

IN THE HIGH COURT OF JUSTICE OF KADUNA STATE OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION

HOLDEN AT KADUNA

BEFORE: THE HON. JUSTICE M.T.M. ALIYUJUDGE

SUIT NO. KDH/KAD/15/EFCC/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

1. AHMED TIJANI UMAR
2. EXIMAB INTERGRATED LINK LTD }.....ACCUSED PERSONS
3. MINANTA ENTERPRISES LIMITED }

17 - 01 - 2018

1st defendant in court, represents

Salele Nasiru with him J. I. Douglas for

Prosecution.

R U L I N G

This notice of preliminary objection was filed by the three defendants to quash the charge in this case or in the alternative, to strike out the 3 counts for being incompetent. The application is premised on four grounds;-

1. The charge as presently constituted is incompetent.
2. All the counts of the charge are defective.
3. The particulars of offences alleged in the entire charge do not support the offences charged.



Zulfair K. Chafe.

4. The economic and financial crimes commission has no power to institute criminal action in the name of the Federal Republic of Nigeria.

Three issues were formulated by the learned counsel for the applicants.

The issues are:-

- 1) Whether upon examination of the proof of evidence, a prima facie case exists to put the accused persons/applicants to trial for the offence of obtaining by false pretence.
- 2) Whether upon a thorough examination of the proof of evidence and ingredients of the offences for which the accused persons/applicants are charged, the prosecution has established any link between the accused persons/applicants to be put on trial for offences in relation to dishonoured cheques.
- 3) Whether the EFCC has the locus standi to file a charge in the name of the Federal Republic of Nigeria without the fiat of the Attorney-General of the Federation and in the face of the provisions of section 1 (2) (a) and (b) of the EFCC Act.

The learned prosecutor filed a counter affidavit of 7 paragraphs and a written address. He adopted the issues raised by the accused persons/applicants. I shall be guided by the issues argued by counsel.

Mr. K. Olowookere, learned counsel for the applicants submits on Issue 1. that by virtue of section 1 (1) of the AFF & OROA, false pretence must be established, it must be a misrepresentation of a fact or

law, be it past or present. See **F.R.N. VS. NOAH TITILAYO & ANOR** (2005)9 C.L.R. 122 lines 5 – 10. For the offence to be established, several ingredients must be present. See **ALAKE VS THE STATE** (1991) 7 N.W.L.R. (pt. 205) 507 @ 591, **ONWUDUNE VS F.R.N.** (2006) ALL FWLR (pt. 319) 774.

Analysing the statements of the representative of FENABROS LTD, Jimoh Ahmed and the statement of the first accused person, he submits that there was an existing head contract, there was a contract between the 2nd accused and the complainant and there was financial commitment between them. It is his argument that there was no misrepresentation from the proof of evidence.

The charge he submits discloses no offence as envisaged in section 419 of the Criminal Code Act which provision he said is in pari materia with section 1 (1) (b) of the Advance fee fraud and other fraud related offences Act. He referred me to the case of **STATE VS OSLER**, and he submits that where money is obtained under a contract for doing an act which was not done, the remedy of such a victim lies in a civil action.

Learned counsel for the prosecutor in his reply stated that the proof of evidence must be looked at to determine if there is a prima facie case. I was referred to **IKOMI VS THE STATE** (1986) 3 NWLR (pt. 28) p. 340. I was urged to hold that there was ground for proceeding with the charge; a crime was committed and a link shown between the accused persons. I was urged to disregard the argument of the accused persons.

On Issue 2, the defendants' counsel argued that the proof of evidence and the provision of the Dishonoured Cheques Offences Act are in conflict. That the proof of evidence should disclose the Mens Rea and Actus Reus of the defendants. He further submits that the alleged dud

cheques cannot be linked to the 1st and 3rd accused persons. That the contract is between the **FENABROS LIMITED AND EXIMAB INTEGRATED LINKS LTD.** That the 3rd defendant – Minanta Enterprises Limited did not derive any benefit whatsoever from the transaction and that the dud cheque is not the property of the 1st defendant. He cited the case of **FEDERAL REPUBLIC OF NIGERIA VS. IBRAHIM SALEH** (2013) FCT/HC/CRR/82/09. I was urged to hold that the 1st and 3rd defendants are not liable for the offence of issuing of dud cheques.

In response to the submissions on this issue, learned prosecutor submits that the contention that the defendants are separate and distinct personalities with no connection between them is misplaced. According to him, the proof of evidence proves that the contract which was the subject matter that gave rise to this case was awarded by the 2nd defendant and the dishonoured cheques belong to the 3rd defendant. That the 1st defendant is a Director in both 2nd and 3rd defendant companies. Further that, the criminal liability of a body corporate lies with the directing minds of such company. He cited sections 343 (6) and 369 of CAMA, **TESCO SUPER MARKETS LIMITED VS NATHIAS** (1972) App. Cas. 153, 170 -72 (H-L). The learned prosecutor further submits that a cheque is a legal tender issued by an account holder to another person to draw money from. See **ABEKE VS STATE** (2007) Vol. 10 QCCR 1 – 203.

On Issue 3, the learned counsel for the defendants submits that an application to quash a charge may be filed after the plea is taken. I was referred to **ADUKWU VS F.R.N.** (2009)9 NWLR (pt. 1146) 370, **ABACHA VS STATE** (2002) 11 NWLR (pt. 779)437. He submits that section 1 (2) (a) (b) (c) of the Economic and Financial Crimes

Commission does not confer power on the Commission to file a charge in the name of the "Federal Republic of Nigeria". That the Commission can only institute an action in its name. That the fact that the charge was brought under a name not recognised or authorised by the statute creating the Commission, the charge should be held incompetent. He further submits that by section 3 (2) of the dishonoured cheques (offences) Act such offences can only be initiated by the Attorney-General of the Federation, and he cannot delegate such powers. I was referred to **STATE VS ILORI** (1983) 1SCNLR @ pg. 94 and section 174 (1) (2) and (3) of the Constitution of the Federal Republic of Nigeria.

The learned prosecutor in response submits that plethora of authorities have established that the EFCC can institute criminal actions in its name. **F.R.N VS OSAHON** (2006)5 NWLR (pt. 974) p. 361. **NYAME VS F.R.N.** (2010)7 NWLR (pt. 1193) 344, and **AKINGBOLA VS F.R.N.** (2012)9 NWLR (pt. 1306)511 at 532 to mention a few were cited.

He further argued that the provision of section 7 (2) (f) of the EFCC Act, 2004 gives the commission powers to prosecute offences under the dishonoured cheques (offences) Act. I was referred to the case of **ALICE OKESUYI VS F.A. LAWAL** (1991)2 SCNJ 1. He further argued that the commission need not have a fiat from the Attorney-General of the Federation or State to prosecute offences. On the whole, I was urged to discountenance the objection.

I now proceed to consider the 3 issues argued.

Issue 1

The charge in count 1 reads:-

"That you Ahmed Tijjani Umar and Eximab
Integrated Links Limited on or about the 10th of

August 2010 in Kaduna with intent to defraud obtained the sum of N24,000,000.00..... from Fenabros Limited by falsely representing to it in respect of a contract for the supply of pipes and sanitary wares which pretence you knew to be false.....”

One of the ingredients of the offence of obtaining property by false pretence is that there must be a representation made by the defendant which is false. See EDE V F.R.N (2001) 1 NWLR (pt. 695) 502 at 512. Section 20 of the Advance Fee Fraud and Other Fraud Offences Act 2006 defined “False Pretence” to mean;

“A representation, whether deliberate or reckless, made by word in writing or by conduct of a matter of fact or law, either past or present, which representation is false in fact or law and which the person making it knows to be false or does not believe to be true.”

In an application to quash a charge on the grounds that the proof of evidence does not disclose a prima facie case against the accused, the court is to be guided by the following principles:-

1. The court must confine itself to the proof of evidence and the statements of the witnesses attached.
2. The proof of evidence must sufficiently link the accused to the offence though conclusive proof is not required at that stage.

3. Where there is no sufficient linkage of the accused to the offence alleged, the court is obliged to quash the charge. See ABACHA V.

STATE (2002) 11 NWLR (pt 779) 434 at 483 and 497, GRANGE V. FRN (2010) 7 NWLR (pt. 1192) 135 at 163 and OHWOVORIOLE VS F R N (2003) 2 NWLR (pt. 803) 106 at 189, 190, 194 – 196 and 208. In DADA V. F R N (2014) LPELER – 24255 (C A) the court explained the meaning of "proof of Evidence" at p. 15 in the following terms:-

"The proof of evidence are not by themselves pieces of judicial evidence – see PIUS V THE STATE (2012) LPELER – 9304 (C A) and F R N V. WABARA & ORS (2013) LPELER- 2008 3(SC) where the Supreme Court explained – "Proof of Evidence" are not the same as the statements of the witnesses the appellant would call at the trial. Proof of evidence are summaries of the statements of those witnesses to be called at the trial by the appellant."

It is clear from these authorities that in the consideration of whether a prima facie case has been made to charge the defendants I am to confine my inquiry to the summaries of the statements of the witnesses to be called by the prosecution as well as the statements of the witnesses attached.

I have carefully read the summaries of the evidence of the 5 investigating officers, those of the two Access Bank Plc witnesses and those of the Managing Director and the Representative of the nominal complainant. I also read the statements of Jimoh Ahmed (the

Representative of the nominal complainant). Kabiru M. Hadejia and the extra judicial statement of the 1st defendant.

From the proof of evidence, the 5 investigating officers will testify on the investigation of the case from the time the petition against the defendants was received and assigned to them. They wrote letters in the course of investigation, to the Corporate Affairs Commission, the clerk of the House of Representative and to Access Bank Plc. They wrote to Corporate Affairs Commission to confirm whether 2nd defendant was registered. They wrote to the clerk of the House of Representative to confirm the existence or otherwise of the contract for the construction of the National Assembly Staff Quarters awarded to the 2nd defendant and to the Access Bank for the Accounts opening package of the "accused person", the Statement of Account and the reason why cheques were returned unpaid.

The 2 Access Bank Staffs are to confirm the request of the EFCC and that they obliged the request by supply of the documents and giving the reason why the two cheques No.s 105 and 106 were returned unpaid.

The Managing Director of the nominal complainant Mr. Nmegbuanaeze Francis is to confirm that they authored the petition against the defendant and to state that he mandated the company's Market Manager to represent the company to adopt the petition and supply EFCC with all related documents requested.

The nominal complainants representative, Ahmed Jimoh is to state that the accused awarded a contract to their company for the supply of PVC pipes and fittings and that they paid N24 million to the defendants who issued a receipt in acknowledgment.

There are 4 statements attached to the proof of evidence. There is the statement of Jimoh Ahmed, the representative of the nominal complainant. There is the extra judicial statement of the 1st defendant dated 28th January, 2014. There are also two statements made by one Kabir Mohammed Hadejia on the 21st of March, 2014 and 3rd September, 2014. The statements of Kabir Mohammed Hadejia who was not listed as a witness in the proof of evidence is that he refunded on behalf of the 1st defendant the sum of ₦1,000,000.00 and ₦2,000,000 to the nominal complainant.

The statement of the representative of the nominal complainant is terse and in view of his importance, as a witness from the nominal complainant I reproduce his statement as follows:-

“As a representative of FENABROS LTD ONITSHA concern the matter between FENABROS LTD and EXIMAB company. The EXIMAB advertise on a newspaper concern their awarded National Assembly Building contract which we went and bid for the supply of PVC pipes and fittings and they agreed to give us the contract and that we have to pay for 3% of total sum of contract which we give them (EXIMAB) the money with receipt giving to us and we are also asked to obtain a bank guarantee, also we did, after completion of our own obligation, the Eximab fails to give us the contract by not giving us mobilization fees, we now demand for refund of our money which we follows up for more than a year before refunding ₦7, 500,000 which they

promise to pay us the balance within three months for the balance of N16,000,000. But since then, he could not meet up with the agreement. The Eximab Intergrated Link is situated at Area 1 near NTA at Abuja. He also have his personal person that he namely be as his representative to us by name Alhaji.”

The relevant portion of the 1st defendant's extra judicial statement dated 28th January, 2014 reads:-

“Sometime 13 March 2009, i entered in an agreement with National Assembly to build 3,000 housing unit in the memorandum of understanding there are obligations of which my company Eximab Integrated Link Limited are responsible to and other obligations are to the Client National Assembly (among there obligation) the total contract sum is about N38,000,000,000.00. In the memorandum of understanding the National Assembly will provide as follows under the obligation.....

6.1 (a) is to provide irrevocable management standing payment – Order. 6.1c to provide any information and support to the developer that will facilitate the smooth execution of the scheme at no cost or condition. 6.1d facilitate building approval or permission from the relevant authority throughout the duration of the scheme and the last item on these obligation is that the

client will shall provide to the developer a Bank guarantee. Among all the client obligation they only provide irrevocable management standing payment order. We have too many company over 8,000 eight thousand companies that are interested to be part of the contractors that will be screen to do the job and we need only about two hundred companies and the only way out for us in Eximab company is to invite all of them into a hall close to our company call Simony Hotel were we address all of them that we facing some challenges on land development of FCDA and the only way to tackle it is to buy few land to start construction as pace one of the project pending when FCDA resolve these issue with the management of National Assembly. The issue is that long ago FCDA land development has given three different allocation to the management of National Assembly for the same purpose of staff housing scheme they want the management to account for the three plot before they issued another plot. We both agreed in the meeting with the sub-contractors instead of them paying some percentage to three various bank to issued the performance bond everyone will paid at least one to three percent of the contract that will be awarded to each and every one of them. So we can use the money to sorce land for the purpose of the project so that we save time before

National Assembly resolve with FCDA. Finabros company paid N24,000,000 about 0.1 percent of these contract sum. We use the money the sub-contractors paid about N200,000,000 add with our company Eximab Integrated Link Ltd money which amount to about N700,000,000 to buy lands at Lokogoma District about 21 hectares and 11 hector at Kaura Kaura district when the National Assembly fail to fulfil there obligation. We started having problem with sum of our contractors and we filed a case against National Assembly of which the case still going on and we decided to start selling those lands to pay off the sub-contractors."

From the facts in the summaries of the evidence of the witnesses highlighted above and the statements of the witnesses including the extra judicial statement of the 1st defendant the 2nd defendant had a contract between it and the National Assembly which it sub-contracted to the nominal complainant and other sub-contractors. To execute the sub-contracts, the 2nd defendant reached an understanding with the sub-contractors including the nominal argument. Unfortunately, the National Assembly breached the terms of the main contract which frustrated the contract and the sub-contracts.

The position of things having changed, the 2nd defendant has started refunding the money paid by the nominal complainant. I agree with the submission of learned counsel for the defendants that no false representation has been alleged in the proof of evidence against the 1st and 2nd defendants. The learned prosecutor has argued that in

considering whether a prima facie case has been made the court consider and analyze not only the statements of the accused but also the summary statements of the witnesses vis-a-vis the documentary evidence attached to the proof of evidence. I agree that documents which were explained in the proof of evidence and or in the statements of the witnesses must be considered by the court. Where however as in this case, no document has been explained in the summaries of witnesses and in the statements of witnesses which disclose prima facie evidence that the offence charged has been committed, the court has no duty to analyze the documents to find an offence that was not linked to the defendants in the proof of evidence. Unfortunately, learned prosecutor could not tell us the evidence that supports the charge that the 1st and 2nd defendants obtained property from the nominal complainant by false pretence. I am mindful of the fact that what the information should disclose is not the guilt of the defendants. But a prima facie case for them to answer ABACHA V STATE (2002) 11 NWLR (pt. 779) 437 at 497. I also agree that prima facie means that there is ground for proceeding. I took account of all these principles of law and i still could not find that the facts disclosed in the proof of evidence and statements of witnesses attached, allege false representation against the defendants in respect of the transaction between them and the nominal complainant. I so hold and settle issue 1 against the prosecution.

ISSUE 2

Counts 2 and 3 which relates to this issue read:-

"COUNT TWO

That Ahmed Tijjani Umar and Minanta Enterprises Limited, on or about the 9th day of January, 2012 in Kaduna within the Judicial Division of the High Court of Justice of Kaduna State issued an Access Bank Plc cheque with serial No. 00000105 dated the 9th January 2012 for the sum of N7,500,000.00 to Fenabros Limited which was presented to Access Bank Plc and returned unpaid on the ground that no sufficient funds were standing to the credit of the drawer as at 18th January, 2012 the date it was presented.....”

“COUNT THREE

That Ahmed Tijjani Umar and Minanta Enterprises Limited on or about the 9th day of January, 2012 in Kaduna.....issued on Access Bank Plc cheque with serial No. 00000106 dated 9th January 2012 for the sum of N7,500,000.00 to Fenabros Limited which was presented to Access Bank Plc and returned unpaid on the ground that no sufficient funds were standing to the credit of the drawer as at 18th January, 2012 the date it was presented.....”

The offence charged is contrary to section 1 (1) (a) and punishable under section 1 (1) (b) of the dishonoured cheques (offences) Act of the Laws of the Federation of Nigeria 2004.

To link the defendants to the offence charged the proof of evidence must show prima facie evidence that the defendants obtained or induced the delivering of anything capable of being stolen to themselves or to any other person by means of a cheque. The proof of evidence as well as the charge in this case refers to the two cheques alleged in this case. Both cheques were issued by the 3rd defendant of which the 1st defendant is its Director. The proof of evidence highlighted earlier in this ruling is clear that the sum of N24 Million paid by the nominal complainant was not paid to the 1st and 3rd defendants but to a different entity, the 2nd defendant. No evidence has been linked to the 3rd defendant that shows that it obtained or induced the delivery of the sum of N24 million to itself or to any other person by means of the 2 cheques in its case. Prima facie case can only be established where the issuer of the cheques either obtained or induced the delivery of the property capable of being stolen as in section 1 (1) (a) or where the issuer of the cheque obtained credit for himself or any other person as in section 1 (1) (b) of the Act. The proof of evidence in this case and the statements of witnesses attached all show that the issuer of the cheque i.e the 3rd defendant did not derive any benefit from the purported transaction. The entity which derived such benefit i.e the 2nd defendant did not issue the cheques. It is my humble view that where there is no prima facie link between the issuer of the cheque and the offence as in this case, the agent of the issuer of the cheque cannot also be linked with the offence.

I hold therefore that there is no prima facie case connecting the offence in counts 2 and 3 of the charge with the 1st and 3rd defendants. I settle issue 2 against the prosecution.

ISSUE 3

There is judicial authority that has settled the issue raised by the defence concerning the prosecutorial powers of the EFCC to initiate criminal prosecution in the name of the Attorney-General of Federation. In *JINADU V. FRN* (2015) LPELR – 24381 (C A) it was stated at pp. 16 and 17 that the EFCC can institute a case in the name of the Attorney-General of Federation and not necessarily in its name only.

Without much ado therefore, i settle issue 3 in favour of the prosecution and affirmatively. In the final analysis therefore and for all the reasons supplied in this ruling it is right to and proper to quash the 3 counts charge in this case. In *ABACHA V. STATE* (2002)11 NWLR (pt. 779) 434 at 513 the Supreme Court stated:-

“.....Where a person is innocent he is free and ought not to be put on trial.....”

At p. 548 the court further held:-

“The courts have inherent jurisdiction to prevent abuse of their process. The judicial power which is conferred on the courts is intended to be used in deciding issues in genuine cases or controversies. The power of courts to prevent abuse of powers includes the power to safeguard an accused person from oppression and prejudice such as would result if he is sent to trial pursuant to an information which discloses no offence with which he is in any way linked.”

It is on the strength of the above findings and decision of the Supreme Court that I hereby quash the 3 count charge against the 3 defendants.

Signed

Hon. Justice M.T.M. Aliyu - Judge

17/01/18

S.B. Wujat for defendants.

WUJAT – I apologise for coming late.



Zulfar-K. Chafe.