

**IN THE HIGH COURT OF JUSTICE OF KADUNA STATE OF NIGERIA**

**IN THE KADUNA JUDICIAL DIVISION**

**HOLDEN AT COURT 6 KADUNA**

**DELIVERED THIS 7<sup>TH</sup> DAY OF MARCH 2017**

**BEFORE THE HON: JUSTICE M:T:M ALIYU**

**SUIT NO: KDH/KAD/EFCC/13**

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

\_\_\_\_\_ COMPLAINANT

VS

ALHAJI ABDURRASHEED HARUNA

\_\_\_\_\_ DEFENDANT

Accused in Court

Aishatu Ibrahim prosecuting

A Buhari for Accused

RULING DELIVERED ON 07/03/2017

The accused person is standing trial on a two-count charge of cheating. The charge reads:

1. That you ALHAJI ABDULRAHEED HARUNA on or about the 29<sup>th</sup> of October, 2010 in Kaduna within the judicial division of the High Court of Justice of Kaduna state dishonestly issued a Spring Bank Cheque No. 14072636 dated 29<sup>th</sup> of October, 2010 in the sum of 9,000,000.00 (Nine Million Naira only) to Abel Akala by deceiving him to believe that the said cheque will be honoured upon presentation which you knew to be false and thereby committed an offence contrary to Section 320(b) and punishable under section 322 of the Penal Code.
2. That you ALHAJI ABDULRASHEED HARUNA on or about the 29<sup>th</sup> of October, 2010 in Kaduna within the Judicial Division of the High Court of Justice of Kaduna State dishonestly issued a spring bank cheque No. 14072637 dated 29<sup>th</sup> of October 2010 in the sum of N7,000,000 (seven million) naira to Abel Akala by deceiving him to believe that the said cheque would be honoured upon presentation which you knew to be false and hereby committed an offence contrary to section 320(b) and punishable under section 322 of the penal code.

The accused person pleaded not guilty to both counts. In the effort to prove the guilt of the accused person, the prosecution called three witnesses. After the prosecution has closed his case, the learned counsel for the accused person indicated that he will be applying for a no case submission. Counsel on both sides agreed to file written submission. The accused's address of no case submission was filed

on 18<sup>th</sup> April 2016, the reply address of the prosecution was filed on 25<sup>th</sup> August 2016 and on 25<sup>th</sup> August 2016, reply on points of law was filed by the learned counsel for the accused person.

In the accused address on no case submission, it was contended that the totality of the evidence led by the prosecution has not established the essential ingredients of the offence of cheating and there is no basis for calling the accused to enter his defence. The following cases were referred to in support

1. TONGO VS COP (2007) 12 NWLR (PT 1049) 525@544 (E-F).
2. UGWU VS STATE (2013) 4 NWLR (PT 1343) 1@188 (H- 109A).
3. FRN VS EKWENUGO (2007) 3 NWLR (PT 1021) 209@215 (G-A).

The decision in UZOAGBA VS COP (2014) 5 NWLR (PT 1401) 441@457 (A-B) where the supreme court identified the ingredients of the offence of cheating was referred to and it was submitted that none of the ingredients has been proved.

It was further contended that the evidence of the prosecution was centered around the presentation of dishonoured cheques and there is no evidence to prove that the accused received any property from the nominal complainant on the basis of which the cheques exh 1 & 2 were issued to him. The evidence of PW3 under cross examination where he made similar admission was referred to in support and it was submitted that since the accused did not receive any property from the nominal complainant, the issue of the accused deceiving the nominal complainant does not arise.

On the ingredient that the nominal complainant did or omitted to do something which he was not bound to do; an essential ingredient of the offence under section 320(b) of the penal code, it was submitted that no evidence was led to prove or suggest what the nominal complainant would have done or refused to do occasioned by the issuance of the cheques. That the nominal complainant did not invest any money with the accused person and the accused person did not guarantee repayment of his investment with New Life Multipurpose Society Limited. That there is no vicarious liability in criminal jurisprudence that makes the son liable for the offence of the father.

In the prosecution's written reply to the no case submission, it was contended that the prosecution has established through its three witnesses and 6 documentary exhibits that the accused falsely represented himself as the father of one Dapo Oladimeji, the Chairman/CEO of New Life Multipurpose Cooperative Society. That the accused deceived PW1 the nominal complainant to abandon the case against the said Dapo who is at large and undertook to refund the money owed to the nominal complainant. That the evidence that the accused issued cheques to PW1 knowing fully well that the account is for a particular purpose and the cheques would not be honoured. It was submitted that a prima facie case has been established and the accused should be called upon to enter his defence. See DURU VS NWOSU (1989) 4 NWLR (PT 113) 24@31, AJIBOYE VS STATE (1995) 8 NWLR (PT 414) 418, FAGBORIOLA VS FRN (2014) ALLFWLR (PT 724) & ADUKWU VS FRN (2009) 9 NWLR (PT 1146) 370.

It was further submitted that the accused took responsibility of the money in Dapo's custody and issued the cheques deceiving PW1 into believing that the cheques would be honoured.

On the meaning of prima facie case, UBANATU VS COP (2000) 1 SC 31@37, was referred to. It was urged to hold that a prima facie case has been established by the prosecution and to call upon the accused to enter his defence.

In the prosecution's reply on points of law, the allegation was levelled at the accused in his written reply to the no case submission that it was characterized by extraneous materials in the guise of evidence led at the trial. That no evidence was led by the prosecution that the accused prevailed on the nominal complainant to drop the complaint of fraud levelled against the president of New Life Multipurpose

Society Limited with the police with the promise that the accused would settle the liability of the said person.

It has been stated in plethora of authorities that no case to answer may be properly made and upheld in the following circumstances.

1. When there has been no evidence to prove an essential element of the alleged offence either directly, circumstantially, or inferentially.
2. When the evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal can convict on it, see *IBEZIAKO VS COP* (1963) 1 SCNLR 99, *UBANATU VS COP* (Supra) @38 & *UGWU VS STATE* (Supra) @188, to mention a few.

No case submission is upheld where the evidence adduced by the prosecution does not disclose a prima facie case. See *UBANATU VS COP* (Supra) @37 & *UGWU VS STATE* (Supra) @188. As stated in these cases, a prima facie case means a ground for proceeding against the accused. It is not the same proof which comes later when the court must find whether the accused is guilty or not guilty. But such evidence which if uncontradicted and believed would be difficult to prove the case against the accused.

Now having warned myself that it is not the proof beyond reasonable doubt that I would seek the evidence to establish in this case to show a prima facie case against the accused, it is my duty to be satisfied that there is in Law a nexus between the criminal conduct and the offence the accused was charged with. In *SHATA VS FRN* (2009) 10 NWLR (PT 1149) 403@413, it was stated that such a connection must be apparent on the face of the evidence led by the prosecution.

The ground upon which the accused person premised its no case submission is that the prosecution has led no evidence to establish the essential element of the offence of cheating the accused was charged with.

Parties seem to be ad idem that for the offence of cheating under section 320(a) of the penal code, the following ingredients must be established.

- i. That the person deceived delivered to someone or consented that some person shall retain certain property,
- ii. That the person deceived was induced by accused to part with the property,
- iii. That the person acted under the inducement of the accused, and
- iv. That the accused had acted fraudulently or dishonestly when inducing that person.

The ingredients of cheating under section 320(b) of the penal code are.

- i. That the person deceived, did or omitted to do something which he was no bound to do or omits to do,
- ii. That the person acted upon the inducement in consequence of his having been deceived by the accused,
- iii. That the accused so induced that person intentionally
- iv. That the act of omission caused or was likely to cause damage or harm to that person in body, mind, reputation, or property.

It is pertinent at this stage to point out that the accused was charged with the offence of (b) of section 320 of the penal code and not the offence of cheating under (a) of the said section. Be that as is may, so long as the evidence establish essential elements of either offence, the no case submission would

be overruled. If on the other hand, it failed to establish the essential ingredients of both provisions of section 320, the submission of no case to answer would be sustained. In this light, I have carefully considered the evidence of PW1, PW2 & PW3 as well as the documents tendered by the prosecution particularly exhibit 1, 2, 3, 4, 5, & 6 which include the two cheques issued by the accused person to PW1, the petition of PW1 to EFCC, the bank documents in relation to the account from which the cheques were drawn and indeed the extrajudicial statement of the accused person.

The particulars of the charge in this case suggests the offence under section 320(a) of the penal code. Both complaints alleged that the accused dishonestly issued cheques to PW1 and deceived him to believe that they will be honoured upon presentation. To establish the actus reus in this subsection, there must be property delivered or retained in consequence of the deceit. In the instant case, no property was delivered by the nominal complainant to the accused person or was retained by him in consequence of the deceit.

The evidence led in this case however seems to allege the offence defined under section 320(b) of the penal code. The actus reus constituting this offence is the action or omission induced by the deceit. The act or omission must also have caused or likely to cause damage or harm in body, mind, reputation, or property. It is therefore not necessary that the damage or harm should have been caused. See Law of crimes in Nigeria revised edition by professor K. S Chukkol @ pg 376.

Having said this, the evidence of the PW1 is important to the determination of the nature of the deceit. His testimony shows that he invested about 20,000,000 (twenty million) naira in New Life Multipurpose Society Limited, a business PW3 introduced him to. One day subsequently, the PW3 called him that the president of the New Life Multipurpose Society limited herein after called the Society was arrested at the police headquarters Kaduna. The PW1 proceeded to the police headquarters and it was at the office of the deputy police commissioner of police that he met the accused for the first time. the accused told him that he is the father of the president of the society and he begged him to follow him to see the commissioner of police. When the commissioner of police allowed him to see the president of the society, the witness allowed the accused to escort him, they met the president of the society where he was detained, he pleaded with them to help secure his bail. The accused also pleaded with PW1 to secure the bail of his son, in the words of PW1;

“accused said as a father, he has the responsibility and whatever support I can give to secure the bail of his son, he will appreciate it. That for a start, he was prepared to address the mammoth crowd in the police headquarters. He solicited that I should assist him with my presence as a general which will give credibility to whatever he will say. I obliged him, the crowd there were serving and retired soldiers and other people. The accused made a pledge before them having introduced himself as the father of the president of the society that they should calm down. He assured them as the father, he ordered them to disperse and go home. The crowd shouted no! No! some soldiers said they are taking him to the barracks and will release him when their money is paid. The accused asked me to help and I now spoke and told the soldiers to keep calm as I am a retired general and that many know me as NDA commandant. I told them that I will protect their interest and ask them to heed to the advice of the accused and his commitments. After some time, they calmed down and I and the accused went to the commissioner of police and pleaded for bail for the president. The commissioner of police said he cannot release the president to the accused because of the huge sum of money involved. He released the president to me. I asked the accused for guarantee that if the president of the New Life is released, he will not run away, the accused told me that I should trust him that he has sufficient funds to support the requirements for bail. The accused later came back to my house and told me that he has gone back to the commissioner of police and has sorted things for the bail. He told me to be rest assured that he will make some funds available to give to some of the soldiers and other contributors...”

In august 2010, the accused issued three cheques of nine million, seven million and five million to PW1, all the cheques were postdated and all bounced on presentation on the grounds that the account on which they were drawn was a dedicated account.

I think the above evidence show representation made by the accused to the PW1 that will support a prima facie case of cheating under section 320(b) of the penal code. I believe there is need for the accused person to leave evidence in defence of the charge. I so hold an according dismiss the no case submission.

Signed

Justice MTM Aliyu

7/03/2017