EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL JURISDICTION)

CASE NO. ANUHCR 2023/0081

BETWEEN:

THE KING

-and-

DYLAN SIMON

Appearances:
Mrs. Shannon Jones-Gittens for the Crown
Mr. Lawrence Daniel for the Defendant

2024: July 4, 8, 9, 10, 11, 12,
23.

JUDGMENT

[1] **BAKRE, J.:** The prosecution filed an eight count amended indictment against the accused. The accused pled not guilty to the charges and the prosecution called twelve witnesses in proof of the charges. The charges and particulars are as follows:-

FIRST COUNT

STATEMENT OF OFFENCE

***Electronic forgery**, contrary to section 6 of the Electronic Crimes Act, 2013.*

PARTICULARS OF OFFENCE

***Dylan Simon,** between 1st and 31st days of the December 2019 in Antigua and Barbuda, with intent to defraud, input computer in the cash receipts register of the Accounting system of Hadeed Motors Ltd., to wit an entry of Antigua Commercial Bank cheque number 91350 for **$62,000 ECC** as being received from **Lervie Joseph** as payment for a used Nissan X-trail vehicle when no such cheque existed thereby resulting in inauthentic data.*

SECOND COUNT

STATEMENT OF OFFENCE

FRAUDULENT CONVERSION, *contrary Section 21(1) (d) of the Larceny Act, Cap. 241 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.*

PARTICULARS OF OFFENCE

DYLAN SIMON *between 1st and 31st days of December, 2019 at Old Parham road in the Parish of St John in Antigua and Barbuda, being a clerk employed by Hadeed Motors Ltd. received one used Nissan X-trail motor vehicle, engine number MR20806622, a registration number A44950 valued at* ***$62,000 EC*** *on account of* ***Hadeed Motors Ltd.*** *and fraudulently converted it to his own use and benefit.*

THIRD COUNT

STATEMENT OF OFFENCE

FORGERY, *contrary to Section 7 of the Forgery Act, Cap. 181 of the Revised Edition (1992) laws of the Antigua and Barbuda*

PARTICULARS OF OFFENCE

DYLAN SIMON *between the 1st and 31st days of December, 2019 in Antigua and Barbuda, with intent to deceive, forged an Antigua and Barbuda change of vehicle ownership form bearing the bearing the date 5th December 2019 which related to a Nissan X-Trail vehicle, registration number A44950 by writing his name as being the person the vehicle was being transferred to.*

FOURTH COUNT

STATEMENT OF OFFENCE

UTTERING, Contrary to Section (9) (1) of Forgery Act .181 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

PARTICULAR OF OFFENCE

DYLAN SIMON *between the 5th and 19th day of December, 2019 in Antigua and Barbuda uttered a forged document, to wit, an Antigua and Barbuda Transport Board change of ownership form bearing the date 5th December 2019 relating to a Nissan X-trail vehicle, engine number* ***MR20806622,*** *registration number* ***A44950****, on which he placed his name as the person the vehicle was being transferred to.*

FIFTH COUNT

STATEMENT OF OFFENCE

FORGERY, Contrary to Section 7 of the Forgery Act, Cap 181 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

__Dylan Simon__ between the 1st and the 19th day of December, 2019 in Antigua and Barbuda, with intent to deceive, forged the signature of __Lervie Joseph__ on __Hadeed Motors Ltd__. Exit/ Entry form bearing the number 18232 relating to used Nissan X-Trail vehicle, registration number A44950.

SIXTH COUNT

STATEMENT OF OFFENCE

UTTERING, Contrary to Section (9) of the Forgery Act, Cap 181 of Revised Edition (1992) of Laws of Antigua and Barbuda.

PARTICULARS OF OFFENCE

DYLAN SIMON on the 5th day of December, 2019 at Old Parham in the Parish of Saint John in Antigua and Barbuda, uttered a forged document, to wit a __Hadeed Motors Ltd. Exit/Entry form number 18268__ dated 5th December, 2019 purporting it to be signed by __Lervie Joseph__ as having paid for and received a used Nissan X-trail vehicle, registration number A44950

SEVENTH COUNT

STATEMENT OF OFFENCE

MONEY LAUNDERING, Contrary to Section 61 (3) (b) of the Proceeds of Crime Act, 1993

PARTICULARS OF OFFENCE

DYLAN SIMON between the 5th day of December 2019 and the 3rd day of October 2020 in Antigua and Barbuda, had in his possession one __Nissan X-trail vehicle, Engine number MR20806622__ which was the proceeds of crime, to wit fraudulent conversion, and he knew that the said vehicle was derived from unlawful activity.

EIGHT COUNT

STATEMENT OF OFFENCE

MONEY LAUNDERING, Contrary to Section 61 (3) (b) of the Proceeds of Crime Act, 1993.

PARTICULARS OF OFFENCE

DYLAN SIMON between the 5th of December 2019 and the 3rd day of October, 2020 in Antigua and Barbuda, disposed of one Nissan X-trail motor vehicle, engine number MR20806622, which was the proceeds of crime, to wit fraudulent conversion by transferring it to the Government of Antigua and Barbuda, and knew that the said vehicle was derived from unlawful activity.

SUMMARY

[2] The case of the prosecution in a nutshell is that the accused was an account staff with Hadeed Motors. He had worked with the company for over 20 years and had also spent a considerable length of time in the accounts department. It was alleged that the accused used his position and skill to manipulate the accounting system in the organization and fraudulently converted a car (Nissan X-trail) traded-in by a customer of the company into his personal property and later sold the car to the government of Antigua and Barbuda.

[3] The prosecution stated that the accused took the car without paying for it and manipulated the books of accounts of the company to show that the car was paid for by an Antigua Commercial Bank cheque number 91350 in the sum of $62,000 (Sixty-Two Thousand Dollars) when in actual fact, no such payment was made to the company.

[4] It was alleged that the accused inputted into the computer data of the company with intent to defraud, the said cheque purporting to be the payment for the cost of the car while the said cheque in actual fact does not exist and was never paid into the company's account.

[5] It was further alleged that the accused forged the Change of ownership form, signed and delivered to the company by one Sean Hibbert (a customer) to transfer the Nissan X-trail to himself fraudulently. He also forged the signature of one Lervie Joseph who he had used his name to do the fraudulent transaction on the company's account, to bring the car out of the premises of Hadeed Motors.

[6] Mr. Dylan Simon was alleged to have converted the Nissan X-trail belonging to Hadeed Motors, having been traded to them for another car, to his use and later sold as his car to the government of Antigua and Barbuda.

[7] In defence, the accused denied the entire allegations. He opted to give evidence on oath and also called one Alison Olivia (a colleague in the accounts department) to give evidence on his behalf.

TRIAL/EVIDENCE

[8] PROSECUTION called eleven witnesses to prove the case and for the purpose of clarity, I shall endeavor to review the two most critical testimonies.

Ms. Angie Bascus

[9] The prosecution first witness was one Ms. Angie Bascus who gave evidence that she is the internal auditor at Hadeed Motors. She narrated that sometimes in 2020 while she was carrying out her duties, she noticed some anomalies on some of the transactions of the accounts department as she sought the permission of her employer to investigate the anomalies.

[10] She stated that in the course of her investigations, she came across several other anomalies which were really not clear both manually and electronically and that a number of these

transactions were credited to a particular employee's account with Hadeed Motors, in the name of Dylan Simon. She said she knew Mr. Simon for about seven year that she had worked with Hadeed Motors and she identified him.

[11] The witness stated that she informed the head of accounts, Dwayna Derrick about her discoveries, sent all the documents too her department, and asked her to investigate. She said Ms. Derrick could not give an answer and that on 14th July 2020, she invited Ms. Derrick and the accused to a meeting where the accused was confronted with the anomalies. At the meeting, Mr. Simon confirmed his signature on the transactions.

[12] She said she realized that there was a cheque of Antigua Commercial Bank (ACB) with number 91350 in the sum of $62,000 (Sixty Two Thousand Dollars) that reflected in the daily cash receipt of the accounts department for the 13th day of December 2019 but did not reflect in the daily bank slips for the same day. The witness said she asked Mr. Simon how come the cheque was not reflected in the payment slip but he did not respond. She emphasized that at this point; Mr. Simon looked at her straight in the eyes but did not respond to the query. The accused was allegedly shown other transactions too but did not respond.

[13] She said the cheque which was inputted as received by the accused on that day and purporting to be used pay for Nissan X-trail (which was brought in by one Sean Hibbert) did not reflect as paid in for that day. She identified the directors of the company at the time as Andre Hadeed, Francis Hadeed and Sir Ramey Hadeed.

[14] Under cross examination, she initially denied that staff of the accounts department use each other's account to log in. She was however confronted with what she told the police during the investigation where she had said that these could happen. She eventually admitted that they use each other's account.

[15] She stated that her inquiry was in May 2020 and that the audit was on risk assessment basis and not specifically for December 2019. She said it was in May 2020 that she conducted the audit and that the audit of the company is always on going.

[16] She stated that a duty free concession is not recorded as part of payment. She stated further that there is no standard practice for auditing but there is best practice.

[17] The witness stated that the meeting she had with the accused and Ms. Derrick was recorded and given to her employers.

Ms. Dwayna Derrick

[18] Ms. Derrick is the second witness called by the prosecution. She said she is the head of accounts and financial controller with Hadeed motors and had been with them for over thirty-six years (36).

[19] It is part of her duties to oversee the staff and ensure that all vehicles are accounted for and payments properly made. She said she deals with all the payments of the company and related that she has relevant qualifications for accounting.

[20] The witness confirmed that she knows the accused and that they had worked together for about fifteen years prior to the incident before this court. She mentioned Summer Hector and Alison Olivia as their co-workers in the accounts department.

[21] She stated that the accused was the cashier and was responsible for BMW sales and ordering along with his responsibilities at accounts department.

[22] She explained how a car is purchased at Hadeed motors and also where there is a trade-in transaction. She said where there is payment to be made, the invoice is issued and entered at the accounts department, the sales representative would process the documentation and then the car is released.

[23] With respect to a trade-in transaction, she gave a detailed report of how the transaction is conducted. She said, for someone coming to trade-in a vehicle, he goes to the department for a valuation of the vehicle. A valuation form is filled and it is given to the sales representative with the details of the car filled by the valuer in that department. It then goes to the sales rep. again. The sales rep. and the customer agree on the valuation. The amount agreed is now put by the sales rep. on the invoice and deducted from the cost of the car. This agreed sum is inputted into the computer by the sales representative, a profoma invoice is issued with which the finance house uses to give loan for the transaction. The company is paid through the accounts department and a receipt is issued to that effect. She said this is termed a deal.

[24] The customer gets the document for the car released; the "Entry/Exit form" is filled with details of the car bought. The form is in book form and the top copy is given to the sales rep. by the accounts department. The customer also gets a gas voucher. The form is given at the gate to the security man who checks the details to be sure that it is the car bought that was being released. It will also show that it is a trade-in and thus the car traded-in would also be verified with its details and it is brought into the premises. The car traded-in becomes the property of the company.

[25] The witness stated that the traded vehicle though physically with the company, the name of the customer only is left on it until they have a buyer for it. After which they will use the pre-signed change of ownership form to effect ownership title from the name of the original owner who traded it in to the new owner at Transport Board.

[26] She stated that payment for a car that has been traded in is paid to the accounts department and a receipt is issued from the system.

[27] It was the evidence of the 2nd Prosecution witness that in June 2020 internal audit saw some anomalies in some transaction. The audit was conducted by Ms. Bascus who asked her to investigate the matter on sale transaction.

[28] She said she looked at the information given to her and compared to the transactions in the system.

[29] Ms. Derrick said she realized from the transaction that a Nissan X trail was handled by the accused. She checked the sales invoices, exit and entry form, the account register (cashier), checked valuation forms. She looked into sale and realized payment was not made for the X-trail traded in. The vehicle was traded in for a BMW by one Sean Hibbert and the accused was the sales rep. she said all effort to trace the payment for it was impossible. She said she noticed that there was a receipt and a cheque number recorded but according to the records, no cheque was received. According to the records, it was purported that one Lervie Joseph bought the car. The cheque number was found in the cash register. The cheque number is usually put on the system when a receipt is to be issued. She said she discovered that another cheque was used for the transaction. She said they gave the documents over to the police subsequently.

[30] She tendered the following documents:-

Exhibit PE1 the receipt in favour of Lervie Joseph.

Exhibit PE 2 Invoice dated the 12/12/19

Exhibit PE 3 Entry and Exit form Number 18281

Exhibit PE 4 Cash receipt register for 13/12/19

Exhibit PE 5 Evaluation form

Exhibit P E 6 Cash sales invoice for Sean Hibbert

[31] Under cross examination, it was stated that there is nothing clearly to show on PE 6 that there was a deposit of $82,000 in cash for the BMW as it did not show a trade-in. Sean Hibbert paid $20,000 along with the delivery of the X-trail to make $82,000. In PE5 it shows valuation was done on the 29th of August 2019. She said she checks all used cars regularly and that as at August 2020 the car was not on the list.

[32] Some documents were tendered through her under cross examination. They are;-

EXHIBIT DE 1 Monthly sale dated 19/12/19

EXHIBIT DE 2 Daily cash report 13/12/19

EXHIBIT DE 3 A&B Cash Deposit Slips 13/12/19

EXHIBIT DE 4 Hadeed Motors Entry and Exit Form 5/12/19

EXHIBIT DE 5 Daily Cash Remittance Voucher dated 13/12/19

[33] She said that on the deposit slips, (Exhibit DE3) the ACB cheque for the sum of $62,000 with number 91350 does not reflect as part of the money paid into the account. She said there was a deposit of a cheque for $90,294.75 which does not reflect in the office records.

[34] She admitted that employees just like any other customer are allowed to purchase vehicles from the company. She said daily bank teller slips are usually filled by Alison Olivia and checked by another staff and that December is usually the busiest part of year.

RE EXAMINATION

[35] In her re-examination, she said Exhibit DE1 is the list of commissions paid for the 19th of December 2019. In the form it was stated that the said $62,000 was paid in cash and commission was paid on it. The witness said sometimes when they receive cash they give it to staff and receive cheque instead. They pay it in and record it as cheque on the slip. She stated that the $90,294.75 was for a different transaction.

[36] These two prosecution witnesses gave the basic facts as relied on by the prosecution. Other witnesses also buttressed the testimony of these two witnesses.

DEFENCE

[37] In the defence, the accused gave evidence in person. His position is that, he actually paid for the vehicle in cash. He admitted that he inputted a false cheque of Antigua Commercial Bank with number 91350 into the daily cash receipt docket in the name of Lervie Joseph.

[38] He claimed he bought the car in the name of his cousin Lervie Joseph and eventually paid cash for it. He said he collected a receipt for the payment and was even paid commission for the sale of the car and that he acquired the car legally not withstanding that he bought the car in the name of his cousin and he used it and eventually sold it. The accused denied that he fraudulently converted the car to his own use.

[39] He gave a detailed account of how a car sale transaction is done at Hadeed motors. His narration is not particularly different from the testimony of the prosecution witness. He stated that the change of ownership form is filled by the customer that traded in a car at Hadeed motors. He will sign and also give a copy of his driver's license and this is kept until they get a buyer who fills in the purchaser's column.

[40] The accused stated that mostly, when they collect cash in large sums, the directors or other staff of Hadeed motors take the cash and issue a cheque to cover the amount and the amount is entered as a cheque into their records.

[41] He gave evidence that the total receipt register is checked by two persons at the end of the day. The accused identified Exhibit PE 4. He said the sum of $62,000 was inputted as a cheque and admitted the cheque did not exist. He said this is a normal occurrence in their system.

[42] Mr. Simon stated that on the 13th of December 2019, after he inputted the details into the system, the daily record was checked by Alison Olivia.

[43] He confirmed that he could see the cheque in Exhibit DE3 A and B, he agreed that the details in these deposit slips does not correlate with the details in the daily cash receipt Exhibit PE 4 notwithstanding that the total balance on the two are correct. His position however is that because of the in-house cash swap that they normally do, the details may be different but the final balance must be the same.

[44] He stated that the sum of $62,000 paid for the X-trail was credited as a deposit for Sean Hibbert who paid additional $20,000 deposit for the BMW.

[45] The accused admitted that he had a meeting with Ms. Bascus and Ms. Derrick in July 2019 but that there was no discussion on the Nissan X-trail at the meeting but that the meeting was about some anomalies that were discovered on the audit in the spare parts department.

[46] He stated that Ms. Bascus was not directly a staff of Hadeed motors as she claimed and that she did not understand the intricacies of the account department and would not understand why a cheque belonging to someone else would have been swapped in place of cash as they were doing. He stated that even though PE 4 was printed in his name, some of the details were inputted by several other staff. He initially insinuated that the input of $62,000 was not by him but later admitted that the said the details of cheque of $62,000 was inputted by him.

[47] He stated that the account of Hadeed motors was audited by an external auditor and that no problem was found with the account.

[48] He denied that he fraudulently used the cheque of $90,294 to pay for the X-trail. He said he validly collected the transfer of ownership form from the sales coordinator after paying for the X-trail in cash.

[49] Again, he reiterated that they normally swap cash for cheques at the accounts department and that there is no record that reflects the true state of affairs before the swaps. He reiterated that there was no money missing in the account of Hadeed motors and that while the details was not accurate, the total sum is correct.

[50] He responded on every count in the indictment that he never defrauded the company and that he followed the accepted company process.

[51] Subsequently, on the issue of Electronic forgery, the accused admitted that he inputted into the computer system of Hadeed motors Ltd. an entry of Antigua Commercial Bank Cheque number 91350 for $62,000 as being received from Lervie Joseph as payment for a used Nissan X-trail, when no such cheque existed. He stated that it was a procedure that was allowed by the company and with the understanding of the directors.

[52] Further to this, the accused in the course of his evidence admitted that he wrote the signature of one Lervie Joseph on the Hadeed Motors Ltd Exit/ entry form relating to a used Nissan X trail vehicle registration number A44950.

[53] The position of the accused is that this forgery was done with the knowledge of the management of Hadeed Motors.

[54] The accused raised an allegation that this action against him is a witch-hunt and that it is a conspiracy against him spearheaded by the management of Hadeed Motors for his refusal to carry out some actions which he did not say.

[55] Under cross examination, he denied that what was tendered as Exhibit PE 13 is the true reflection of the question and answer session that took place between him and the police office Mr. O'Garro. The witness alleged that his signature was forged on the document presented to the court. He denied the content of the said exhibit and said there was collusion to witch-hunt him between the police and the management of Hadeed motors.

DW2

[56] The defendant also called Alison Olivia as a witness. She was an accounts clerk with Hadeed motors and was responsible for entering bills into the system. She also did stock taking and was responsible for both cheque and cash payments when the accused is not available.

[57] She also confirmed the evidence that they swap large sums of cash for cheque in the accounts department. She even went further to state that they already have the cheque book belonging to the directors with them in the accounts department thus when they have large cash transactions, they fill the sum into a cheque and give the cash to their bosses who will sign off the said amount with a cheque.

[58] She was shown exhibits DE2, DE 2 A and B and was also shown Exhibit PE4. She admitted that she filled Exhibit DE 2 A and B. when asked about the discrepancies in the details on Exhibit PE 4 and DE 2 A and B, she said the only explanation is that cash must have been collected in replacement for the cheque that reflected in $62,000. She stated that she never saw the cheque that reflected in exhibit PE 4 but that the total sum that was paid to the bank is correct with what was received on the 13th of December 2019 except that the details are not correct.

[59] She said sometimes they hold back cash or cheque and put in a different cheque to make the balance. She felt that it was strange that a payment that is a cheque transaction would be recorded as cash. She confirmed that in exhibit PE1 which is the receipt for the said $62,000 the payment was captured as cash payment. She said she knows that Mr. Dylan purchased the X-trail but she could not remember if it was by cash or cheque. She said when cash is paid; it is counted by two persons.

[60] Under cross examination, she said PE 1 was written both cash and cheque payment of $62,000 and that there was an Antigua commercial bank cheque for $62,000 not seen. She confirmed that where a cash payment is swapped for a cheque, such payment is recorded as cash payment even if it was eventually changed to cheque. She said it is the duty of Mr. Simon to prepare the daily cash report while she checks it to reconfirm. She said she relied on Exhibit DE 1 to prepared DE 2 A and B. she said she could confirm that the accused owns the X-trail merely because he drove it around.

[61] On the conclusion of her evidence, the trial was closed and counsel on both sides addressed the court.

ANALYSIS

[62] It is the basic law that in a criminal case, the burden of proof rests squarely on the prosecution and does not shift at any time to the defendant. The Defendant has a choice not to say anything or proffer any evidence in defending the case against him. The prosecution has a duty to convince the court beyond reasonable doubt that the accused is guilty of the offence charged. The prosecution is duty bound to prove every element of each of the charges against the accused person.

[63] It is also the law that in a trial by judge alone (such as this), the judge is duty bound to consider the law in relation to the facts presented in the determination of the fate of the accused. The judge is the determinant of both the law and the facts.

[64] In the entire eighth count charge, five of the counts are for forgery and uttering of documents, I will deal with these set of charges first and deal subsequently with the allegations of conversion and money laundering.

COUNT ONE.

[65] The first charge against the accused is Electronic forgery contrary to Section 6 of the Electronic Crimes Act 2013. It says:-

***Section 6**. "A person who, with <u>intent to defraud, inputs</u> alters, deletes, or suppresses <u>computer data, resulting in inauthentic data,</u> whether or not the data is directly readable and intelligible, commits an offence and is liable on ;-*

(a)…….

(b) conviction on indictment to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding seven years, or to both".

[66] The allegation against the defendant is that he inputted into the computer system of Hadeed motors, details of an Antigua Commercial Bank cheque number 91350 for $62,000 as payment

received for the purchase of a Nissan X-trail when indeed he is aware that the cheque did not exist.

[67] Prosecution witnesses, Ms. Bascus who is the internal auditor with Hadeed Motors gave evidence that in the course of her duties, she came across the daily cash receipt register of Hadeed motors for the 13th of December 2019 and noticed an input of a cheque of $62,000 of ACB with number 91350 purporting to be made by one Lervie Joseph and inputted by the accused but she discovered that the cheque did not exit.

[68] She narrated how she took this up with the financial controller and subsequently had a meeting with the financial controller and the accused who rather than explain the anomaly merely kept mute.

[69] This allegation was buttressed by Ms. Derrick the financial controller who also tendered the said daily cash receipt as Exhibit PE4. On the said Exhibit PE4, the said cheque was inputted as the 4th item on the list.

[70] Prosecution called Lervie Joseph as a witness. He admitted that he knows the accused who is his cousin. He stated that the accused mentioned that he would be buying a car in his name but that he never had any transaction with Hadeed motors and did not give any cheque in that regard.

[71] Mr. Austen Gittens, who is the chief internal auditor for Antigua Commercial Bank where the cheque purportedly emanated from, was also called as a witness by the prosecution. He said that amongst other things, he is a fraud examiner. He gave evidence that they searched their system and that they did not find that the cheque with number 91350 was ever issued by their bank for Lervie Joseph as alleged. He denied that they have the records of the said cheque in their records.

[72] This inquiry from the bank was also buttressed by Police Assistant Superintendent Mr. O'Garro who also gave evidence for the prosecution.

[73] Upon being confronted by this fact, the defendant stated that notwithstanding that the input reflected his name; the normal position in the accounts department is that every staff inputs daily transactions even though it would always come in his name as that is the way the system is configured.

[74] It was stated that the sum was allegedly used to pay for the Nissan X-trail said to have been purchased by the accused on behalf of his cousin Lervie Joseph. He initially tacitly denied that the input was not done by him, upon the realization that the transaction was in respect of the car he claimed to have bought, he admitted that he inputted the cheque details and stated that it is a normal process in their accounts department to do this. He said he withdrew the cheque and later paid in cash.

[75] Now, in relation to the First charge on the indictment and as stated above, the prosecution has a duty to prove the elements of the offence. The elements of the offence are that an inauthentic

data must have been inputted into the computer system with the intention to defraud. The elements are broken down as follows:-

1. That the accused has an intention to defraud.
2. That the accused inputted data into the computer system
3. That the said data is an inauthentic data

[76] Having admitted that he is the one who inputted the cheque into the daily cash receipt register, it is clear that the second leg of the element need no proof. The next element is to see whether the data was actually inauthentic. I refer to the facts stated above, where the verification of the cheque was done by the investigating officer who found out at the bank that the cheque/draft did not emanate from the bank and thus does not exist.

[77] Also there is substantial evidence that the cheque disappeared and was not on the slip for the payments made to the bank for that day. It was discovered that the cheque was not issued by Lervie Joseph.

[78] On the last element, the intention of the accused is to use the cheque as proof that payment was made for the X-trail. Having subsequently withdrawn this cheque, clearly the intent to defraud was proved in this instance. I hold that this charge was proved beyond reasonable doubt. I find the **accused guilty of this charge**.

COUNT THREE,

[79] This is an allegation of forgery Contrary to Section 7 of the Forgery Act Cap 181.

[80] Section 3 of the Act defines forgery as the making of a false document in order that it may be used as genuine. Section 7 of the same Act under which the accused is charged states that forgery of any document not made a felony if made with intent to defraud or deceive would be a misdemeanor.

[81] The cumulative meaning of Sections 3 and 7 of the said Act is that where the Defendant made a false document in order to use it as genuine with intent to defraud, he shall be guilty of a misdemeanor.

[82] As stated above, the particulars of the offence for count three is that the accused, DYLAN SIMON between the 1st and 3rd days of December, 2019 in Antigua and Barbuda, with intent to deceive, forged an Antigua and Barbuda change of vehicle ownership form bearing the bearing the date 5th December 2019 which related to a Nissan X-Trail vehicle, registration number A44950 by writing his name as being the person the vehicle was being transferred to.

[83] The said Change of ownership form was tendered in evidence as exhibit PE 7. It was purportedly signed by Sean Hibbert as the owner of the Nissan X-trail car with number A44950 on the 5th day of December 2019. The accused signed as the purchaser of the said car. The said document,

exhibit PE7 was presented by the accused at the Transport Board office by the accused to effect the transfer of ownership in the said car to him. Evidence relating to this transaction was brought by the prosecution and one Josette Payne, a supervisor of license with the Transport Board gave evidence on how the document was presented to her and she effected the transfer of ownership in the said car.

[84] The element of this offence is to the effect that it must be shown that the Defendant actually made a false document in order to use it as genuine with intent to defraud.

[85] The allegation against the accused in relation to this count is that he used the said document (Exhibit PE7) which he allegedly signed and filled to transfer the Nissan X-trail allegedly belonging to Hadeed motors, to himself. The intent to defraud here is the act of transferring the car which allegedly belongs to Hadeed motors to himself by deceiving the officer at Transport Board.

[86] This allegation was supported by the evidence of Sean Hibbert who gave evidence that upon the trade-in of his Nissan X-trail to Hadeed Motors, the car was valued and used as part of his deposit to pay off for the BMW he bought from Hadeed Motors. Thus the car became the property of Hadeed Motors.

[87] The Defendant did not deny that he filled in his details on Exhibit PE 7 however he stated that upon his purchase of the car from Hadeed Motors, he validly used Exhibit PE 7 to do the change of ownership.

[88] As earlier stated, Josette Payne who is a supervisor with the transport Board gave evidence that she assisted the defendant in effecting the transfer of the said Nissan X-trail. She signed at the back of Exhibit PE 7 to certify that it is a true copy of the transfer form completed by the defendant and this was also confirmed by the Defendant.

[89] The guilt of the accused with this charge is dependent on whether the accused actually purchased the vehicle from Hadeed Motors to whom Sean Hibbert gave the car as deposit for the BMW.

[90] The evidence before the court from the prosecution witnesses is that where a car is to be traded in for a new one at Hadeed Motors, the owner would fill the owner's part on the Change of ownership form and leave the portion for the purchaser open to be filled by the purchaser.

[91] The evidence of Ms. Payne is that where the Transport Board gets a Change of ownership form and they are able to verify the true ownership through the driver's license of the owner. She confirmed that this was done with respect to Exhibit PE 7.

[92] In the circumstance, the guilt of the accused in respect of this count is dependent on whether he actually purchased the vehicle. It would be discussed and determined later in the course of the judgment.

COUNT FOUR

[93] This count is for Uttering Contrary to Section (9) (1) OF THE Forgery Act, Cap 181.

[94] Section 9 of the Forgery Act states that every person who utters any forged document shall be liable to punishment as if he forged the document.

[95] Particulars of the offence in Count four as stated is that the accused, DYLAN SIMON between the 5th and 19th day of December, 2019 in Antigua and Barbuda uttered a forged document, to wit, an Antigua and Barbuda Transport Board change of ownership form bearing the date 5th December 2019 relating to a Nissan X-trail vehicle, engine number MR20806622, registration number A44950, on which he placed his name as the person the vehicle was being transferred to.

[96] It my respectful view that count four just like count three above would follow the same trend and that the guilt or otherwise of the accused with respect to it would be determined by the finding of whether the accused actually ever paid for the Nissan X-trail.

COUNT FIVE

[97] This a Count that bothers on Forgery Contrary to Section 7 of the Forgery Act, Cap 181.

[98] Again I refer to the definition at Section 3 of the Act which defines forgery as the making of a false document in order that it may be used as genuine. Also Section 7 of the same Act under which the accused is charged states that forgery of any document not made a felony if made with intent to defraud or deceive would be a misdemeanor.

[99] The combined effect of Sections 3 and 7 of the said Act is that where the Defendant made a false document in order to use it as genuine with intent to defraud, he shall be guilty of a misdemeanor.

[100] The particulars of Count five is that the accused, Dylan Simon between the 1st and the 19th day of December, 2019 in Antigua and Barbuda, with intent to deceive, forged the signature of Lervie Joseph on Hadeed Motors Ltd. Exit/ Entry form bearing the number 18232 relating to used Nissan X Trail vehicle, registration number A44950.

[101] The prosecution has a duty to prove the elements of the offence. The element of the offence is that with the intention to defraud, the accused made a false document in order that it may be used as genuine. The elements are broken down as follows:-

1. That the accused has an intention to defraud.
2. That he actually made the false document.
3. That he intended to deceive the receiver to believe it is genuine.

[102] The Exit/ Entry form in question was tendered as Exhibit PE3 it is dated 19th day of December 2023.

[103] Ms. Derrick gave evidence that after a car is traded in; it is valued by the valuation officer assigned for this purpose. The valuation becomes part of the deposit for the new car. The valuation is given to the sales coordinator until a buyer is found for it. Upon the payment of the purchase price, the sales representative collects the change of ownership form from the sale coordinator and prepares the Exit and Entry form for the car to be taken away.

[104] The prosecution also brought Lennox Smart, who at the time relevant to this action was the security man at the gate of Hadeed Motors. He gave detailed evidence of the process of taking bought cars out of the premises of Hadeed motors. The witness stated that as the security man, it was his duty to release sold cars at the gate at Hadeed Motors. He gave evidence that the sale representative for the car would present an Entry and exit form signed by the sale representative and that it is his duty to check the car and make sure that certain things like the jack , Jack handle, Spare tire, battery, Radio are all present. He said it is after the form has been signed and delivered to him that the car was allowed to go out.

[105] In the course of the trial, the accused was confronted with Exhibit PE3 which is the Entry and Exit Form with number 18281 (not 18232 as stated as stated in the charge), dated 19th of December 2019 in respect of the X-trail and purportedly in the favour of Lervie Joseph. He agreed that he filled the details in the form. He also eventually agreed that he signed the portion for both delivered and the portion for received purportedly in the name of Lervie Joseph.

[106] This was done to deliberately make the security man to believe it is genuine. This was also done with intention to deceive the gateman that Lervie Joseph actually is the receiver of the vehicle when in actual fact Lervie Joseph did not sign the document.

[107] Permit me to state at this point, that I noticed the error on the particulars of offence in Count Five. I see that the prosecution wrote that the document said to have been forged has serial number **18232 but it actually has no 18281**. I consider this a minor error that would not affect the charge as the defendant was given the document (Exhibit PE3), and he identified it as the document in question, also all details on the document except the serial number corresponds with what is on Exhibit PE3, the date, the details of the car and the name of Lervie Joseph all corresponds. In my view, this typographical error is not enough to, and actually did not mislead the accused nor the court with respect to the document allegedly forged.

[108] I rely on the text Blackstone's Criminal practice 2017 paragraph D11.44 page 1618 where the author relied on R v. Moses (1991) Crim L.R 617:-

> *"The court of appeal observed that particulars of offence were not like the words of a statute…………………….. It seems that the test to apply in relation to incorrect particulars is whether the defence was prejudiced by the erroneous description of the offence".*

[109] Thus, notwithstanding the error of the serial number, the accused was not in any way prejudiced. I believe that the prosecution proved this charge beyond reasonable doubt and I thus find the accused guilty of count five of the indictment.

COUNT SIX.

[110] In Count Six, it was alleged that the accused DYLAN SIMON on the 5th day of December, 2019 at Old Parham in the Parish of Saint John in Antigua and Barbuda, uttered a forged document, to wit a Hadeed Motors Ltd. Exit/Entry form number 18268 dated 5th December, 2019 purporting it to be signed by Lervie Joseph as having paid for and received a used Nissan X-trail vehicle, registration number A44950.

[111] I have examined the Entry and Exit form with number 18268 dated the 5th day of December 2019 and admitted as exhibit DE 4. I observed that the allegation that it was purported to have been signed by Lervie Joseph is incorrect. Exhibit DE4 is an Entry and Exit Form of Hadeed Motors signed by (or purportedly signed by) Sean Hibbert to receive the BMW he purchased and not Lervie Joseph. There is nothing in Exhibit DE4 linking the said document to Lervie Joseph. Exhibit DE4 in my view is the form with which the BMW was released to Sean Hibbert. The only signature of the accused on this exhibit is the one that showed he released the car to Sean Hibbert. This position was not denied by either the prosecution or the accused. I do not see any forgery of Lervie Joseph's signature on Exhibit DE4 as alleged in the charge. Also unlike Exhibit PE 3, the accused never admitted directly or otherwise to this allegation.

[112] I do not find the nexus between exhibit DE4 and the charge in Count Six. I hold the accused is not guilty of this charge as same was not proved.

[113] Having dealt with all the charges that relates to forgery and uttering, the court is now to determine the charges of fraudulent conversion and money Laundering. These are the, Second, Seventh and Eight Counts.

[114] To establish each of the charge, it is important to consider the case of the prosecution.

[115] Fraudulent conversion under Section 21 (1) (d) of the Larceny Act is defined in this manner: - Every person who having either solely or jointly with any other person received any property for or on account of any other person, fraudulently converts to his own use or benefit of any other person, the property or any part thereof or any proceeds thereof, shall be guilty of a misdemeanor……..

[116] The simple explanation of the crime of fraudulent conversion is where an owner's property is entrusted to a person for a specific use and after taking possession of the property in a lawful manner, the person converts the property to his own use by selling, using or otherwise disposing of the property as if it were his own.

[117] The particulars of all the three charges reveal an allegation that the accused has dealt with the Nissan X-trail in a manner that is inconsistent with the right of the owner Hadeed Motors. It was alleged that the accused had converted the car to its own use and subsequently transferred same to the government of Antigua and Barbuda.

[118] In this judgment, I have set out the case presented by the prosecution. It was the testimony of the Ms. Derrick and subsequent witnesses that stated that the accused never paid for the Nissan X trail. On the part of the accused, he insisted he paid for the car initially by a cheque of Antigua Commercial Bank which he later withdrew and paid cash.

[119] The evidence of the prosecution before this court is that the on the 13th day of December 2019, the accused, purporting to pay for the X-trail traded in and valued $62,000 allegedly inputted into the computer for the daily cash receipt ACB cheque number 91350 which never existed. It was alleged that the false cheque purported to be the payment for the vehicle.

[120] In his defence, the accused insisted that he withdrew the cheque and paid in cash which was receipted and that the payment reflected in the total daily balance paid into the bank with Exhibit DE 2A and B. Exhibit DE 2 A and B are the payment slips with which the total sum of money received by Hadeed Motors was paid.

[121] In comparison with Exhibit PE4 which is the daily cash receipt for the 13th day of December 2019 it is clear that the total sum of $395,839.76 stated as the amount received in PE4 corresponds with the amount that was paid into the bank account. This is the total sum received in both the accounts department and the spare part Department less the credits from credit cards.

[122] In clear terms, the position of the accused is that there is no sum missing from the sums collected in the company and the sum paid into the account for the 13th day of December 2019. He gave evidence that it was a normal routine at Hadeed motors for cheques to be swapped for cash where the cash is deemed to be in large sum. The accused stated that where there is large sum of cash, the directors take this cash and issue their personal cheque to replace the sum. He insisted that there is no money missing from the accounts on the 13th December 2019 and that the sum of $62,000 was paid in cash thus the balance on the amount paid in.

[123] In explaining out the balance on the account, the prosecution witness, Ms. Derrick stated that the said sum after the withdrawal of the cheque of $62,000 allegedly paid, was substituted with a cheque of $90,294. It was alleged that the said cheque of $90,294 was a cheque for a different transaction.

[124] In the circumstance, this court is faced with the evidence of both parties that either the said $62,000 was paid or not.

[125] It is important that I emphasis again that this is a criminal trial and the onus is on the prosecution to convince this court beyond reasonable doubt that the sum was not paid.

[126] In the attempt to show this, the prosecution presented Exhibit PE4 and stated that the cheque allegedly inputted by the accused into the system did not reflect and was not paid into the account. The prosecution actual stopped at this until the counsel to the accused asked for and was eventually was given Exhibits DE1, DE2 A and B, and DE3. Upon tendering these documents, the counsel to the Defendant confronted the Financial Director of Hadeed Motors Ms. Derrick with the fact that by virtue of Exhibit DE1, the Defendant was paid the sum of $500 as commission on the sale of the X-trail in the sum of $62,000.

[127] The witness was also confronted with Exhibit DE2 A and B which are the payment slips for the 13th day of December 2019. It was stated that by DE 2b, the sums paid into the company's account corresponds with the sum received both at the spare parts department and the accounts department.

[128] Exhibit DE3 which is the daily cash report details the income from the spare parts department and the accounts department it shows that the sum of $395,839.76 received in the accounts department is complete and if added to the sum of $59, 676.17 received at the spare parts department. The total will be 455,575.93. Sums received from visa card and master cards were deducted from the said sum and the final balance came to $437,731.82. This break down is reflected in Exhibit DE3.

[129] Exhibit DE 3 which captured the total income is now compared to Exhibit DE 2A and B, it shows a balance of $437, 731.82.

[130] Exhibit DE3 was purportedly prepared by the accused Simon Dylan and checked by Alison Olivia. It was confirmed as correct.

[131] Under cross examination, Ms. Derrick sought to explain why the amount balanced out despite the fact that the sum of $62,000 was not paid. She referred to a cheque of CUB bearing the amount of $90,294.75 paid along with other cheques into the bank in Exhibit DE 2b, she explained that the said cheque is for another transaction. Incidentally, this $90,294.75 did not also reflect in the sums received in the daily cash receipt (Exhibit PE4) but it is in the sum paid with the slip to bank. (Exhibit DE2b). Ms. Derrick did not explain what the other transaction was, for this court to understand whether truly there was a sum missing in any other transaction.

[132] I would have been tempted to ask why the said cheque of $90,294.75 was also not captured in the daily transaction in any of the other Exhibits (Exhibit PE4 or DE1), but all the parties have alluded to different forms of accounting manipulations encouraged by the company for reasons best known to them. It is clear that an unexplainable cheque of $90,294.75 made its way into the company's bank account on the 13th day of December 2019. No one has stated what the money was meant for or where the cheque came from

[133] The only seemingly reasonable explanation is what both witnesses for the prosecution and the accused had stated that it is common practice in the company for large amount of cash to be

substituted for cheques. This may explain where a cheque of $90,294.75 not captured in the daily transaction found its way into the bank slip. This notwithstanding, If as alleged, the sum of $62,000 was removed and replaced with a cheque of $90,294.75 there would be an excess of $30,294.75 in the account balance but this was not so.

[134] On the contrary, the accused admitted that he wrongly inputted a cheque of $60,000 where there was none but paid cash of the $60,000 into the company's coffers.

[135] This explanation of the accused, taking into cognizance all the circumstances surrounding the mischievous accounting procedures in the company seems more probable.

[137] Apart from the mere ipsi dixit of the financial controller, Ms. Derrick that the sum of $90,294.75 was for another un-clarified transaction, there seem to be no other explanation on how the account of the company would be balanced and they will still insist there is $62,000 missing.

[138] As I stated, in a criminal proceeding the accused is not bound to offer any thing in his defence. The prosecution bears the burden of proven the case. It is my view, that the prosecution has the responsibility to explain the following:-

1. Where the $90,294.75 came from.
2. What it was meant for,
3. Why it was not reflected in the income of the company and
4. Finally show clearly that its addition to this daily income led to a short fall in another transaction.

[139] Anything less than this, I do not think the prosecution has proven the loss of any money from the company's account either on the 13th of December 2019 or on any other day.

[140] The simple explanation made by the financial director that the cheque was for another transaction falls far below the expected proof beyond reasonable doubt.

[141] In my view, this court is of the opinion that the prosecution failed to prove that the sum of $60,000 allegedly paid for the Nissan X-trail vehicle is missing.

[142] It is important that I stress that this is a criminal matter and all that is required by this court is a proof beyond reasonable doubt that a state of affair actually happened. In this instance, the court is expected to determine that defendant actually did not pay $60,000 for the Nissan X-trail. The court in this regard based on the evidence before me cannot conclusively come to that conclusion.

[143] What the court struggles to state here is that, whether the accused paid truly for the car or not, is not properly proved here. This court is merely not able to see clearly that he paid, or did not pay for the car. Where however as in this case the court is not certain that an allegation of crime has been proved, the court will resolve the issue in favour of the accused who is presumed innocent.

[144] In all, I am unable to hold that the accused is guilty of the charges proffered against him in counts Three, Seven and Eight where allegations of conversion and money laundering were alleged. I state this because unless it was proved that the accused did not pay for the car, then he cannot be guilty of fraudulent conversion and money laundering as alleged.

[145] On Counts three and four, it is also my view that the allegations of uttering and forgery therein raised would only succeed where the prosecution succeeded in proving that the car was not paid for. In this instance, the two charges also fail.

[146] On Counts Six, I have held that the prosecution did not prove that as alleged in the charge, the Entry and exit for with number 18268 dated the 5th day of December 2019 was forged by the accused purporting it to be the signature of Lervie Joseph.

[147] At this stage, I must comment on the demeanor of the accused in the course of this trial. He appeared to be a bare faced liar and confident man who seem to have perfected the art of forgery and lies. Without any sense of decency, he lied under oath denying his signature on Exhibit PE 13, which is the Report of the question and answer session conducted by the police during investigation. The document clearly had been his custody all through this case without objection but at trial, he vehemently denied the signature on it even to the embarrassment of his counsel who immediately denied that he ever heard such from him. He initially denied the input of the details in Exhibit PE4. He initially denied writing the signature of Lervie Joseph. To say the least, the actions of the accused leave so much to be desired. He is a huge disappointment.

[148] In conclusion, with respect to Counts One and five, I find the accused **Guilty** as charged. With respect to counts Two, Three, Four, Six, Seven and Eight, I find the accused **Not Guilty**.

Tunde A. Bakre
High Court Judge

By the Court

Registrar