C examination. Learned counsel contended that in the absence of direct evidence there was circumstantial evidence linking the appellant with the uttering Exhibit ‘S’. Counsel then referred to page 151 of the record D where the learned trial judge said: -

“The 1st accused must be lying when she said she knew nothing about the account..... If the 1st accused knew something about the account, then she must be able to say how the account was opened at the Bank.” E

The appellant was the 1st accused at the trial. I agree that from evidence before the trial court, it can properly be inferred that the appellant would be lying if she said she knew nothing about the fraudulent account. But because of that knowledge alone it cannot be properly in- F ferred that she knew “how” the said account was opened in the bank. It is the duty of the prosecution to prove this beyond reasonable doubt and this was not done.

Learned counsel for the respondent also referred to page 256 of G that record and submitted that the Court of Appeal correctly in the circumstances adopted and agreed with the findings of the learned trial judge or this issue. Counsel therefore urged the court not to disturb those findings as they are based on cogent and reliable circumstantial evidence.

On page 256 of the record, the Court of Appeal referred to what H the learned trial judge said on page 151 of the same record on this issue. In addition to what I quoted above, the learned trial judge also said: -

“I believe that the 1st accused opened the account herself or

aided, counselled or procured someone to open the account for her else she could not have operated it.....”

The Court of Appeal said that all these were inferences drawn from facts before the trial judge and would therefore be “*wary to interfere with it more so when the finding of facts is not perverse in keeping with the time tested principle that the primary function of a trial judge is proper evaluation and ascription of facts before him.*”

While I agree with the Court of Appeal that a trial court judge is the master of the facts of the evidence given before him, and his inference, evaluation or assessment of the evidence should not ordinarily be faulted that by an appeal court, such inference, assessment or evaluation of the evidence must be properly based on the available evidence given before him and not outside it. See *Udedibia v. The State* [1976] 11 SC 133. It is also necessary to ensure that there are no co-existing circumstances which would weaken or destroy the inference, evaluation or assessment. See *Udedibia v. The State* 11 SC 133; *Fatoyinbo v. A-G. Western Nigeria* [1966] WNLR 4 *Omogodo v. The State* [1981] 5 SC. 5. It is also well settled that for any circumstantial evidence to support the conviction of the offence charged, that evidence must be credible, cogent, consistent, and unequivocal and leads to no conclusion other than the guilt of the person charged with the offence. Circumstantial evidence is evidence of surrounding circumstances culled from credible evidence in court and which, by undersigned coincidence, is capable of proving a preposition with the accuracy of mathematics. It can be used to convict an accused person charged with a criminal offence but in such circumstances, the court must be sure that the evidence is cogent, consistent, irresistible, rational and compelling and leads to the guilt of the accused person and leave no degree of possibility or chance that other person could have been responsible for the commission of the offence. See *Ojioffor v. The State* [2001] 9 N.W.L.R. (pt. 718) 371; *Adeniji v. The State* [2001] 13 N.W.L.R. (pt. 730) 375; *Akpan v. The State* [2001] 15 N.W.L.R. (pt. 737) 745; *Adepetu v. The State* [1998] 9 N.W.L.R. (pt. 565) 185.

Circumstantial evidence cannot be raised on speculation or suspi-

cion however strong, and it must always be narrowly construed and examined as to prevent being fabricated to cast suspicion on innocent persons. See Ahmed v. The State [2001] 18 N.W.L.R. (pt. 746) 622; Onyenankeya v. The State [1964] I All NLR 151.

In the instant case, there is no evidence to indicate or prove B from the evidence that the appellant knew or had reason to know how the fraudulent account was opened. By operating the account, she must have known that the account existed but in order to operate an account, it is necessary to know who opened the account. As I said earlier, there is no iota of evidence as to who wrote Exhibit 'S'. The appellant denied any C connection with it and it cannot be read on the face of the letter Exhibit 'S' that the appellant wrote it. Therefore the inference of the learned trial judge that he believed that the appellant opened or counseled the opening D of the account is in my view, wrong and this cannot be used to convict her of the offence of uttering exhibit 'S'. In my view uttering a document envisage a positive act in dealing with the document to be uttered, unless there are other evidence to connect the accused person with the offence. There is none here. E

It is also pertinent to recall here that the appellant was tried together with one Kayode Okusanya in the court. Kayode Okusanya was also charged with the offence of uttering false documents (cheques) contrary to s. 468 of the Criminal Code Law Ogun State, 1978. At the F end of the trial, he was found not guilty of the charge and was discharged and acquitted. The prosecution did not appeal against his discharge.

At the time of the incident, the appellant was in the same office G with 5 other staff of Internal Revenue Department, but none testified on Exhibit 'S' or any discussion with the appellant to open the fraudulent account. Adekunle Adeboye was the Branch Manager of the Cooperative Bank. Ijebu-Igbo before 1992 and at time the said document was opened.

Also Mr. Adewumi Ogundipe was the Branch Accountant at all H material time but neither of them was called to give evidence at the trial. The evidence also showed that the appellant admitted that one Alhaji Rasaki Amure and one Solomon Adeboye knew about the said account. Alhaji

Amure was not called to testify at the trial, and although Adeboye was called as P.W. 7, no question was asked of him about the opening of the account or about Exhibit 'S'. There is not the slightest evidential link with the appellant on Exhibit 'S' or the opening of the fraudulent account throughout the trial. There is therefore nothing, in my respectful view, from which any inference could properly be made to prove that the appellant "uttered" Exhibit 'S'. The prosecution has completely failed to prove the offence of uttering Exhibit 'S' beyond reasonable doubt as required in a criminal trial.

In the final analysis it is my humble and respectful view that the finding by the learned trial judge by circumstantial evidence that the appellant uttered Exhibit 'S' which was affirmed by the Court of Appeal, is wrong and perverse and cannot be supported by any evidence at the trial. An appeal court can interfere with the evaluation of evidence of a lower court in circumstances such as this. See *Nnorodim v. Ezeani* [2001] 5 N.W.L.R. (pt. 706); *Fagbenro v. Arobadi* [2006] All F.W.L.R. (pt. 310) 1575. I now do so here and accordingly answer this issue in the negative.

ISSUES 3: This issue also asked if the prosecution have proved that the appellant has uttered Exhibits IX1, IX2, IX3, IX and 1.

The learned counsel for the appellant submitted in his brief that although the endorsement on the back of the cheques Exhibits IX1, X2, IX3, IX and 1, were proved through the handwriting expert (P.W. 9) to have been made by the appellant, it was not proved that the mandate on the face of the cheques was also made by the appellant so as to prove that she uttered the cheques. Counsel argued that since there was no evidence of who wrote the mandate on the cheque, the offence of uttering the cheques is insufficient and doubtful, and the prosecution have failed to prove that the appellant uttered the cheques. Counsel asked the court to say that the appellant had not uttered these cheques and to discharge and acquit her of the offence.

The learned counsel for the respondents conceded that the handwriting expert (P.W. 9) found that all the writings on the reverse side of the cheques in question were made by the appellant, but also pointed out that the appellant presented all the cheques to the Bank for payment be-

fore she was arrested on 15/4/1992. Therefore, counsel argued, the appellant, by submitting these cheques for payment, she must have dealt with them and wanted the bank to act upon them for payment of money from the account. Counsel further argued that this being the case, the appellant must have uttered the cheques within the meaning of section 468 of the Criminal Code Law Cap. 29 Volume II Laws of Ogun State of Nigeria 1978. Learned counsel submitted therefore that the appellant uttered Exhibits IX1, X2, IX3, IX and 1 and urged the court to find accordingly.

It is not in dispute that P.W. 9, the handwriting expert confirmed in his testimony that the appellant made or wrote the endorsements on Exhibits IX1, X2, IX3, IX and 1 which were cheques with which money was withdrawn from the fraudulent account. In section 1 of the said Criminal Code Law of Ogun State, the word “utter”

“includes using or dealing with and attempting to use, deal with, and attempting to induce any person to use, deal with or act upon, the thing in question”. (Underlining mine)

The appellant no doubt used or dealt with the cheques in question and induced the bank officials to deal with and act upon the cheques in question to pay her money. By this process, the offence of uttering is, in my view, complete. I agree with the Court of Appeal on this when it said on page 254 of the record on definition of “utter”: -

“The purport of this definition (supra) is that it does not really matter who wrote the mandate being questioned. What is of moment is knowing who used or dealt with the documents including the questioned Exhibits IX1, X2, IX3, IX and 1. The available evidence unveiled the appellant as the perpetrator and no one else.”

I entirely agree with this and consequently find that I must resolve this issue against the appellant and I do so.

In the final analysis and having regard to my findings in issue 2 above, this appeal is allowed in part only. Accordingly I confirm the conviction and sentence of the appellant of the offences of stealing of N1,802,920.41 property of Ogun State Government and uttering of Exhibits IX1, X2, IX3, IX and 1 (cheques with which money was withdrawn

from the fraudulent account GA400004). I find her not guilty of count II of the offence of uttering Exhibit ‘S’, the letter authorizing the opening of the fraudulent account and I set aside the conviction and sentence in respect of that count.

B

MOHAMMED JSC

I have been privileged before today to read in draft the judgment of my learned brother, Niki Tobi, J.S.C., which he has just delivered. While I agree with him that the appellant’s appeal against her conviction and sentence for the offence of stealing the sum of N1,802,920.41 belonging to the Ogun State Government lacks merit, I am however of the view that there is no evidence to support the conviction of the appellant of the offence of uttering Exhibits.

The appellant who was a staff of the Internal Revenue of the Ministry of Finance, Abeokuta, Ogun State was tried along with one other staff on an information containing a five count charge for the offences of conspiracy, stealing and uttering of false documents contrary to sections 516, 390(9) and 468 of the Criminal Code Law Cap. 29 Laws of Ogun State of Nigeria, 1978. In the judgment delivered on 5-10-1995, the trial High Court found the appellant not guilty of the offence of conspiracy but found her guilty on three counts of stealing and uttering of documents. The appellant was accordingly convicted and sentenced to four years imprisonment for each of the counts with the terms of imprisonment to run concurrently. The appellant’s co-accused was however found not guilty and he was acquitted and discharged. The appellant’s appeal to the Court of Appeal against her conviction and sentence was heard and dismissed by that court in its judgment of 6-12-2004, hence the present appeal in this court.

Three issues distilled in the appellant’s brief and duly adopted in the respondent’s brief for the determination of this appeal are:

“(A) Whether the N 1,802,920.41 was proved to belong to the Ogun State Government and if not, whether the affirmation of the judgment of the trial court was justified.

(B) Whether the court below was right in law in affirming the conviction of the appellant for uttering Exhibit S in the absence of credible evidence.

(C) Whether the fact that Exhibit XIV, which is the Report of the Handwriting Expert, did not state that the appellant wrote the mandate on the face of Exhibits IX1, IX2, IX3, IX, I is a justification to discharge and acquit the appellant of the charge of uttering of the said exhibits.” B

The main complaint of the appellant in the first issue is that there was no evidence to prove one of the important ingredients of the offence of stealing, namely, that the money the appellant was charged and convicted of having stolen, belong to the Ogun State Government as alleged by the prosecution. Learned appellant’s counsel described the evidence relied upon by the trial court and the court below in finding and confirming the appellant’s conviction of the offence of stealing, as purely speculative and lacking in credibility which turned the said judgment of the two lower courts against the appellant into perverse judgments liable to be set aside by this court. Concluding his submission on this issue, learned counsel urged this court to resolve the issue in favour of the appellant. C D E

In the respondent’s brief of argument however, it was argued that from the evidence before the trial court, it had been established that the sum of N1,802,920.41 lodged into the fraudulent account No. GA400004, belong to the Ogun State Government as found by the trial court and the court below. F

From the evidence on record, it appears that the argument of the learned counsel for the appellant on this is mainly based on the failure of the prosecution to put in evidence, the cheques by which the various sums were paid in favour of Ogun State Government. However, the learned appellant’s counsel failed to realize that the evidence contained in the thirty four Cooperative Bank tellers admitted in evidence as exhibits viii, viii 1-33, by which a total sum of N1,802,920.41 was shown to have been lodged into the Cooperative Bank Limited fraudulent account in favour of the Director, Internal Revenue Division, Ministry of Finance Abeokuta, also provided sufficient credible evidence of the owner of the amount found in the fraudulent account. Therefore with the concurrent G H

finding of fact on the ownership of the amount stolen by the appellant, in the absence of any complaint from the appellant that these concurrent decisions of the two lower courts on this issue are perverse, the appeal of the appellant against her conviction and sentence for the offence of stealing must fail.

However on issue No. 2, I am unable to agree that the offence of uttering Exhibit 'S' was established against the appellant. Accordingly the ID appellant's conviction and sentence for that offence are hereby set aside.

With these comments on the first and second issues for determination, I also dismiss this appeal and affirm the appellant's conviction and sentence on the offence of stealing.

D

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, holden at Ibadan in appeal No. CA/I/198/2003 delivered on 2nd December, 2004 dismissing the appeal of the appellant against her conviction and sentence resulting from charge No. HCB/3C/1993 by the High Court of Ogun State holden at Ijebu-Igbo delivered on 5th October, 1995 by Sodeke, J.

The appellant along with one Kayode Okunsanya were charged with the following offences, to wit: -

1. Conspiracy to steal contrary to section 516 of the Criminal Code Law (Cap. 29) Laws of Ogun State, 1978,
2. Stealing the sum of N1,802,900.40 property of the Ogun State Government contrary to section 390(9) of the Criminal Code (cap.29) Laws of Ogun State, 1978.
3. Uttering a false document purporting same to have been issued by one Mojjeed Oladede Akinyinka, a Director of Internal Revenue, Abeokuta, Ogun State, contrary to section 468 of Criminal Code (cap.29) Laws of Ogun State, 1978.
4. Fraudulent uttering some co-operative Bank's Cheques purporting same to be the mandate of the Director of Internal Revenue,

Abeokuta, Ogun State, whilst holding herself out at different occasions as Mrs. S. B. Arowolo, Mrs. C. O. Adegoke and Mrs. Comfort Adegoke.

5. Fraudulently uttering some co-operative Bank's cheques purporting same to be the mandate of the Director of Internal Revenue whilst holding himself out at different occasions as Mr. Adedeji, Mr. R. B A. Adedeji and Mr. A. Bello.

Whilst the appellant was charged with the offences listed in Nos. 1, 2, 3 and 4 supra, Mr. Kayode Okunsanya was only charged with the 5th offence and was acquitted and discharged of same at the conclusion of trial. C

The following facts are not in dispute. The appellant and Mr. Okunsanya were staff of the Internal Revenue of the Ogun State Ministry of Finance, Abeokuta as cashier at the Capital Grains Tax section and the Litigation Division of the Department respectively. Appellant was in charge of withholding tax which is tax deducted from monies paid to contractors by contract awarding agencies. D

The prosecution however alleged that appellant and Mr. Okunsanya fraudulently opened a fraudulent account No. - GA400004 E at the Co-operative Bank, Ijebu-Igbo on the false authority of the Director of Internal Revenue, Ministry of Finance, Abeokuta, who testified as P.W. 1 at the trial and denied giving such authority. Several lodgments and withdrawals were made into and out of the said account by the F appellant and Mr. Okunsanya in different assumed names.

In the course of the transactions the Bank became suspicious of the account and P.W.2 who was the manager,, made inquiries at the Internal Revenue Office at Abeokuta as a result of which their suspicion was confirmed; P.W. 1 denied making the letter of authority which was G tendered, admitted and marked as exhibit S. On the 15th day of April, 1992, appellant was arrested in the Bank while parading herself as Mrs. S. B. Arowolo with three cheques totaling N915,000,00 with intention of withdrawing same from the said account. At the time of her arrest, she H had signed the Bank's Register to collect the money from the counter. Two of the three cheques were meant to be issued into Bank drafts in favour of Sammy Agency Abeokuta (a company owned by appellant's

husband) and Rem Fem Nigeria Enterprises, Lagos.

The appellant's case, however, is that on 15/4/92 she was at the Bank to see the Bank Manager in respect of an allocation paper for cement which she allegedly received from WAPCO, Sagamu Depot with the intention of selling same to the manager, as she had previously done; that it was whilst she waited for the manager in the banking hall that she was accosted by P.W. 5 (the Bank Inspector) who asked her to sign a record book of the Bank after stretching a bank draft to her for collection; that she refused to sign but was given some slaps by P.W. 5 thereby compelling her to sign, after which her photograph was taken by a photographer while she held the drafts. She was later taken to the police station alleged to have stolen the drafts and her house was later on searched and exhibits L, M, N & O recovered. She made a statement to the police denying knowing anything about Mrs. S. B. Arowolo. Appellant was later charged, tried and convicted. Her appeal to the Court of Appeal was dismissed resulting in a further appeal to this court.

Learned counsel for the appellant, Joseph Nwobike, Esq., has submitted three issues for determination of the appeal in the appellant's brief of argument filed on 13/7/05. The issues are as follows: -

“(a) Whether the N1,802,920.41 was proved to belong to the Ogun State Government and if not, whether the affirmation of the judgment of the trial court was justified.

(b) Whether the court below was right in law in affirming the conviction of the appellant for uttering Exhibit S in the absence of credible evidence.

(c) Whether the fact that Exhibit XIV, which is the Report of the Handwriting Expert, did not state that the appellant wrote the mandate on the face of Exhibits IX1, IX2, IX3, IX, I is a justification to discharge and acquit the appellant of the charge of uttering of the said exhibits.”

In arguing the appeal, learned counsel for the appellant submitted that under the provisions of section 138(1)(2) of the Evidence Act, the prosecution has the duty to prove all the material ingredients of the offence alleged but that the prosecution did not discharge that burden since they failed to prove the fact that the money allegedly stolen belongs

to the Ogun State Government; that the decisions of the lower courts on the matter are based on speculation, not supported by evidence and therefore perverse. Learned counsel cited and relied on Onafowokan v. State [1987] 3 N.W.L.R. (pt. 61) 536; Odibe v. Agege [1989] 9 N.W.L.R. (pt. 259) 279; Idowu v. State [1998] 9-10 SC. 1 at 5.

Learned counsel also submitted that the prosecution failed to prove that exhibit S was altered by the appellant and that the confirmation of the conviction on the matter by the Court of Appeal was in grave error of law, relying on the case of Atano v. A-G Bendel State [1988] 12 SC. 59; Obiakor v. State [2002] F.W.L.R. (pt. 113) 299 at 313; Ahmed v. State [1999] 7 N.W.L.R. (pt. 612) 641; Amusa v. State [1986] 3 N.W.L.R. (pt. 30) 536; Nnolim v. State [1993] 3 N.W.L.R. (pt. 283) 569; and Nwosu v. State [1986] 4 N.W.L.R. (pt. 35) 350.

Finally learned counsel submitted that the court below ought not to have affirmed the decision of the court below on uttering of exhibits IX, IX2, IX3, IXI and I since the evidence on record were not sufficient to justify a conviction of the offence charged and urged the court to allow the appeal and set aside the decisions of the courts below.

I have pointed out the fact that there is concurrent finding of fact to the effect that the sum of N1,802,920.41 lodged into the fraudulent account No. GA400004 was the property of Ogun State Government and that the applicable law to such a finding is that this court does not make a practice of setting aside such findings unless demonstrated by the appellant to have been perverse etc, etc.

In the instant case, the trial court at page 155 of the record found as follows:-

“The money in Account GA400004 belongs to the Ogun State Government. It was fraudulently deposited there. The money deposited into the account came into the accused’s possession by virtue of her employment as a cashier in the Capital Gains Tax section of the Department of Internal Revenue, Ogun State.”

The above finding was confirmed by the Court of Appeal thus: -

“I have carefully considered the copious submissions of the learned counsel for both parties and since I am seised of all the facts of

this appeal as culled from printed record, I am of the strong view that the main contention is ownership of N1,802,920.41 The argument of the learned counsel for the appellant that the cheques by which the various sums were paid in favour of Ogun State Government are not in evidence is ill -conceived. There is instead evidence that thirty four co-operative Bank Limited tellers marked exhibits VIII. VIII'I to 33 for which the total sum of N1,802,920.41 was lodged into the Co-operative Bank Limited in Account GA400004 in favour of the Director, Internal Revenue Division, Ministry of Finance, Abeokuta. The question is: what further evidence of ownership of the sum of N1,802,920.41 does any reasonable person need?" Emphasis supplied by me.

The question is whether the above finding of fact based on documents tendered and admitted in evidence as exhibits which remain unimpeached even before this court, can be legally said to be based on speculation and therefore perverse as submitted forcefully by learned counsel for the appellant? Learned counsel must always bear it in mind that the legal profession is one based on the reasonable and responsible use of words and that he owes a duty not only to himself but the court to be very responsible in his choice of words in addressing the courts on issues in contention. I need not say more on the matter.

I hold the firm view that with the facts of this case as supported by evidence on record as concurrently found by the lower courts. The learned counsel for the appellant has not demonstrated any reason why this court should interfere with such findings of fact particularly as it has not been shown that the said finding has resulted in any miscarriage of justice, or violation of some principles of law and procedure neither is the finding perverse. Issue No. 1 therefore has no merit and I so hold.

On the second issue the complaint is based on alleged absence of "*credible evidence*" to support the conviction in relation to exhibit S. In other words, learned counsel agrees that there was evidence in support of the charge of uttering exhibit S but that the evidence is not credible. Is he right? That apart, the same principle applicable to the first issue, that of concurrent finding of fact equally applies to the issue under consideration since the lower courts both held that appellant uttered ex-

hibit S based on the evidence before the court.

It must be noted that the finding of the lower courts on exhibit S is based on circumstantial evidence. What then is the evidence?

At page 151 of the record, the trial court made the following finding:

“The 1st accused must be lying when she said she knew nothing about the account. If the 1st accused knew something about the account, then she must be able to say how the account was opened at the Bank.”

While the Court of Appeal stated thus:

“I have carefully considered the learned counsel’s submissions made on issue 2, I am wary to agree with the argument on behalf of the appellant that the inability of the P.W. 9 giving an expert opinion on the authorship of exhibit S is fatal. It is instead settled law that where direct evidence or expert opinion is lacking on a subject, the trial court who is seised of the entire case can source cogent inferential evidence from other facts adduced at the trial of the matter to establish the guilt of an accused person. See Adepetu v. The State (supra) page 207. In the instant case, I agree with the instances portraying the appellant had sufficient knowledge of exhibits S highlighted in the submissions of learned counsel for the respondent, I can therefore hardly cast any aspersions on the following finding of the learned trial Judge when he said at page 151 of the printed record.”

What then are the instances from which a link could be said to have been established between appellant and exhibit S, by virtue of which the fraudulent account was opened and subsequently operated.

Now P.W.1 who was alleged to have issued exhibit S denied knowledge of same - at page 33 of the records he said “*I am not the writer of IDI (i.e., exhibit S) and the signature on it is not mine.*”

P.W.1 claimed under cross-examination that it was only the Accountant-General of Ogun State who had the power to authorize the opening of an account on behalf of the Government. He went on to say that he did not need to know the number of the account because only the Accountant-General can operate same - see page 34.

Though appellant denied issuing exhibit S with which the ac-

count in issue was opened and operated and alleged that Messrs Amure and Adeboye knew about the opening of the account, there is evidence accepted by the trial court and confirmed by the Court of Appeal to the effect that on different occasions and with different names the appellant made withdrawals from the said account. There is evidence before the court that the only bank account operated by the Ogun State Government at Ijebu-Igbo is with WEMA Bank and not Co-operative Bank and that money can be paid into the said government account and not withdrawn therefrom. I hold the view that with the circumstances of this case, the court was right in inferring that appellant knew about exhibit S and was the maker thereof. The trial court found thus:

“I found as a fact that she know something about the account. From available evidence the 1st accused has been operating the account. Exhibit XIV paragraph 4(1) pointed to the 1st accused as the writer of certain cheques which were presented by the 1st accused under some assumed names to withdraw at different occasions from the fraudulent account..... I believe that the 1st accused opened the account herself or aided, counseled or procured someone to open the account for her else she could not have operated.”

The second issue is therefore resolved against the appellant. On the third and final issue for consideration, it is on record that the handwriting expert found as a fact that all the writings on the reverse side of the cheques (exhibits) concerned were made by the appellant, who also presented them to the Bank for payment. By the provision of section 1 of the Criminal Code (Cap. 29) Laws of Ogun State 1978, the word “utter” is defined as:

“includes using or dealing with, and attempting to use or deal with, and attempting to induce any person to use, deal with, or act upon, the thing in question.”

There is no doubt that appellant dealt with the cheques in respect of which the money stolen was withdrawn from the fraudulent account. I therefore hold the considered view that having regard to the provisions of section 1 of the Criminal Code *supra*, it is immaterial whether appellant wrote the mandate on the face of the cheques particularly as her act

comes squarely within the definitions of “utter” as reproduced supra.

In conclusion therefore I resolve all three issues against the appellant and agree with the lead judgment of my learned brother, Niki Tobi, J.S.C. that the appeal is devoid of any merit and should be dismissed and order accordingly.

Appeal dismissed.

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