

# 1 Constructive Trust: The only True Potent Weapon to Fight 2 Corruption among Public Officers in Nigeria

3 Past. Dr. Abomaye-Nimenibo<sup>1</sup> and Williams Aminadokiari Samuel<sup>2</sup>

4 <sup>1</sup> OBONG UNIVERSITY

5 *Received: 11 November 2020 Accepted: 5 December 2020 Published: 15 December 2020*

6

---

## 7 **Abstract**

8 This paper treats the topic which seeks to know whether Constructive Trust could be a  
9 powerful weapon against corruption among public office holders and Examines the functions of  
10 public service and the code of conduct for public servants in Nigeria and to ascertain the  
11 provisions of the relevant laws. The Public sector, represent the realm where the government  
12 operates for the benefits of the citizenry of any nation. On the adjacent is the private sector  
13 where an individual or group of individuals operates.

14

---

15 **Index terms**— constructive trust, powerful weapon, corruption, public officers, equity, estate,

## 16 **1 Introduction**

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

## 35 **2 II.**

## 36 **3 Conceptual Clarification**

## 37 **4 T**

38 The term public service includes the following: a. The Civil Service: the career personnel of the presidency,  
39 ministers, Extra Ministerial Departments, the National Assembly and the Judiciary.

### 40 5 a) Meaning of Public Service

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

### 51 6 b) Meaning of Civil Service

52 The Civil service is an organ the State or Federal government created to ensure that policies and programs  
53 of any government at any particular time are carried out as enshrined in the constitution or Act that created  
54 it. The Civil Service the main organ of Government subsists having perpetual life and nature of existence  
55 irrespective of the changing of constitutionally elected governments; which has been saddled with specific functions  
56 or peculiarities or inclinations of that government. The Civil Service is known as: a) Non -partisan to enable  
57 it to serve any government of the day. b) Must be made up of experienced men and women with technical and  
58 professional expertise know to enable it to implement government policies and programmes. c) Orderliness and  
59 ensuring that orderly administration of the country is without stoppage, and rather continuous. d) Indispensable  
60 continues the traditional role of keeping the functions of government running no matter what changes occurs in  
61 the administration of the country. e) Operating under rules called the Civil Service Rules and Regulations which  
62 guide its conduct. f) An entity which operates in hives of activities, divided between Ministers and Departments  
63 each having its own set of functions and goals.

### 64 7 c) Meaning of Parastatals or Public Enterprises

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

### 71 8 d) Meaning of Code of Conduct

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

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

## 79 9 III.

### 80 10 Functions of Public Service

81 The public service (Ministers, Department and Agencies) has always been the tool available to the Nigeria  
82 government for the implementation of development goals and objective. The Public Service is a responsible  
83 organ for the creation of an appropriate conducive environment in which all sectors of the economy can operate  
84 maximally. Under the New Public Management, the public service is expected to play a catalytic role in the  
85 economic sector by providing the enabling policies for all the sectors of the economy; and whose functions include:  
86 1. Implementing and enforcing economic, political and social policies of the current Government. 2. Designing  
87 and implementing public service. 3. Raising revenue for the government. 4. Ensuring managerial, political  
88 and financial accountability. 5. Serving people. 6. Monitoring and evaluating the performance of organizations  
89 (Public, private or non-Governmental) that is rendering service on behalf of the government.

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

### 91 11 a) The Code of Conduct for Public Officers

92 The public service is the machinery that Government uses to render services to the people and as such, public  
93 servants should be proper and thorough avenues by constantly and conveniently improved upon to give better  
94 services at all times. The rendering of these services must conform to the prescribed code of conduct provided by

95 the constitution of the Federal Republic of Nigeria. Hence, the said constitution which has been established on  
96 threshold or standards that would guide a public servant in the discharge of his or her duties. Part1 of the fifth  
97 schedule of the 1999 constitution has generally made provision in respect of code of conduct and work attitude  
98 for a public servant.

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

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

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

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

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

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

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

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

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

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

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

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

145 University, or other Parastatals and organizations shall not accept: a) A loan, except government or its  
146 agencies, a bank, building society, mortgage institution or other financial institution recognized by law; and b)  
147 Any benefit of whatever nature from any company, contractor, or businessman, or the nominee or agent of such  
148 person.

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

151 Section 8 is an extension of good faith and it is to the effect that a public officer is under an obligation not  
152 to take a bribe or any kind of inducement while executing his duties or responsibilities. A bribe can take the  
153 form of cash payment as secret commission, discount against other transactions or bonus for service rendered.  
154 A bribe represents a particular type of secret profit and the law takes a very serious view of secret benefits as  
155 it can compel a public officer to compromise his position. When a bribe is established, it constitutes a violation  
156 of the code of conduct. Section 9 provides that: A public officer shall not do or direct to be done in the house

## 13 D) WHO IS A PUBLIC OFFICER?

---

157 of his office, any arbitrary act prejudicial to the rights of any other person knowing that such act is unlawful or  
158 contrary to any government policy.

159 Section 10 also provides that, 'a public officer shall not be a member of, belong to, or take part in any society  
160 the membership of which is incompatible, the functions or dignity of his office'. This provision is similar to Rule  
161 020210 of the Public Service Rule which provides that;

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

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

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

179 Section 12 provides that any allegation against a public officer who has committed a breach of or has not  
180 complied with the provisions of this code should be reported to the code of conduct Bureau. The Bureau has  
181 the power to investigate the alleged violation and if a case is found, institute an action at the code of conduct  
182 Tribunal. The Tribunal has the power to handle cases of breach of work ethics and code of conduct. Therefore,  
183 when any public officer is found guilty of contravening any section of the provisions of the code of conduct, then  
184 the tribunal shall impose punishment which includes any of the following:a. Vacant of office or seat in any  
185 legislative house, as the case may be b. Disqualification from membership of a legislative house and the holding of  
186 any public office for a period not exceeding two years; and c. Seizure and forfeiture to the State of any property  
187 acquired in abuse or corruption of office.

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

189 **12 "Any allegation that a public officer has committed a breach  
190 of or has not complied with the provisions of this code shall  
191 be made to the code of conduct Bureau". The foregoing  
192 provisions are unambiguous and so construed literally mean  
193 that any breaches of any provisions of the said 5th Schedule  
194 or matters of noncompliance with any provisions of the code  
195 shall (meaning that it is mandatory i.e. must) be made to  
196 the code of conduct Bureau that has established its Tribunal  
197 with the exclusive jurisdiction to deal with any violations  
198 of any provisions under the code, if I may emphasize any  
199 violation shall be made to code of conduct Bureau?**

200 This provision has expressly ousted the powers of ordinary regular courts in respect of such violation. It is clear  
201 from the above functions of the Code of Conduct Bureau, which renders strategic and important roles in ensuring  
202 that public officers are working and conducting themselves within the ambit of the law.

### 203 13 d) Who is a Public Officer?

204 A Public Officer is the holder of Public office under the Crown, or public agent (Osbon's Concise Law Dictionary,  
205 8th Edition, 1993). Now if a public officer is an agent of the public, who then is the Principal? The simple answer  
206 is -The Public. Thus the Public Officer by extension holds the office in trust for the benefit of the Public. IF  
207 this argument is acceptable, thus, the Public Officer by extension holds the office in trust for the benefit of the  
208 Public. IF this argument is accepted, then it is easy to conclude that the Public Officer is a trustee of a Sort.

---

## 209 14 e) What then is Corruption?

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

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

217 Obayelu (2007) defined Corruption in a paper presented at the 2007 African Economic Conference, as efforts  
218 to secure wealth or power through illegal means for private gain at public expense; or a misuse of public power  
219 for private benefit. Corruption like cockroaches has coexisted with human society for a long time and remains  
220 as one of the problems in many of the world's developing economies with devastating consequences. ??gbu  
221 (2001), defines corruption as the behaviour of public and private officers who improperly and unlawfully enrich  
222 themselves and/or those closely related to them, or induce others to do so, by misusing the position in which they  
223 are placed. Systemic corruption also referred to as entrenched corruption, which occurs where bribery (money in  
224 cash or kind) is taken or given in a corrupt relationship. These include kickbacks, pay-off, sweeteners, greasing  
225 palms, etc.) are widely practised on a large or small scale. It is regularly experienced when a license or a service  
226 is sought from government officials especially in the case administration itself transposes the expected purposes  
227 of the organizations; by forcing participants to follow what otherwise would be termed unacceptable ways and  
228 punishing those who resist and try to live up to the formal norms (International Center for Economic Growth,  
229 1999).

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

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

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

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

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

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

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

263 A onetime Nigerian Head of State was reported to have paid a total sum of N12.4 billion between September  
264 1988 and 30th June 1994 into a "Special Dedicated Account", funds which under normal conditions should have  
265 been paid into the Federal Accounts as required by law, News watch (2004) and The Punch Editorial ??2003).  
266 Out of this amount, the report further reveals that the military President and the Governor of the Central Bank  
267 clandestinely disbursed N12.2 billion without any explanation as to the extrabudgetary expenditures.

268 Many factors account for the spate of corruption in Nigeria's social life. One is that the incapacitating  
269 socio-economic situation of Nigerians must have heightened the potential for corrupt and sharp practices in the  
270 public and private sectors of the economy. Secondly, the leaders get deep-rooted in corruption because they  
271 lack independent economic base; and therefore rely on the state for survival, and they who are perpetrators of

272 fraud and corrupt enrichment often go scot-free. Former President Obasanjo in 2000, highlighted the elements  
273 of corruption in Nigeria as (i) use of one's office for pecuniary (money), (ii) gratification (iii) influence peddling,  
274 (iv) insincerity in advice to gain, tardiness, slovenliness and less than a full day's work for a full day's pay.

275 In Nigeria, corruption cannot be detached from poverty amongst the populace who on the average earn just  
276 \$260 a year which is far less a pay that can't stop an average Nigerian from being corrupt. It is of prime  
277 importance to know that less than one per cent of the population own over 60 per cent of the nation's wealth;  
278 and over 50 per cent of the wealth is however kept overseas thus leaving Nigeria's economy in very bad shape,  
279 poor and in servitude. As a result of mismanagement and relentless assault on the public, Nigeria's GDP per  
280 capita dropped from \$1,010 in the However, as part of efforts geared at fighting corruption and strengthening the  
281 economy, Nigeria embarked on an aggressive pursuit of economic reform through privatization, banking sector  
282 reform, anticorruption campaigns and establishment of clear and transparent fiscal standards since 1999 with no  
283 apparent improvement.

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

### 293 15 f) Constructive Trust

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

300 Unauthorized profits by trustees and other fiduciaries. ii.

301 Strangers receiving or intermeddling with trust property. iii.

302 Vendors of the land after signing the Contract of Sale. iv.

303 Mortgages and Mortgagors in certain situations. v.

304 Acquisition of property by fraud.

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

307 According to the Trust Concept, a trustee is a person who holds the trust property for the benefit of the cestus  
308 que trust, though the legal owner of the property, the trustee is not to benefit anything from the Property. a.  
309 Trust refers to the wilful dispossession of one's property by passing on or vesting the ownership of its title to one  
310 or more persons known as trustees who can only apply the benefits arising from the property so bequeathed at  
311 the appropriate time to the benefit of the beneficiary (ies). A trust can be created when an estate or property is  
312 held by a person known as a trustee for the benefit of another person so named in the will called a beneficiary.

313 Trust also relates to an equitable obligation that is binding on a person called the trustee dealing in a property  
314 he has custody of, for the benefit of persons called beneficiaries of which he/she may be one beneficiary.

315 b. Trustee refers to a person whom the administration of a trust is given, and holds the property on trust  
316 on behalf of another person known as a beneficiary. However, nothing in law precludes a trustee from being a  
317 beneficiary if so appointed. Trustees are persons to whom a property (ies) is/are legally committed in trust, to  
318 be applied either for the benefit of specified individuals or public uses; one who is instructed with property for  
319 the benefit of another. It may also be a person in whose hands or care the effects of another person are attached  
320 in a trustee process. It may also be an attachment of a debtor's wages, credits, or property in the hands of a  
321 third person solely for the interest of the creditor. In a simple term, your property is kept within the trust to  
322 administer in your interest either to generate interest or profit from it. This interest or income so generated  
323 may be for my exclusive use or your use but some stipend has to come to the fund manager and the government  
324 (Abomaye-Nimenibo, 2017: 171-178) By extension, that is "a constructive trustee of any profits he makes out  
325 of the property" under his care, for the benefit of the beneficiary (Kodilinye, supra). Under the authority of De  
326 Bussche V. Alt. (1877) 8 Ch.D.286, the above rule applies not only to trustees but also to other fiduciaries such  
327 as agents, partners and Company Directors.

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

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

334 renewal in favour of the trustee, he took a renewal on his behalf. The defendant was held to be a constructive  
335 Trustee of the new lease for the infant.

336 In Nigeria, this rule was applied both in Marques V. Edematie (1950) 19 N.L.R. 75 and Ukatta V. Emembo  
337 (1963) 7 E.N.L.R. 139. In the latter case, the defendant agreed in writing to assign to the Plaintiff the lease of  
338 a plot of land at Aba as soon as he obtained an assignment of it from the Crown lessee. In furtherance of the  
339 agreement, the Plaintiff paid N2, 000.00, the full purchase price to the defendant. The Plaintiff, at the request  
340 of the defendant, paid the renewal fees, while the defendant obtained the renewal in his name. It was held that  
341 the defendant was a Constructive trustee.

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

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

## 352 **16 IV.**

## 353 **17 Conclusion**

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

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

369 General Ibrahim Babangida (6.25bn 7.41bn 2.00bn 9.00bn) General Abdulsalami Alhaji Abubakar (1.31bn  
370 2.33bn 800M) etc. These generals were regarded as sacred cows that could not be touched by anybody and could  
371 not face the penal laws of Nigeria. The flexibility of the Concept of Constructive trust could be expanded to  
372 cover areas bothering on corruption among Public officers. Perhaps by the time a corrupt Public Officer realises  
373 that the unjust enrichment of himself he has made in actuality belongs to him legally but benefits accruing there  
374 from will benefit the actual person(s). The writer or researcher concludes that by extension, that constructive  
375 Trust could be a potent weapon against corruption among public officers. Therefore, a constructive trust is a  
376 potent weapon against corruption among Public Officers.

377 V.

## 378 **18 Recommendations**

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

381 Public Servants should adhere to public service laws and regulations and not violate the laws to enrich  
382 themselves. ii.

383 Corruption and other vices in all sectors of the economy must be tackled by the government through empowered  
384 agencies for effective public service in Nigeria and elsewhere. iii.

385 Nigerians should be educated and enlighten the populace through campaigns to discourage corrupt practices,  
386 especially in the public service. iv.

387 Nigerians should be taught and trained to be patriotic, honest, hold on to integrity at all times, be committed  
388 and dedicated to service. v.

389 All <sup>1</sup>

Figure 1:

---

390 [ De Bussche v. Alt] , 1877) 8 Ch.D.286. *De Bussche v. Alt*

391 [Keech and Sandford ()] , V Keech , Sandford . *Sel. Cas. t. King* 1726. p. 61.

392 [Marques and Edematie ()] , V Marques , Edematie . 19 N.L.R. 75. 1950.

393 [Ukatta and Emembo (ed.) ()] , V Ukatta , Emembo . 7 E.N.L.R. 139 (ed.) 1963.

394 [Lipset and Lenz ()] , S M Lipset , Gabriel S Lenz . 2000.

395 [ The Transparency International Corruption Index (CPI) ()] , *The Transparency International Corruption Index (CPI)* 2001. p. .

396 [ The Punch Editorial (2003)] , *The Punch Editorial* 2003. November 14. p. 17.

397 [ CBN Statistical Bulletin ()] , *CBN Statistical Bulletin* 2007.

398 [ Ethics and Discipline in Public Service ()] , *Ethics and Discipline in Public Service* 2013. Ahmadu Bello University Press Limited.

399 [Olaopa ()] *A Critical Overview of Public Sector Reform in Nigeria; Framework of Transformation for the Federal Civil Service (NIPSS*, T Olaopa . 2012. Kuru.

400 [Gire (1999)] 'A Psychological Analysis of Corruption in Nigeria'. J Gire . <http://www.jsdafrica.com/Jsda/Summer1999/articlespdf/ARC%20%20A%20Psychological%20Analysis%20of%20Corruption%20in%20Nigeria.pdf> *Journal of Sustainable Development* 1999. 20 April 2007.

401 [Code of Conduct Bureau and Code of Conduct Tribunal enshrined in the 1979 Constitution of the Federal Republic of Nigeria] *Code of Conduct Bureau and Code of Conduct Tribunal enshrined in the 1979 Constitution of the Federal Republic of Nigeria*,

402 [Frn ()] *Code of Conduct Bureau and Tribunal Act, Cap. 15 Laws of the Federation of Nigeria*, Frn . 2004. 2004.

403 [Trendossguy (2016)] *Complete list of Nigerian looters released by World Bank See the amount of money they stole, Internet posting on 6th*, Trendossguy . [wikipedia.org/wiki/code-of-conduct](http://www.wikipedia.org/wiki/code-of-conduct).Accessedon05/02/2015 2016. November 2016.

404 [Corruption and Harrison Huntington (ed.) ()] Culture Corruption , Markets . *Culture Matters*, Lawrence E Harrison, Samuel P Huntington (ed.) (New York) 2000. Basic Books. p. 112.

405 [Nwabuzor (2005)] 'Corruption and Development: New Initiatives in Economic Openness and Strengthened Rule of Law'. A Nwabuzor . *Ethics* 2005. June 2005. 18. 59 (1) p. .

406 [Agbu ()] 'Corruption and Human Trafficking: the Nigerian case'. O Agbu . *West Africa Review* 2003. 2003.

407 [Ike (2009)] *Corruption and its Impact on the Economic Development of Nigeria*, D Ike . 2009. 17th April 2009. Ota. p. . Covenant University (28th Public Lecture)

408 [Defined and developed an effective code of conduct for the organization ()] *Defined and developed an effective code of conduct for the organization*, <http://www.ifac.org>.Accessedon05/02/2015 2007. (International Good Practice Guidance)

409 [Sani (ed.) ()] *Discipline and Ethical Values: A Tool for Effective Public Service Delivery in*, A M Sani . Wamako A.M (ed.) 2013. Zaria: Ahmadu Bello University Press Ltd. (Ethics and Discipline in Public service)

410 [Ribadu (2003)] *Economic Crime and Corruption in Nigeria: the Causes, Effects, and efforts aimed at combating these vices in Nigeria. Paper presented at the Monaco World Summit 5th International Summit on Transnational Crime Monte Carlo 23rd and*, M Ribadu . 2003. 24th October 2003.

411 [Dike (2005)] 'Effect of Corruption on Nigeria's Economy. Nigeria EFFC Information Communication Technology Department'. V E Dike . <http://www.jsdafrica.com/Jsda/Summer1999/articlespdf/ARC%20-%20A%20Psychological%20Analysis%20of%20Corruption%20in%20Nigeria.pdf11>. *EFCCreports Africa Economic Analysis*. Retrieved on 2005. 1st August 2007. 2005. 2006. December 2006. 12. (FRN. Public Service Rules (Revised to)

412 [Obayelu ()] *Effects of Corruption and Economic Reforms on Economic Growth and Development: Lessons from Nigeria*, Obayelu . 2007.

413 [FRN (2013) Ahmed v. Ahmed (2013) Law Pavilion Electronic Report-21143] *FRN (2013) Ahmed v. Ahmed (2013) Law Pavilion Electronic Report-21143*,

414 [ICEG Information Brief 6, Causes and Effects of Corruption International Center for Economic Growth ()] 'ICEG Information Brief 6, Causes and Effects of Corruption'. *International Center for Economic Growth* 1999. 1999.

415 [Sanda (2002)] *Moving Nigerian Economy Forward*, A Sanda . 2002. October 29. Nigerian Tribune. p. 25.

416 [ IC P ()] *Nigeria and Corruption. Independent Corrupt Practices and Other Related Offences Commission*, IC P . 2006.

417 [Osbon's Concise Law Dictionary ()] *Osbon's Concise Law Dictionary*, 1993. (8th Edition)

## 18 RECOMMENDATIONS

---

444 [Paragraph 11 of Part 1, of the fifth schedule of the 1999 Constitution of the Federal Republic of Nigeria as amended]  
445 *Paragraph 11 of Part 1, of the fifth schedule of the 1999 Constitution of the Federal Republic of Nigeria as*  
446 *amended,*

447 [Paragraph 3 of the Third Schedule, Part 1, Section A of the 1999 Constitution of the Federal Republic of Nigeria as amended]  
448 *Paragraph 3 of the Third Schedule, Part 1, Section A of the 1999 Constitution of the Federal Republic of*  
449 *Nigeria as amended,*

450 [Ayodele (2014)] 'Performance Measurement and Management'. O F Ayodele . *School of Business and Human*  
451 *Resources Management*, (Lagos) 20/06/2014. National Open University

452 [Pagbemi (2014)] *Performance Measurement and Management, a Publication of the School of Business and*  
453 *Human Resources Management*, A O Pagbemi . 2014. June 2014. Lagos. p. 20. National Open University

454 [Obasanjo ()] *President Obasanjo's Speech at the Signing Ceremony of the Anti-Corruption Law of the Federal*  
455 *Republic of Nigeria*, O Obasanjo . 2000. Lagos: Times Press.

456 [Marshall et al. (2015)] 'Public Service in 23. Nigeria-An Overview of Functions and Code of Conduct'. Junaidu  
457 Marshall , Bello , Aminu M Murtala . *Global Journal of Politics and Law Research* 2015. March 2015. 3 (1)  
458 p. .

459 [Salisu ()] M Salisu . *Corruption in Nigeria*, 2006. 2000-2006), pp 1-2, 15. p. 23. Lancaster University Management  
460 School (Working Paper)

461 [Section 98(1) of the Criminal Code, The Laws of the Federation of Nigeria and Lagos ()] *Section 98(1) of the*  
462 *Criminal Code, The Laws of the Federation of Nigeria and Lagos*, 1958.

463 [Sections 171, 172, 206, 208 and 318 and in section 10 of Third Schedule of the 1999 Constitution of the Federal Republic of Nigeria]  
464 *Sections 171, 172, 206, 208 and 318 and in section 10 of Third Schedule of the 1999 Constitution of the*  
465 *Federal Republic of Nigeria*, (as amended)

466 [Frn ()] *The 1999 Constitution of the Federal Republic of Nigeria with amendment*, Frn . 2011. 2011.

467 [Abomaye-Nimenibo ()] *The Concept and Practice of Taxation in Nigeria*, W A Abomaye-Nimenibo . 2017. Port  
468 Harcourt: Nimehas Publishers.

469 [The International Federation of Accountants 39 The News Watch (2004)] 'The International Federation of Ac-  
470 *countants 39*'. *The News Watch* 2004. July 17. p. .

471 [The Third and Fifth Schedules of the 1999 Constitution of the Federal Republic of Nigeria The Standard Dictionary Internationala]  
472 *'The Third and Fifth Schedules of the 1999 Constitution of the Federal Republic of Nigeria'. The Standard*  
473 *Dictionary International Edition*, 1978 42. (as amended)

474 [The Transparency International Corruption Index (CPI) ()] [http://www.investinestonia.com/pdf/](http://www.investinestonia.com/pdf/CPI_2004.pdf)  
475 *CPI\_2004.pdf* > *The Transparency International Corruption Index (CPI)*, 2002. 2004. May 28. 2008. (45.  
476 Transparency International Corruption Index)

477 [Adebo] *Why Code of Conduct Bureau should not be removed from the Constitution (2012) available*  
478 *at www.thisdaylive.com/article/why-codeof-conduct -bureau-should not-be-removed-from-the constitution*, A  
479 Adebo . 05 / 02 / 2015.

480 [Adebo ()] *Why Code of Conduct Bureau should not be removed from the Constitution-available at*  
481 *www.thisdaylive.com/article/whycode-of -conduct -bureau -should not -be -removed -from -the -constitution*,  
482 Ademola Adebo . 2012. 2018.

483 [Dankofa (ed.)] *Work Attitude and Organization Efficiency: The Need to Enforce the Code of Conduct in the*  
484 *Nigerian Civil Service in Wamako*, Y Dankofa . A.M (ed.)