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Constructive Trust: The only True Potent Weapon to Fight Corruption among Public Officers in Nigeria

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Constructive Trust: The only True Potent Weapon to Fight Corruption among Public Officers in Nigeria

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Keywords: constructive trust, powerful weapon, corruption, public officers, equity, estate, criminal code, fraud, vendors of land, mortgages, mortgagors, acquisition of property. public service.

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I. Introduction

This paper treats the topic which seeks to know whether Constructive Trust could be a powerful weapon against corruption among public officeholders. The public service is an Organization that is saddled with the responsibility of managing the resources of a nation on behalf of the people who are the real owners of these resources, and its affairs are run or administered by both elected and appointed officials. According to section 318 (1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended), elective as well as appointed officials include The President, Vice President, Governors and their Deputies, Ministers and commissioners, members and staff of legislative Houses, Chairmen, Directors of all corporations and companies in which the government has controlling shares. The public sector represents the realm where the government operates for the benefits of the citizenry of the same country. This organization is different from the ones of the private sector which are run by their owners who individually manages them. The public service is a typical bureaucratic organization made up of public servants who are recruited based on their individual skills/qualification(s) and expertise. The 1999 Constitution of the Federal Republic of Nigeria, being the grunt grand norm of the public service, there exist also the Revised Public Service Rules, 2006 for the guidance of public servants whose rules are to be obeyed and follow holistically. In revise, we commonly find the public servants defying these rules with all impunity in the name of immunity and go scout free as the government is less concerned in meeting out punitive measures against violators. It is, therefore, the concern of the researcher to see if some kind of measures existing in the constitution can be invoked to restructure the culprits and divestiture them and recover the looted treasures legally through the application of constructive trust law as these public servants hold positions of trust in the government public service.

II. Conceptual Clarification

The term public service includes the following:

a. The Civil Service: the career personnel of the presidency, ministers, Extra Ministerial Departments, the National Assembly and the Judiciary.

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b. The Armed Forces, The Police, Other Security agencies e.g. Para-Military organizations.
c. The Parastatals or Public Enterprises.

a) Meaning of Public Service

The Pubic Service as is contained in section 277 (91) of the Constitution of the Federal Republic of Nigeria of 1979 now section 169 of the 1999 Constitution as incorporating the civil service (Ministerial departments), statutory corporations or parastatals, judiciary, legislature, educational institutions, financially wholly or principally owned by government at the Local, State and Federal levels, The Nigeria Police, the Armed Forces and other organizations in which the Federal or state or local governments owned controlling share(s) or vested interest. The meaning of the concept of Public or Civil Service as established by the Nigerian Constitution is as provided in Sections 171, 172, 206, 208 and 318 and in spelt out under section 10 of the Third Schedule of the 1999 Constitution, as amended. The government's bureaucracy in Nigeria is public service. The government at whatever level pronounces and implements the policies, programs and projects of the nation through the instrumentally of the public service that is service oriented in nature.

b) Meaning of Civil Service

The Civil service is an organ the State or Federal government created to ensure that policies and programs of any government at any particular time are carried out as enshrined in the constitution or Act that created it. The Civil Service the main organ of Government subsists having perpetual life and nature of existence irrespective of the changing of constitutionally elected governments; which has been saddled with specific functions or peculiarities or inclinations of that government. The Civil Service is known as:

a) Non - partisan to enable it to serve any government of the day.
b) Must be made up of experienced men and women with technical and professional expertise know to enable it to implement government policies and programmes.
c) Orderliness and ensuring that orderly administration of the country is without stoppage, and rather continuous.
d) Indispensable continues the traditional role of keeping the functions of government running no matter what changes occurs in the administration of the country.
e) Operating under rules called the Civil Service Rules and Regulations which guide its conduct.
f) An entity which operates in hives of activities, divided between Ministers and Departments each having its own set of functions and goals.

c) Meaning of Parastatals or Public Enterprises

Parastatals are the operational arm of government ministers; that are established to provide services to the populace. The scopes of the services they provide are usually sufficiently complex to warrant their establishment as separate bodies outside the normal operations of government departments. The laws setting them up to do not only allow considerable flexibility as against the rigid demands of the Civil Service for a high degree of accountability but also guarantee some measure of autonomy. This autonomy is subject to government general direction of their operations to ensure the achievements of the desired objective without sacrificing accountability.

d) Meaning of Code of Conduct

A code of conduct is a set of rules outlining the responsibilities of, or proper practices for, an individual, party or organization which concepts include ethical, honour and moral codes, as well as religious laws as explained by section 98(1) of the Criminal Code, The Laws of the Federation of Nigeria and Lagos, 1958.

The International Federation of Accountants provides a working definition of code of conduct as, 'principles, values, standards, or rules of behaviour that guide the decisions, procedures and systems of an organization in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations'.

III. Functions of Public Service

The public service (Ministers, Department and Agencies) has always been the tool available to the Nigeria government for the implementation of development goals and objective. The Public Service is a responsible organ for the creation of an appropriate conducive environment in which all sectors of the economy can operate maximally. Under the New Public Management, the public service is expected to play a catalytic role in the economic sector by providing the enabling policies for all the sectors of the economy; and whose functions include:

1. Implementing and enforcing economic, political and social policies of the current Government.
2. Designing and implementing public service.
3. Raising revenue for the government.
4. Ensuring managerial, political and financial accountability.
5. Serving people.
6. Monitoring and evaluating the performance of organizations (Public, private or non-Governmental) that is rendering service on behalf of the government.
7. Driving all development initiatives.
8. Delivering quality public service (such as education, electricity, water and transportation).

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The public service is the organ responsible for the overall efforts towards nation-building.

a) The Code of Conduct for Public Officers

The public service is the machinery that Government uses to render services to the people and as such, public servants should be proper and thorough avenues by constantly and conveniently improved upon to give better services at all times. The rendering of these services must conform to the prescribed code of conduct provided by the constitution of the Federal Republic of Nigeria. Hence, the said constitution which has been established on threshold or standards that would guide a public servant in the discharge of his or her duties. Part1 of the fifth schedule of the 1999 constitution has generally made provision in respect of code of conduct and work attitude for a public servant.

Section 1 provides that, 'a public officer shall not put himself in a position where his interest conflicts with his duties and responsibilities'. This section makes it imperative for a public officer not to put himself in a position where his interest conflicts with his duties and responsibilities; which duty is an aspect of the common law to act in good faith. This means that the law imposes on the public officer the duty to show fidelity in the discharge of his duties and responsibilities. The rule is strict and is justified on the basis that would a public officer be faced with such a conflict between his interest and his official duty, he will naturally favour his interest over that of his duty. The law, therefore, requires him not to even allow himself to be exposed to such temptation. Occasionally, a public officer may experience a situation where his interest conflicts with his duty, in the course of his official duty. When such a situation arises, the public officer is liable for a breach of code of conduct, if he allows his interest to take precedent.

Section 2 (a) provides that, 'public officer shall not receive or be paid the emoluments of any public office at the same time as he receives or is paid the emoluments of any other public officer'. This section restricts a public officer from receiving or being paid double emoluments of any other public office. This rule is closely linked to that which prohibits a conflict of interest. The rule seeks to prevent a public officer from receiving or be paid emoluments from two different public offices.

Section 19 of the Fifth Schedule of the 1999 Constitution as amended talk about emolument as follows:

> *Any salary, wage, overtime or leave pay, commission, fee, bonus, gratuity, benefit, advantage (whether or not that advantage is capable of being turned into money or money's worth), allowances, pension or annuity paid, given or granted in respect of any employment or office.*

Subparagraph (b) of this section goes on to restrict a public officer from engaging or participating in the management of any private business, profession or trade except where his employment is on a part-time basis. But the rule did not prevent a public officer from engaging in farming or fishing.

Section 3 prohibits maintaining or operating a foreign bank account by the President, Vice-President, Governor, Deputy Governor, and Ministers of the Federation and Commissioners of the Governments of the States, and such other public officers or persons as the National Assembly may by law prescribed. Today, we see this law being circumvented blatantly.

Section 4 sanctions a public officer from accepting more than one remunerative position as chairman, director or employee of a company owned or controlled by the Government; or any public authority after his retirement from public service and while receiving a pension from public funds. However, section 14 (a) exempt members of legislative houses from the provision of this section.

Subparagraph (2) of this section prohibits a retired civil servant from receiving any other remuneration from public funds in addition to his pension and the emolument of such one remunerative position. This provision prohibits a public officer from benefiting twice from public funds when others are yet to benefit even once.

Section 5 prohibits retired and ex-serving, Presidents, Vice-Presidents, Chief Justices of Nigeria, Governors and Deputy Governors of a State from serving or accepting employment in foreign companies or enterprises. This is due to the sensitive nature of the offices they have hitherto held in Nigeria.

Section 6 prohibits a public officer from asking for and accepting property or benefit of any kind for himself or from any other person on account of anything done or omitted to be done by him in the discharge of his duties.

Subparagraph 2 of Section 6 prohibits the receipt of any gift or benefit by a public officer from commercial firms, business enterprises or persons who have contracts with the Government; whereas Sub-Paragraph 3 allows a public officer to accept personal gifts or benefits from relatives or personal friends, and donations or gifts to public institutions.

The import or weight of these considerations and stipulations is that a public servant must be loyal and honest to government and must fight against gratifications. Public servants are paid salaries from government pulse for doing their jobs and must not receive gratifications for government jobs being done by them in the course of their job functions.

Section 7 provides that the President and his Vice, Governor and his Deputy, Minister and Commissioner, Permanent Secretary, Head of any public Corporation,

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University, or other Parastatals and organizations shall not accept:

a) A loan, except government or its agencies, a bank, building society, mortgage institution or other financial institution recognized by law; and
b) Any benefit of whatever nature from any company, contractor, or businessman, or the nominee or agent of such person.

With a proviso that Head of a public corporation or a University or other parastatal organization may, subject to the rules and regulations of the body, accept a loan from such body.

Section 8 is an extension of good faith and it is to the effect that a public officer is under an obligation not to take a bribe or any kind of inducement while executing his duties or responsibilities. A bribe can take the form of cash payment as secret commission, discount against other transactions or bonus for service rendered. A bribe represents a particular type of secret profit and the law takes a very serious view of secret benefits as it can compel a public officer to compromise his position. When a bride is established, it constitutes a violation of the code of conduct.

Section 9 provides that:

> *A public officer shall not do or direct to be done in the house of his office, any arbitrary act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any government policy.*

Section 10 also provides that, 'a public officer shall not be a member of, belong to, or take part in any society the membership of which is incompatible, the functions or dignity of his office'. This provision is similar to Rule 020210 of the Public Service Rule which provides that;

> *No public officer shall become a member of any secret society. Any public officer who is a member of such society shall renounce his membership forthwith, by making a statutory declaration to that effect, or resign his appointment, or retire from the service.*

This rule encourages ethics and morality in the public service by restraining officers from cultism and other unwanted social behaviours.

Section 11 is also an important provision of the code of conduct that has a very good foundation in enhancing probity, honesty and good public image for the public servants. The section provides that any public officer shall within three (3) months after being appointed into office and thereafter, the end of every four (4) years of the end of his term, submit to the Code of Conduct Bureau a written declaration of all his properties, assets and liabilities and those of his unmarried children under the age of 18 years. Any statement in the declaration that is found to be false by any authority or person authorized in that behalf to verify it shall be deemed to be in breach of the code and any property or assets acquired by a public officer after any declaration required under the constitution and which is not fairly attributable to the income, gift or loan approved by the code shall be deemed to have been acquired in its breach unless the contrary is proved. This provision of the law is in line with the legal concept of public accountability. Therefore, Public Officers shall remain honest and shall not misuse or misappropriate public funds. They are not expected to enrich themselves by the advantage of their access to public funds and authority.

Section 12 provides that any allegation against a public officer who has committed a breach of or has not complied with the provisions of this code should be reported to the code of conduct Bureau. The Bureau has the power to investigate the alleged violation and if a case is found, institute an action at the code of conduct Tribunal. The Tribunal has the power to handle cases of breach of work ethics and code of conduct. Therefore, when any public officer is foundguilty of contravening any section of the provisions of the code of conduct, then the tribunal shall impose punishment which includes any of the following: -

a. Vacation of office or seat in any legislative house, as the case may be
b. Disqualification from membership of a legislative house and the holding of any public office for a period not exceeding two years; and
c. Seizure and forfeiture to the State of any property acquired in abuse or corruption of office.

In the recent case of *Ahmed v Ahmed* at Supreme Court while giving life to the above provision, held thus:

> *''Any allegation that a public officer has committed a breach of or has not complied with the provisions of this code shall be made to the code of conduct Bureau''. The foregoing provisions are unambiguous and so construed literarily mean that any breaches of any provisions of the said 5th Schedule or matters of noncompliance with any provisions of the code shall (meaning that it is mandatory i.e. must) be made to the code of conduct Bureau that has established its Tribunal with the exclusive jurisdiction to deal with any violations of any provisions under the code, if I may emphases any violation shall be made to code of conduct Bureau…*

This provision has expressly ousted the powers of ordinary regular courts in respect of such violation.

b) The Setup of Code of Conduct Bureau and Tribunal

The Political Bureau recommended to the Federal Military Government in 1988 the establishment

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of a Code of Conduct Bureau and Tribunal to strengthen the existing pieces of machinery for monitory the actions and behaviour of public officers, to ensure that they conform to the highest standards of public morality and accountability. The Political Bureau observed that corruption and indiscipline were the banes responsible for our underdevelopment. The recommendation of the Public Bureau resulted in the establishment of Code of Conduct Bureau and Code of Conduct Tribunal with powers to enforce the code of conduct for public officers as enshrined in the 1979 Constitution of the Federal Republic of Nigeria. These provisions were equally retained in the Third and Fifth Schedules of the 1999 Constitution of the Federal Republic of Nigeria (as amended) respectively and the establishment of Code of Conduct Bureau and Tribunal Act.

The importance of the Code of Conduct Bureau was aptly stated by Ademola (2012) in the following words:

> *… The Bureau has been doing all within its powers and limited resources to put public officers in constant check through public enlightenment, Administering of Assets Declaration Forms (Form CCB – 1) to public officers and prosecuting earring officers at the Code of Conduct Tribunal. At the moment, more efforts are being channelled into the prevention of various abuses of public office through constant monitoring of pubic officers' assets base and verification of same at regular intervals, workshops, seminars and other forms of public enlightenments10.*

c) Statutory Functions of the Code of Conduct Bureau

The Code of Conduct Bureau has a clear mandate to ensure corrupt-free public service in all tiers of government in Nigeria as its functions are provided for under paragraph 3 of the Third Schedule, Part 1, Section A of the 1999 Constitution of the Federal Republic of Nigeria as follows:

a. To receive declarations by Public Officers made under paragraph 11of Part 1, of the fifth schedule of the 1999 Constitution.
b. Examine the declarations following the requirements of the Code of Conduct or any law of the Federal Republic of Nigeria.
c. Retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and condition as the National Assembly may prescribe.
d. Ensure compiles with and where appropriate enforce the provisions of the Code of Conduct or any other related law.
e. Receive complaints of noncompliance with the Code of Conduct, investigate the complaint and where appropriate refer such matters to the Code of Conduct Tribunal.

It is clear from the above functions of the Code of Conduct Bureau, which renders strategic and important roles in ensuring that public officers are working and conducting themselves within the ambit of the law.

d) Who is a Public Officer?

A Public Officer is the holder of Public office under the Crown, or public agent (Osbon's Concise Law Dictionary, 8th Edition, 1993). Now if a public officer is an agent of the public, who then is the Principal? The simple answer is – The Public. Thus the Public Officer by extension holds the office in trust for the benefit of the Public. IF this argument is acceptable, thus, the Public Officer by extension holds the office in trust for the benefit of the Public. IF this argument is accepted, then it is easy to conclude that the Public Officer is a trustee of a Sort.

e) What then is Corruption?

According to the Standard Dictionary International Edition, 1978, Corruption is a state of being corrupted, while to be corrupt means dishonesty or bribe. Corruption is an offence under section 98 (1) of the Criminal Code, The Laws of the Federation of Nigeria and Lagos, 1958. The section prescribes a seven years imprisonment to any Public Officer found guilty of the offence.

Corruption according to Wikipedia is the abuse of entrusted power for private gain. In a philosophical, theological, or moral discussion, corruption is the abuse of bestowed power or positions to acquire a personal benefit. Corruption may include many activities such as bribery and embezzlement.

Obayelu (2007) defined Corruption in a paper presented at the 2007 African Economic Conference, as efforts to secure wealth or power through illegal means for private gain at public expense; or a misuse of public power for private benefit. Corruption like cockroaches has coexisted with human society for a long time and remains as one of the problems in many of the world's developing economies with devastating consequences.

Agbu (2001), defines corruption as the behaviour of public and private officers who improperly and unlawfully enrich themselves and/or those closely related to them, or induce others to do so, by misusing the position in which they are placed. Systemic corruption also referred to as entrenched corruption, which occurs where bribery (money in cash or kind) is taken or given in a corrupt relationship. These include kickbacks, pay-off, sweeteners, greasing palms, etc.) are widely practised on a large or small scale. It is regularly experienced when a license or a service is sought from government officials especially in the case of Public Office holders which differs from petty corruption in that it is not individualized. We have Systemic Corruption that is apparent whenever the

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administration itself transposes the expected purposes of the organizations; by forcing participants to follow what otherwise would be termed unacceptable ways and punishing those who resist and try to live up to the formal norms (International Center for Economic Growth, 1999).

Agbu, (2001) went on to say that Corruption is a global problem, and exists in varying degrees in different countries Corruption is not only found in democratic and dictatorial politics but also feudal, capitalist and socialist economies.

Dike, (2005) says that Christians, Muslims, Hindus, and Buddhists cultures are equally bedevilled by corruption. Corrupt practices according to Lipset and Lenz, (2000) say that corruption is not an issue that just begins today; but the history is as old as the world.

The World Bank (1997) defines corruption as the abuse of public office for private gains; and Public office is abused through rent-seeking activities for private gain when an official accepts, solicits, or extorts a bribe. Public office is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state resources. A public official is said to be corrupt if he accepts money for doing something that he is either under obligation or duty to do or not. Corruption is a betrayal of trust more especially in public office resulting directly or indirectly from the subordination of public goals to those of the individual interest. Thus a person who engages in nepotism has committed an act of corruption by putting his family interests over those of the larger society (Gire 1999).

It is a cankerworm that has eaten deep in the fabric of our nation. It ranges from petty corruption to political/bureaucratic corruption or Systemic corruption (International Center for Economic Growth, 1999). World Bank studies put corruption at over $1 trillion per year accounting for up to 12% of the Gross Domestic Product of nations like Nigeria, Kenya and Venezuela (Nwabuzor, 2005).

In the opinion of Agbu, (2003) corruption is endemic as well as an enemy within a nation. Economic and Financial Crime Commission (EFCC), 2005) says that corruption is a cankerworm that has eaten deep in the fabric of this country and had made the various sectors of GDP to have stunted growth. Independent Corrupt Practices Commission (ICPC), 2006) says that corruption has been the primary reason behind the country difficulties in developing fast. This is evident in Transparency International's consistent rating of Nigeria as one of the top three most corrupt countries in the world.

Corruption has always been in existence with human development and efforts at curbing its menace has always been short-lived. Modern waves of corruption, of which fraud is a subset, do not seem to recognize the essence of sovereignty, territorial boundaries or race. Corruption is a global phenomenon not peculiar to Nigeria alone.

Transparency International, a non-government organization using the Corruption Perception Index (CPI) categorized Nigeria as the first in the ranking of corrupt nations of the world in the year 2000. In 1999, Nigeria was ranked 98 out of the 99 countries according to Salisu, (2006). In 2001 the image of Nigeria slipped further to 90 out of 91 countries and coming as the second most corrupt nation with Bangladesh as the most corrupt. Nigeria maintained the same position as Bangladesh in 2003, (Ike 2009).

A onetime Nigerian Head of State was reported to have paid a total sum of N12.4 billion between September 1988 and 30th June 1994 into a "Special Dedicated Account", funds which under normal conditions should have been paid into the Federal Accounts as required by law, News watch (2004) and The Punch Editorial (2003). Out of this amount, the report further reveals that the military President and the Governor of the Central Bank clandestinely disbursed N12.2 billion without any explanation as to the extra-budgetary expenditures.

Many factors account for the spate of corruption in Nigeria's social life. One is that the incapacitating socio-economic situation of Nigerians must have heightened the potential for corrupt and sharp practices in the public and private sectors of the economy. Secondly, the leaders get deep-rooted in corruption because they lack independent economic base; and therefore rely on the state for survival, and they who are perpetrators of fraud and corrupt enrichment often go scot-free. Former President Obasanjo in 2000, highlighted the elements of corruption in Nigeria as (i) use of one's office for pecuniary (money), (ii) gratification (iii) influence peddling, (iv) insincerity in advice to gain, tardiness, slovenliness and less than a full day's work for a full day's pay.

In Nigeria, corruption cannot be detached from poverty amongst the populace who on the average earn just $260 a year which is far less a pay that can't stop an average Nigerian from being corrupt. It is of prime importance to know that less than one per cent of the population own over 60 per cent of the nation's wealth; and over 50 per cent of the wealth is however kept overseas thus leaving Nigeria's economy in very bad shape, poor and in servitude. As a result of mismanagement and relentless assault on the public, Nigeria's GDP per capita dropped from $1,010 in the early 1980s to less than $300 in 2006 (CBN Statistical

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Bulletin,2007). About 70 per cent of Nigerians according to Sanda, (2002) survive barely on an income that is less than one dollar per day.

However, as part of efforts geared at fighting corruption and strengthening the economy, Nigeria embarked on an aggressive pursuit of economic reform through privatization, banking sector reform, anti-corruption campaigns and establishment of clear and transparent fiscal standards since 1999 with no apparent improvement.

Fraud is criminal deception, whereby the use of false representation or trick, or deception intended to benefit a party is common. Fraud also means the use of criminal deception by someone to obtain an unjust or illegal advantage from another person. Fraud also means the diversion of persons or organizations money, property or material by someone for the satisfaction of the perpetrators personal or selfish gains through criminal deceptive means. Fraud as an act or cause of deception or trick deliberately indulged or practised by someone to gain some advantage dishonestly from another person. A person is said to be fraudulent having the intent to defraud, having the intention to deceive and using such deceit, obtain some advantage for himself and to cause loss to another person. Corruption is synonymous with decomposition, moral deterioration, bribery, kickbacks, embezzlement, and the use of corrupt practices. Fraud is a component of Corruption.

f) Constructive Trust

According to Osbon's Concise Law Dictionary (supra) is a trust "raised by Equity to satisfy the demands of justice and good conscience without reference to any presumed intention of the parties". Kodilinye (1994) defined Constructive Trust as an imposition "by the Court on grounds of conscience, without reference to the implied or presumed intention of any person". Even though the concept, according to him, is imprecise, in America its wide application is used against unjust enrichment. However, in English law, the scope is narrower to the following headings:

i. Unauthorized profits by trustees and other fiduciaries.
ii. Strangers receiving or intermeddling with trust property.
iii. Vendors of the land after signing the Contract of Sale.
iv. Mortgages and Mortgagors in certain situations.
v. Acquisition of property by fraud.

Of these, the first application of constructive trust is more appealing as a weapon against corruption among public officers.

According to the Trust Concept, a trustee is a person who holds the trust property for the benefit of the cestus que trust, though the legal owner of the property, the trustee is not to benefit anything from the Property.

a. *Trust* refers to the wilful dispossession of one's property by passing on or vesting the ownership of its title to one or more persons known as trustees who can only apply the benefits arising from the property so bequeathed at the appropriate time to the benefit of the beneficiary (ies). A trust can be created when an estate or property is held by a person known as a trustee for the benefit of another person so named in the will called a beneficiary. Trust also relates to an equitable obligation that is binding on a person called the trustee dealing in a property he has custody of, for the benefit of persons called beneficiaries of which he/she may be one beneficiary.

b. *Trustee* refers to a person whom the administration of a trust is given, and holds the property on trust on behalf of another person known as a beneficiary. However, nothing in law precludes a trustee from being a beneficiary if so appointed. Trustees are persons to whom a property (ies) is/are legally committed in trust, to be applied either for the benefit of specified individuals or public uses; one who is instructed with property for the benefit of another. It may also be a person in whose hands or care the effects of another person are attached in a trustee process. It may also be an attachment of a debtor's wages, credits, or property in the hands of a third person solely for the interest of the creditor. In a simple term, your property is kept within the trust to administer in your interest either to generate interest or profit from it. This interest or income so generated may be for my exclusive use or your use but some stipend has to come to the fund manager and the government (Abomaye-Nimenibo, 2017: 171-178)

By extension, that is "a constructive trustee of any profits he makes out of the property" under his care, for the benefit of the beneficiary (Kodilinye, supra). Under the authority of De Bussche V. Alt. (1877) 8 Ch.D.286, the above rule applies not only to trustees but also to other fiduciaries such as agents, partners and Company Directors.

"It is an inflexible rule of a Court of equity that a person in a fiduciary position is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict" Lord Herschell in Bray V. Ford (1896) A.C. 44, H.L, at p.51.

A leading Case is Keech V. Sand ford (1726) Sel. Cas. t. King 61. In that case, the defendant was the express trustee of the Lease of a market for an Infant. The defendant requested a renewal in favour of the infant but this was refused by the lessor on grounds of the infant's Contractual incapacity. As the lessor had no objection to a renewal in favour of the trustee, he took a

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renewal on his behalf. The defendant was held to be a constructive Trustee of the new lease for the infant.

In Nigeria, this rule was applied both in Marques V. Edematie (1950) 19 N.L.R. 75 and Ukatta V. Emembo (1963) 7 E.N.L.R. 139. In the latter case, the defendant agreed in writing to assign to the Plaintiff the lease of a plot of land at Aba as soon as he obtained an assignment of it from the Crown lessee. In furtherance of the agreement, the Plaintiff paid N2, 000.00, the full purchase price to the defendant. The Plaintiff, at the request of the defendant, paid the renewal fees, while the defendant obtained the renewal in his name. It was held that the defendant was a Constructive trustee.

This principle could be applied for example in situations where some public officers in Nigeria, acquire property in one of the Nigerian Newspapers that Retired Major General Useni, at the time he was Minister of the Federal Capital Territory, unjustly acquired over fifty (50) houses at the expense of the masses. If this accusation is established to be a fact, General Useni should be held as holding those houses in trust for Nigerians. Both his "interest and duty must not conflict".

Again, public officers who receive or ask for a bribe or incidental profits during the performance of their duty do not deserve such profits and should be regarded as constructive trustee of the bribe or incidental profit in trust for the person (s) from whom the bride was taken. This law if in vogue now will reduce corruption and fraud in Nigeria and by extension the whole world. A constructive trust is a good weapon to fight corruption in Nigeria and elsewhere.

IV. Conclusion

Public service is too important in public service delivery and governance. Therefore, the quality of the public service largely determines the pace of development of any nation due to the crucial role public servants play in the formulation and implementation of programs and policies of governments. The public officers propel the engine of societal growth must as a matter of fact and principle set good examples to other members of the society by living and acting above board in their conducts and behaviours. The template of good behaviour has been set by the Constitution of the Federal Republic of Nigeria 1999 (as amended) should be holistically followed in terms of probity.

Regardless of the enormous ineffectiveness of the code of conduct laws, many public servants seemed not to be fully aware of the provisions therein; and even those who are aware of it were found to hardly put its provisions into implementation. The Code of Conduct Tribunal and its performance have been very poor in convicting guilty officers who enriched themselves at the expense of the government irrespective of the enormous powers it was granted under the Constitution. The tribunal hardly passes judgment against violators of the code of conduct of the law by convicting them. Trendossguy posted on the internet on November 6, 2016, a list of Nigerian looters as released by World Bank names of Nigerian looters who deposited a huge sum of money in London, Swiss ($), USA($), and Germany Banks respectively as follows:

i. *General Ibrahim Babangida (6.25bn 7.41bn 2.00bn 9.00bn)*

ii. *General Abdulsalami Alhaji Abubakar (1.31bn 2.33bn 800M) etc.*

These generals were regarded as sacred cows that could not be touched by anybody and could not face the penal laws of Nigeria. The flexibility of the Concept of Constructive trust could be expanded to cover areas bothering on corruption among Public officers. Perhaps by the time a corrupt Public Officer realises that the unjust enrichment of himself he has made in actuality belongs to him legally but benefits accruing there from will benefit the actual person(s). The writer or researcher concludes that by extension, that constructive Trust could be a potent weapon against corruption among public officers. Therefore, a constructive trust is a potent weapon against corruption among Public Officers.

V. Recommendations

The following recommends are made to solve the Nigerian endemic and structured institutional corruption in Nigeria:

i. Public Servants should adhere to public service laws and regulations and not violate the laws to enrich themselves.
ii. Corruption and other vices in all sectors of the economy must be tackled by the government through empowered agencies for effective public service in Nigeria and elsewhere.
iii. Nigerians should be educated and enlighten the populace through campaigns to discourage corrupt practices, especially in the public service.
iv. Nigerians should be taught and trained to be patriotic, honest, hold on to integrity at all times, be committed and dedicated to service.
v. All humans including those of Nigeria should always have the fear of God especially those holding public offices and/or positions in the country.
vi. Penal sanctions and punishments should be meted out to corrupt Public Office holders both in Nigeria and abroad.
vii. There should be no sacred cow no matter whose horse is gourd.
viii. More concerted efforts should be channelled into the prevention of various abuses of public office through constant monitoring of pubic officers'

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assets base and verification of the same at regular intervals.

ix. The Code of Conduct Bureau should rise now and exercise all its powers and limited resources to put public officers in constant check through public enlightenment campaigns, vigorously administering Assets Declaration Forms (Form CCB–1) to public officers and prosecuting earring officers at the Code of Conduct Tribunal.

x. *Application of constructive trust laws without fear or favour as a potent weapon to fight against corruption among public office holders in Nigeria.*

xi. *Workshops, seminars and other forms of public enlightenments should be launched about the application of Constructive Trust Law.*

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