


IN THE HIGH COURT OF ENUGU STATE OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
BEFORE HIS LORDSHIP, HON. JUSTICE K.I. OKPE-JUDGE
ON WEDNESDAY THE 25TH OF APRIL, 2018.

BETWEEN CHARGE NO: E/112C/2016
FEDERAL REPUBLIC OF NIGERIA ... COMPLAINANT
AND
SAMUEL OVUTE
(Trading under the name and style of
OGBUEGU & SONS ENTERPRISES NIG.) ... DEFENDANT

JUDGMENT

This charge was filed by Fortune Amina I. Asemebo Esq of Economic & Financial Crime Commission (EFCC) on the 4th day of July 2016. The defendant was charged under two counts and they read as follows:

COUNT ONE

 (Signature) 31/5/018

That you Samuel Ovute trading under the name and style of Obuegu & Sons Enterprises Nig. on or about the 14th April 2015 at Enugu within the Jurisdiction of the High Court of Enugu State, issued a Fidelity Bank Plc. cheque No. 18261737 dated the 14/4/2015 with the face value of (N914,380.00) Nine Hundred and Fourteen Thousand Three Hundred and Eighty Naira only, to Emmanuel Ugwoke trading under the name and style of Emma Ugwoke & Sons, the said cheque when presented for payment within three months was dishonoured on the ground of insufficient fund standing to the credit of the Account upon

which it was drawn and you thereby committed an offence contrary to section 1(1) (b) of the Dishonoured Cheque (Offences) Act Cap D11 Laws of the Federation 2004 and punishable under Section 1(1) (b) (i) (ii) of the same Act.

COUNT TWO

That you Samuel Ovute trading under the name and style of Obuegu & Sons Enterprises Nig. on or about the 17th April 2015 at Enugu within the Jurisdiction of the High Court of Enugu State, issued a Fidelity Bank Plc. cheque No. 18261732 dated the 17/4/2015 with the face value of (N915,690.00) Nine Hundred and Fifteen Thousand Six Hundred and Ninety Naira only, to Emmanuel Ugwoke trading under the name and style of Emma Ugwoke & Sons, the said cheque when presented for payment within three months was dishonoured on the ground of insufficient fund standing to the credit of the Account upon which it was drawn and you thereby committed an offence contrary to section 1(1) (b) of the Dishonoured Cheque (Offences) Act Cap D11 Laws of the Federation 2004 and punishable under section 1(1) (b) (i) (ii) of the same Act.

The defendant was arraigned on 28th of July 2016, the charge read to him and he pleaded not guilty to the two counts. Trial commenced on 6th of September 2016 with the evidence of the 1st witness for the complainant, Mrs. Uchenna Gloria Obiejesi, who testified as the PW1. She is a staff of Fidelity Bank Plc where the defendant maintained a bank account. She told this Court that her bank received cheques issued by the defendant

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that came through clearing and that the cheques were returned unpaid as the defendant's account was not funded.

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She also told this Court that her bank obliged the EFCC with the banking documents of the defendant and that she made statement to EFCC explaining why the defendant's cheques were returned unpaid. The following documents were tendered through her:

- a. Fidelity Bank Plc letter to EFCC dated 08/03/2016; Exhibit A.
- b. Account Mandate Form of the defendant with Fidelity Bank Plc; Exhibit A1.
- c. Defendant's statement of account with Fidelity Bank Plc; Exhibit A2;
- d. Fidelity Bank Plc certificate given pursuant to Section 84 of the Evidence Act 2011; Exhibit A3, and
- e. The statement Mrs. Uchenna Gloria Obiejesi, the PW1, made to EFCC on 14/06/2016; Exhibit B.

Under cross-examination, the PW1 explained that in accounting, a sum of money in brackets is an indication of minus. She admitted that she is not a chartered accountant but maintained that the account of the defendant was in debit on the days the cheques in issue in this case were presented for payment.

The 2nd witness for the complainant, Mr. Emmanuel Ugwoke, testified as the PW2. He does business in the name and style of Emm Ugwoke & Sons. He told this Court that the defendant is his good friend; that he used to supply beer to the defendant and when he

sells, he will pay him: that the defendant issued him with two Fidelity Bank Plc cheques dated 14/04/2015 and 17/04/2015 and when he went to cash the cheques, there was no money in the defendant's account. The two cheques were admitted in evidence and marked Exhibits C & C1 respectively.

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The PW2 also told this Court that when he approached the defendant on the unpaid cheques, he claimed he had placed his land for sale to raise the required money. He stated that after the return of the two cheques, the defendant paid him only N167,670.00 and they continued with the business. He further stated that when the defendant was not forthcoming with payment, he engaged a lawyer who wrote petition to EFCC and that he also made statement. The said petition to EFCC dated 19/01/2016 and his said statement were admitted in evidence and marked Exhibits D & E respectively.

Under cross-examination, the PW2 maintained that though there is no "DAR" or "DCR" or "BOUNCED" indication on the cheques, the stamps on the cheques were proof that they were presented for payment. He also maintained that the money still outstanding is in respect of the two cheques and not in respect of their other transactions. The witness stated that he entered into an agreement with the defendant on how he will pay the money and eventually instituted a civil suit against him. The Certified True Copy of the Court process was admitted in evidence and marked Exhibit F.

The next witness for the complainant, Mr. Tijani Kabo, testified as the PW3. He is a Deputy Detective Superintendent with the EFCC. He told this Court that he and his team

investigated the defendant on the allegation of issuance of dud cheques and obtaining by false pretence. He also told this Court how they obtained statements from the PW2 and the defendant; how they investigated the case by contacting the Corporate Affairs Commission and Fidelity Bank Plc. The statement of the defendant to EFCC dated 24/02/2016 and the letter from the Corporate Affairs Commission dated 14/04/2016 were admitted in evidence and marked Exhibits G & H respectively.

Under cross-examination, the PW3 admitted that he has no banking qualification and experience but that he can interpret bank statement. He maintained that issuance of dud cheque is an offence. He told this Court that they obtained the defendant's statement of account with Zenith Bank Plc but will not know why their lawyer did not include it in the proof of evidence. He admitted that though there are stamps on the unpaid cheques showing that they were presented for payment, they were not marked "bounced".

Then the last witness for the complainant, Miss Akanle Gbemisola, testified as the PW4. She is also a staff of EFCC and she confirmed that the PW3 was in the team that investigated the defendant and indeed did the questioning. She testified in line with the evidence of the PW3. She stated that when they got and analysed Zenith Bank Plc statement of account of the PW2, it showed that there were several payments made by the defendant into the account before and after the unpaid cheques were issued. She also stated that their analysis showed that the cheques in issue were presented for payment, passed through clearing house and bounced. She further testified that their analysis showed that the monies paid after the cheques in issue bounced were meant for the

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subsequent goods the defendant collected from the PW2. The following documents were tendered through the witness:

- i. Zenith Bank Plc letter to EFCC dated 22/03/2016; Exhibit J.
- ii. Application for account opening for Emma Ugwoke & Sons Enterprises; Exhibit J1 and
- iii. Statement of Account No 1013387917 for Emma Ugwoke & Sons Enterprises; Exhibit J2.

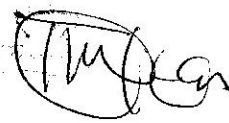
Under cross examination, this witness also agreed she has no banking experience but that she knows from her investigation experience when a cheque bounces. She also conceded that the cheques were not marked "DAR" or "DCR" or "BOUNCED" but that they were stamped. The prosecution closed its case after the evidence of the PW4 and the defendant filed application on no case to answer which was dismissed and the case adjourned for defence.

The defence commence on 18/07/2017 and continued on 17/10/2017 with the evidence of the defendant who testified as the DW1. The DW1 confirmed that he did business of drinks with the PW2 in 2014 and 2015; that it was in 2015 that they introduced his issuing post-dated cheques to the PW2 and a working agreement. The Debt Settlement Agreement dated 05/11/2015 was admitted in evidence and marked Exhibit K. He testified that business was not moving and he had to approach his bank and an overdraft was approved for him.

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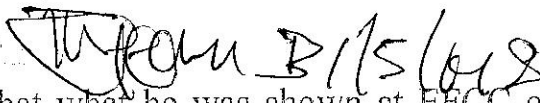
The Fidelity Bank Plc Letter of offer of Overdraft Facility for N1,500,000.00 in favour of the defendant and dated 06/01/2015 was admitted in evidence and marked Exhibit L. He testified that after he secured the overdraft, his transaction with the PW2 started moving until the month of April 2015 when his account officer informed him that the overdraft facility will drop into his account on 21st of the month. That by then, the PW2 had his cheques and he (the defendant) told him (the PW2) not to present the cheques until his account was credited. That to his surprise, the PW2 presented the cheques before the said 21st of April 2015 and his account officer called his attention and he immediately contacted the PW2 who claimed that it was his sales girl that presented the cheques and accepted to pay the bank charges.

The DW1 further testified that when the overdraft dropped into his account on the said 21st of April 2015, he transferred the N1,500,000.00 into the account of the PW2 and the PW2 confirmed that he received alert to that effect. He further testified that after about four days he paid additional N600,000.00 into the account of the PW2; that these two payments were more than the value of the two cheques now in issue as there were new supplies made to him by the PW2 via small van. It is the further evidence of the DW1 that in May 2015 his account officer told him that they have instruction not to give overdraft, which he referred to as TOD, again to customers and with the development he was unable to continue buying from the PW2. That he explained his predicament to the PW2 and he threatened to sentence him to prison.

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The witness told this Court that the PW2 followed the threat up with a petition to EFCC where he was shown about five cheques amounting to N5,000,000.00 and he told the officers at EFCC that what is outstanding in his transaction with the PW2 was N1.6 Million. He testified that the officers at EFCC insisted that he must pay for the entire cheques as he failed to collect back some of his cheques after making payments. This threat, he said, necessitated his engaging a lawyer who applied to Court for the enforcement of his fundamental right which was granted.

The witness confirmed that the PW2 instituted a civil suit claiming the outstanding balance of N1.6 Million and that consent Judgment was entered in the suit. The CTC of the consent Judgment in Suit No CME/401/2016 and the Terms of Settlement were admitted in evidence and marked Exhibits M & M1 respectively. It is also the evidence of the witness that while they were still at the Magistrate Court, EFCC officers called to inform him that they will be charging him to court on a Monday and when he called the PW2 to know why, he informed him that EFCC officers said that nobody takes them to court and goes free.


Under cross-examination, the witness insisted that what he was shown at EFCC office were five cheques. He maintained that he issued post-dated cheques as he was collecting goods from the PW2. He denied that the cheques in issue bounced as all that his account officer did was to return the cheques without marking them "bounced" as his account officer knew that his overdraft will be due in few days. He also told this Court that he issued about 50 to 70 cheques to the PW2 in a business relationship that involved more

than N300,000,000.00. He stated that it was after entering into agreement with the PW2 that he started issuing cheques to him as he took supply of goods from the PW2.

The DW1 was the only witness for the defendant and the case was adjourned for adoption of final written addresses which was done on 20/02/2018. The final written address of the defendant is dated 22/01/2018 and filed on the same date while that of the complainant is date 30/01/2018 and filed on 31/01/2018. On the 8th of February 2018, the defendant filed a reply on points of law. It is dated 05/02/2018.

Counsel for the defendant, Chuma Oguejiofor Esq, in his written address noted that the facts of the case already rests in the bosom of the court and proceeded to reproduce the two count charges and set out the ingredients of the offence that the prosecution must prove to secure conviction under Section 1(1) (b) of the Dishonoured Cheque (Offences) Act Cap. D11, Laws of the Federation 2004. Counsel then raised a sole issue for determination to wit: "whether the prosecution has proved its case against the accused person beyond reasonable doubt as to secure his conviction as charged." Counsel argued that the prosecution is under a legal obligation to prove the ingredients of the offence charged, citing *Woolmington v. DPP (1935) AC 462*. Counsel argued further that the cheques in issue (Exhibits C & C1) were not presented for payment within the time regime prescribed by law; that they were presented for payment on 14/4/2015 and 17/4/2015 respectively which are the dates on the face of the instruments.

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It is also the further argument of counsel for the defendant that the language of the relevant law is that the cheques have to be presented for encashment "not later than 3 months after the date of the cheque". Counsel then submitted that it means the cheques ought not to have been presented on the dates on the face of the instruments but after the dates which, according to counsel, ought to have been on 15/4/2015 and 18/4/2015 respectively.

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Counsel conceded that cheques can be presented for payment on the day of issue but submitted that for the purpose of compliance with the provisions of the Dishonoured Cheque (Offences) Act "the instrument must not be presented for payment on the same date *ex facie* the same but as from the next date". Counsel referred to and relied on *Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517* as authority that the maker of any law be it constitutional or otherwise does not use any word in vain. Counsel also cited *Edozie O. Aroh v. Odedo & Ors, Suit No. CA/E/EPT/01/2011* (an unreported judgment of the Court of Appeal, Enugu Division) where the use of the word "after" in Section 134(1) of the Electoral Act 2010 was interpreted.

It is also the contention of counsel for the defendant that there is a statutory defence to an offence under Section 1 of the Dishonoured Cheque (Offences) Act. He referred this Court to Section 1(3) of the Act which he reproduced. Counsel referred to evidence of the defendant on how he started the business relationship with the PW2 up to when he started issuing cheques to the PW2 as security for the supply of goods to him by the PW2. Counsel also referred to evidence of the defendant on his arrangement with Fidelity Bank

Plc for temporal overdraft facilities (TOD). Counsel noted that the defendant testified that when it became obvious that there will be a delay in the dropping of the overdraft facility of April 2015, he informed the PW2 to wait for few days after 17/04/2015 before presenting the cheques but the PW2 went on to present the cheques on 17/04/2015.

Further, the attention of this Court was drawn to the fact that the defendant testified that the said overdraft facility dropped on the 21/04/2015 and the same day he transferred the N1,500,000.00 facility to the PW2. Reference was made to Exhibit A2, Fidelity Bank Plc statement of account of the defendant, particularly the entries of 21/04/2015. Also, counsel referred to the evidence of the defendant to the effect that 4 days after transferring the said N1,500,000.00 to the PW2 he paid additional N600,000.00 to the PW2 and the total of the two payments is higher in value than the total value of the cheques now in issue. Finally on this, counsel referred to the evidence of the defendant on how Fidelity Bank Plc stopped the overdraft facility and the reactions of the PW2 which culminated to his reporting the matter to the EFCC, instituting a civil action at the Magistrate Court and, lastly, this present case.

Counsel then submitted that from the evidence of the defendant, he had made arrangement by which Exhibits C and C1 were to be honoured had the complainant been patient for some days before presenting the cheques for payment. Counsel further submitted that:

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"In putting together the arrangement for a TOD facility from his bank so as to raise fund and liquidate the debt represented on the face of Exhibits C and C1, the accused person had reasonable ground to believe that the cheques would be honoured on presentation and in fact they had been honoured between 21/4/2015 and 27/4/2015".

Counsel then urged this Court to hold that the explanations proffered by the accused person in his defence suffice to exonerate him from criminal responsibility with regard to the alleged offence. This Court was then urged to discharge and acquit the defendant.

On his part, counsel for the complainant, Fortune Amina I. Asemebo Esq, in the prosecution's final written address reproduced the two counts and after a brief introduction, listed the exhibits tendered in this trial. Counsel also raised one issue for determination to wit: "whether the prosecution has proved the ingredients of the offence of issuance of dud cheque against the defendant?" Counsel conceded that in criminal trial, the burden of proof is always on the prosecution in proving beyond reasonable doubt the guilt of the accused, citing *Awosika v. State* (2010) 9 NWLR (Pt. 1198) 49 @ 52; that the proof will entail proving all the ingredients of the particular offence, citing *Olodoun v. The State* (2010) 15 NWLR (Pt. 1217) 490 @ 499.

Counsel listed the three ingredients of the alleged offence as follows:

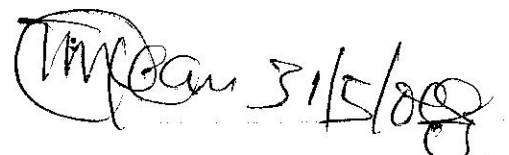
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- a. "That the accused person obtained credit by himself;

- b. That the cheque was presented within three months of the date therein; and
- c. That on presentation, the cheque was dishonoured on ground that there was no sufficient funds or insufficient funds standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn”.

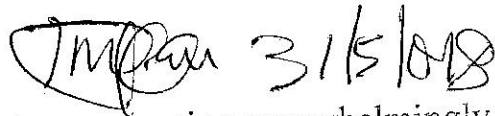
Counsel cited *Abeke v. State* (2007) 9 NWLR (Pt. 1040) 411 and submitted that Exhibits C and C1 demonstrate the fact that the accused person obtained credit for himself. Quoting *Oguntade JSC in Abeke v. State (supra)* counsel submitted that a cheque serves two purposes: documentation of the particular transaction and as a medium of payment. Counsel then concluded that there is no doubt that the defendant owed the PW2 referring also to the Debt Settlement Agreement (Exhibit F) executed by the defendant and the PW2.

Counsel then further submitted that the cheques were presented for payment within three months, relying on Exhibits A, A1 and A2 and this Court was urged to so hold. On the third ingredient, counsel referred to Exhibits A1 and E (statements of account) which show that the cheques passed through clearing and were dishonoured on ground of insufficient fund standing to the credit of the defendant's account. Counsel also referred to the evidence of the PW1, the Fidelity Bank Plc staff who testified that the cheques were returned due to insufficient fund in the defendant's account; that the account was in debit.

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Counsel then turned to deal with the case of the defence. He noted that the defendant in his defence maintained that he has paid the PW2 the sums in the cheques. Counsel went on to reproduce the evidence of the defendant including his evidence under cross-examination and submitted that his evidence is contradictory. Counsel pointed out that the claim by the defendant that the Debt Settlement Agreement was signed before he issued the cheques is false and that the falsehood has destroyed the foundation of his evidence. Counsel argued that the implication is that the defendant has no defence to the charge as "he was merely cooking up stories even against documentary evidence".

Arguing further, counsel urged this Court not to ascribe credit or value to the evidence of the DW1 as it is self-serving. Counsel noted that a witness who tenders a document and proceeds to give on oath evidence contradicting his document does not deserve to be regarded as a truthful witness; that the Debt Settlement Agreement cannot be the foundation of the contract, rather it was built on the cheques after the cheques were dishonoured.

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Counsel then submitted that the evidence of the prosecution overwhelmingly covered the field, referring to the evidence of the PW2. He urged this Court to see it as an absurdity for the defendant to claim he has paid the sums on the cheques and also made claims of not retrieving the cheques. Counsel then described the evidence of the defendant as "incredible and an insult to the intelligence of an average person". This Court was then called upon to resort to the evidence of the PW3 and the PW4, the investigating police

officers as it can be deduced from the evidence of the PW3 that the payment made on 21st of April 2015 was for the other goods and not for the cheques in issue. He argued that this piece of evidence was corroborated by evidence of the PW4 who testified that they found out that the monies the defendant paid after the cheques were issued were for subsequent goods he collected from the PW2 and since the PW4 was not cross-examined on this finding, it is an admission in law and facts admitted need no further proof, citing *Olateju v. Comm., L. & H., Kwara State (2010) 14 NWLR (Pt. 1213) 287 @ 305.*

Then on the computation of time, counsel submitted that the submissions of counsel for the defendant that the dates on the cheques are to be excluded is absurd and runs contrary to the spirit and letters of the law. Counsel argued that the simple way to calculate time is by using the corresponding date, and that the corresponding date to 14/04/2015 was 14/4/2015 which therefore includes the due date, citing *Niger Insurance Co. Ltd v. Merchant Bank Ltd (1996) 2 NWLR (Pt. 430) 370.* Counsel then posed a question whether an appeal will be rendered incompetent because the appellant filed the notice of appeal on the same day judgment was delivered. He answered in the negative and submitted as follows:


“The word ‘not later than three months after the date of the cheque’ as used in the Dishonoured Cheque (Offences) Act does not exclude the due date. Where the expression “not later than” is used in an Act, the stipulated date is included.”

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Counsel then submitted that it is therefore not correct in law to hold that the due date on the cheque is excluded, citing *Abeke v. State (supra)*. Counsel noted that assuming but not conceding that the position of counsel for the defendant is correct, both cheques cannot be caught up by the computation of time; that the cheque of 14/04/2015 would survive as both cheques passed through a clearing house on the 17/04/2015 and returned unpaid on the 20/04/2015.

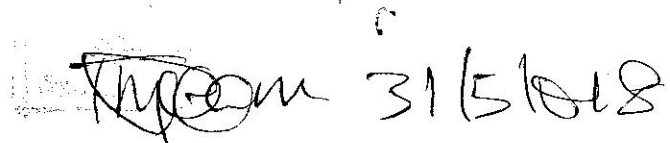
Finally, counsel submitted that criminal and civil litigation can run concurrently and that Exhibits M and M1 (Certified True Copy of the Magistrate Court Judgment and Terms of Settlement) cannot vitiate the present criminal proceeding, citing *Federal Republic of Nigeria v. Vijay Lalwani (2013) LPELR-20376 (CA)*. This Court was then urged to hold that the prosecution has proved her case beyond reasonable doubt against the defendant and consequently to convict him.

The defendant through his counsel filed a reply on points on law on 08/02/2018. It is dated 05/02/2018. Counsel for the defendant, in the said reply, emphasised on the submission of counsel for the prosecution that there is contradiction in the evidence of the defendant. Counsel reproduced part of the defendant's evidence in his reply on points of law. The said evidence is before this Court and will be considered in the determination of this case. I therefore do not see how it is an issue of law deserving to be contained in a reply brief, as it were. Counsel however submitted that contradiction must be material for the court to consider the witness and his testimony unreliable citing *Esangbedo v. The State (1989) 7 SC (Pt. 1) 36*.

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Also, it is the view of this Court that the further argument, in the reply on points of law, that the defendant issued the cheques upon reasonable grounds and in the belief that they would be honoured if presented is not an issue of law and will be discountenanced. The same will apply to the submission on why the cheques were returned unpaid; the submission on the contents of Exhibit D i.e. the PW2's Petition to EFCC and the submission on the evidence of the PW3. All will be discountenanced.

Finally, counsel submitted that the evidence of the PW4 that "we also found out that the monies he paid (accused) after the cheques were issued were for the subsequent goods he collected from Emmanuel Ugwoke" is hearsay and deserving of no probative value citing *Ijioffor (2001) 4 SC (Pt.II) 1 @ 7-8*. Counsel then again urged this Court to discharge and acquit the defendant.

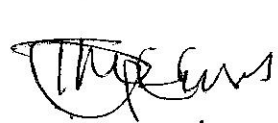
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I have carefully gone through the evidence of all the witnesses that testified in this trial. I have painstakingly scrutinized the exhibits tendered. Also, I have had a detailed reading of the written addresses of counsel, including the reply on points of law and by way of adumbration. I will start with noting that this is a case with lots of valuable documentary evidence. It is the view of this Court that a proper reading; a proper interrogation of the documentary evidence will assist greatly and immensely in the determination of this case.

I say this because both counsel, when it did not sooth their case, deliberately, in my view, chose not to give a proper reading of the documentary evidence before this Court. For

For instance, Exhibits C and C1, the cheques in issue in this case are clear on when they were presented for payment. The back of the two instruments has the stamp of Zenith Bank Plc with the date they were presented mechanically affixed. The date of presentation of the two cheques for payment is 17/04/2015. A proper reading of these instruments would expose the folly and unhelpfulness of the argument and submissions of counsel for the defendant on time computation. A proper reading of these instruments would rather show, as counsel for the prosecution rightly pointed out, that assuming but not conceding that the date on the face of each instrument is to be excluded in computing time, that only one of the instruments, the one dated 17/04/2015, i.e., Exhibit C1, will be affected. It means that the defendant, *mutatis mutandis*, can be convicted on Exhibit C.

The argument of counsel for the defendant is that for the purpose of litigating under the Dishonoured Cheque (Offences) Act, the cheque ought not to be presented for payment on the date of issue i.e. the date on the face of the cheque but at least a day after. He referred to the provision of Section 1(1) (b) of the Dishonoured Cheque (Offences) Act which provides that the cheque has to be presented for payment not later than 3 months after the date of the cheque. He relied on *Tukur v. Government of Gongola State (supra)* and particularly *Edozie O. Aroh v. Odedo & Ors (supra)* on how the word "after" is interpreted when used in a statute.

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I find illogicality in this argument as the whole essence of issuing and accepting a cheque is that it will be honoured on presentation on the affixed date. If parliament had intended otherwise, it would have done so in plain and clear language. For instance, the life span

of a cheque is 6 months but for the purpose of compliance with the provisions of the Dishonoured Cheque (Offences) Act, parliament provided in plain and clear language that the cheque must be presented for payment not later than three months after the date of issue. I have read the Certified True Copy of the Judgment in *Edozie O. Aroh v. Odedo & Ors (supra)*. The cannon of interpretation in that case is the mischief rule. It is obvious that it is the mischief in Section 132 of the Electoral Act 2002 that parliament corrected by replacing the words "from the date" therein with the word "after" in the Electoral Act 2010. Counsel conceded that the holder of a cheque is legally entitled to present it for payment on the date of issue. It is therefore the view of this Court that if parliament had intended otherwise for the purpose of the Dishonoured Cheque (Offences) Act, it would have done so in plain and clear language.

What is more, this Court in the cause of trial of this case delivered a considered ruling on this issue of time computation; that was when I refused the application for no case to answer made on behalf of the defendant at the close of the case for the prosecution, and I have no reason whatsoever to want to differ now. I therefore abide by that ruling


Counsel for the defendant has another ground for urging this Court to discharge and acquit the defendant. The ground is hinged on Section 1(3) of the Dishonoured Cheque (Offences) Act. It reads as follows:

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"A person shall not be guilty of an offence under this section if he proves to the satisfaction of the court that when he issued that cheque he had reasonable grounds for believing, and did believe in fact, that it would be honoured if presented for payment within the period specified in subsection (1) of this section."

Counsel for the defendant devoted five pages of his final written address arguing this ground. Curiously, counsel for the prosecution did not consider this ground worthy of a mere mention in his final written address of about 10 pages. Meanwhile this ground is very fundamental in the determination of this case. This, in the view of this Court, is not good advocacy. I will leave it at that and now turn to the evidence before this Court to determine if the defendant, as argued by his counsel, is entitled to take benefit of this subsection.

Before I do that, let me say, even if it is in passing, that I agree with counsel for the defendant that contradiction in the evidence of a witness must be material for the court to consider the witness and his testimony unreliable. Counsel for the prosecution made heavy weather over the issue of whether the cheques in issue, Exhibits C and C1 were issued before Exhibit K, the Debt Settlement Agreement, or the other way round. The defendant, under cross-examination testified that it was after the agreement that he started issuing post-dated cheques. This obviously is a false claim as the 5th of November 2015 date on Exhibit K is later in time than the 14th of April 2015 and 17th of April 2015 dates on Exhibits C and C1 respectively.

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Counsel for the prosecution considered this false claim a contradiction that is fundamental; that the contradiction has destroyed and collapsed the evidence of the defendant. This Court was therefore urged not to ascribe credit or value to the entire evidence of the defendant as he is not a truthful witness.

I however do not think that a mix-up as to which of two documents was issued first is so fundamental as to make this Court attached no weight to the entire evidence of the defendant particularly when the two or, in this case, three documents are before this Court. This Court also does not see this as a real issue of contradiction and if it is, I consider it more as a minor discrepancy. In *Wanke v. State (1993) LPELR-3470(SC)* it was held that "minor contradictions in the evidence of the prosecution witnesses cannot be fatal to the case of the prosecution". This is even more so here that we are considering the evidence of the defendant.


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Now, back to the defence provided under Section 1(3) of the Dishonoured Cheque (Offences) Act, I shall start with an interrogation of some of the exhibits tendered during trial. The first is Exhibit L, the Fidelity Bank Plc letter of offer of N1,500,000.00 overdraft facility to the defendant. This facility started in January 2015 and was subsisting in April 2015 when the cheques in issue were due for payment. A close look at the entries in Exhibit A2, Fidelity Bank Plc statement of account of the defendant will reveal that though that account was mostly in debit, the defendant was able to make payments to the PW2. The PW1, Mrs. Uchenna Gloria Obiejesi, a staff of Fidelity Bank Plc, in her evidence be-

fore this Court explained that when the sum of money in an account is in brackets, it is an indication that the account is in the debit. So from Exhibit A2, the defendant's Fidelity Bank Plc account was in debit on the 2nd of April 2015 yet he paid N922,680.00 to the PW2. It was also in debit on 13/04/2015 when he paid N914,380.00 to the PW2.

The defendant told this Court that there was a slight delay in the dropping of the facility he had arranged to use in paying for the sums in the cheques in issue and he asked the PW2 to tarry in the presentation of the cheques. This piece of evidence was not challenged under cross-examination. Also, there is evidence that when the facility dropped, and precisely on 21/04/2015 with his account still in debit, the defendant transferred the sum of N1,500,000.00 to the PW2 and N600,000.00 on 27/04/2015.

From the evidence before this Court, particularly Exhibit L, it is evident that the defendant made prior arrangement with Fidelity Bank Plc to ensure that the cheques he issued to the PW2 including Exhibits C and C1, the cheques in issue in this case, were honoured on presentation. I therefore hold that having arranged for Exhibit L, the defendant had reasonable grounds for believing, and did believe in fact, that the cheques he issued to the PW2 would be honoured if presented for payment. This believe was made manifest when on 21/04/2015 and 27/04/2015 the defendant paid a total sum of N2,100,000.00 to the PW2, a sum higher than the total value of Exhibits C and C1.

 31/5/18

Also, there is unchallenged evidence by the PW4, Miss Akanle Gbemisola, a staff of EFCC, to the effect that the entries in the Zenith Bank Plc statement of account of the PW2 (Exhibit J2) show that several payments were made by the defendant into the account before and after the presentation of the cheques in issue. This piece of evidence was corroborated by evidence of the defendant that he issued between 50 to 70 cheques in the business transactions between him and the PW2 which amounted to over N300,000,000.00.

What is more, there is yet unchallenged evidence of the defendant that the overdraft facility was stopped by Fidelity Bank Plc in May 2015 and that explains the pendency of the outstanding sum of about N1.6 Million that resulted in the Debt Settlement Agreement, Exhibit L; the Terms of Settlement, Exhibit M1 and the Consent Judgment, Exhibit M. From my proper interrogation of the exhibits tendered in this trial and my evaluation of the testimonies of the witnesses that testified it does not seem to this Court that this case comes within the contemplation and spirit of the Dishonoured Cheque (Offences) Act Cap.D11, Laws of the Federation 2004. The express provisions of the law and more particularly its spirit is clear on the point that it is not an instrument of ambush. It should not be used as a trap to catch a partner in business at the slightest default.


TAMUEN 3/15/2016

What is more, it is very obvious from the evidence before this Court that the challenge the defendant had and maybe still has in paying the outstanding sum due to the PW2 arose from the cancellation of the overdraft facility granted to him by Fidelity Bank Plc,

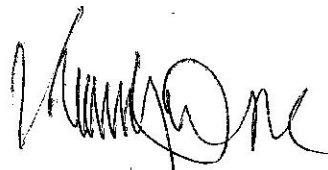
an act that occurred independently of the exercise of his will. In *Abeke v. the State* (supra) relied upon by counsel for the prosecution, Niki Tobi, J.S.C. noted thus:

"I entirely agree with the appellant that to convict on the above subsection, the prosecution must prove that the accused had *mens rea* and *actus reus*. Put in common simple parlance, *mens rea* means a guilty mind. And *actus reus* means a guilty act. In cases of strict liability, *mens rea* comes before *actus reus*. In other words, the accused develops the guilty mind before guilty act. Put in another language, the guilty mind instigates the guilty act or flows into the guilty act. The period of time between the two cannot be determined in vacuo but in relation to the factual situation in each case dictated by the state of criminality of the accused at the material time."

This certainly is the case in this instant charge where the prosecution has not proved the *mens rea* required to secure conviction. From the volume and frequency of payments made by the defendant to the PW2 as can be seen in the entries in the defendant's Fidelity Bank Plc statement of account, Exhibit A2 and the entries in the Zenith Bank Plc statement of account of the PW2's, Exhibit J2, the Debt Settlement Agreement, Exhibit K and particularly the Petition to the EFCC, Exhibit D which is the forerunner to this case may not have been necessary if the overdraft facility was not cancelled.

 31/5/08

I therefore agree with counsel for the defendant that the explanations proffered by the defendant in his defence before this Court suffice to exonerate him from criminal responsibility with regard to the offence of issuing dishonoured cheques (Exhibits C and C1) and I so hold. Accordingly, the defendant is hereby discharged and acquitted.



K. I. OKPE

(JUDGE)

25/04/2018

~~Impe~~ 31/5/18

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Settlement - 107,000
31/5/18

31/5/18