

IN THE HIGH COURT OF ENUGU STATE OF NIGERIA  
IN THE ENUGU JUDICIAL DIVISION

HOLDEN AT ENUGU  
BEFORE HIS LORDSHIP HON. JUSTICE A. A. NWOBODO  
ON MONDAY THE 8<sup>TH</sup> DAY OF JANUARY 2018

BETWEEN: SUIT NO. E/134C/2015  
FEDERAL REPUBLIC OF NIGERIA COMPLAINANT  
AND

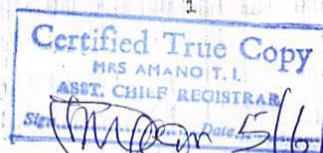
1. HOME BUILDER NIGERIA LIMITED.
2. ABDULWAHAB A. A. ABDULRAHAMAN ACCUSED PERSONS.

JUDGMENT

The accused persons are charged before this court with a three count charge as follows:

COUNT ONE

That you Home Builder Nigeria Limited and Abdulwahab A. A. Abdulrahaman ( Managing Director/ CEO of Home Builder Nigeria Limited) on or about the 10<sup>th</sup> December 2013 at Enugu within the jurisdiction of the high court of Enugu State, issued a First City Monument Bank Plc cheque No. 05678882 dated the 10/12/2013 with the face value of ( N9,329,932.00) Nine Million Three Hundred and Twenty Nine Thousand Nine Hundred and Thirty Two Naira only, to Udoka Ebudide trading under the name and style of Ekenweofia Enterprises. The said cheque when presented for payment within three



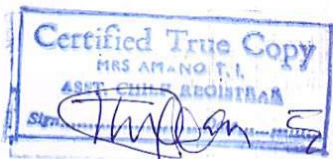
months was dishonoured on the ground of insufficient fund standing to the credit of the account upon which it was drawn and you thereby committed an offence contrary to section 1(1) (b) of the Dishonoured Cheque (Offences) Act Cap D11 Laws of the Federation 2004 and punishable under section 1 (1) (b) (i) (ii) of the same Act.

#### COUNT TWO

That you Home Builders Nigeria Limited and Abdulwahab A. A. Abdulrahman (Managing Director/CEO of Home Builder Nigeria Limited) on or about the 10<sup>th</sup> December 2013 at Enugu within the jurisdiction of the High Court of Enugu State, issued a First City Monument Bank Plc cheque No. 05678885 dated 10/12/2013 with the face value of ( 1,080,500.00) One Million and Eighty Thousand Five Hundred Naira only, to Udoka Ebudide trading under the name and style of Ekenweofia Enterprises, 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 THREE

That you Home Builder Nigeria Limited and Abdulwahab A. A. Abdulrahman (Managing Director/CEO of Home Builder Nigeria Limited) on or about the 10<sup>th</sup> December 2013 at Enugu within the jurisdiction of the High Court of Enugu state, issued a First City Monument Bank Plc cheque No. 05678881 dated the 10/12/2013 with



the face value of ( N1,688,500.00) One Million Six Hundred and Eighty Eight Thousand Five Hundred Naira only, to Udoka Ebudide trading under the name and style of Ekenweofia Enterprises, 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) (i) and (ii) of the same Act.

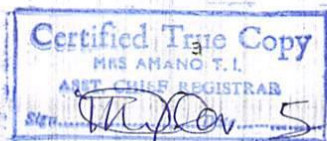
The prosecution called three witnesses while the defence called only one witness.

At the conclusion of evidence, the counsel exchanged written addresses.

The learned defence counsel has proposed the following two issues for the determination of the court:

1, WHETHER THE PROSECUTION HAS PROVED THE CHARGE AGAINST THE ACCUSED PERSONS BEYOND REASONABLE DOUBT IN THE CIRCUMSTANCE OF THIS CASE, AND AS A COROLLARY WHETHER THIS CASE DOES NOT FALL WITHIN THE EXCEPTION IN SECTION 1 (3) OF THE DISHONoured CHEQUE (OFFENCES) ACT CAP 102 LAWS OF THE FEDERATION OF NIGERIA.

2, COUNT THREE OF THE CHARGE IS SUPERFLUOUS AND OUGHT TO BE STRUCK OUT CONSIDERING THE COPIOUS EVIDENCE THAT THE ACCOUNT OF THE ACCUSED PERSONS WAS DULY FUNDED AS AT THE TIME THE CHEQUE STATED THEREIN WAS PRESENTED.



The learned prosecuting counsel presented the issue for determination to be:

WHETHER THE PROSECUTION HAS PROVED THE INGREDIENTS OF THE OFFENCE OF ISSUANCE OF DUD CHEQUE AGAINST THE DEFENDANTS?

I shall now quickly dispose of the second issue raised by the learned defence counsel. He has argued that it is pertinent to note that as at the time the cheque with the face value of N1,688,500.00 (One Million Six Hundred and Sixty-Four Thousand Seven Hundred and Ninety-Six Naira Ninety-Eight Kobo), was presented, the accused persons account was in credit of N2,464,796.98 (Two Million Four Hundred and Sixty-Four Thousand Seven Hundred and Ninety-Six Naira, Ninety-Eight kobo). That this was confirmed by the evidence of the PW2, and also by exhibits A and H, which are the cheque with the face value of N1,688,500.00. and the accused persons' statement of account.

The prosecuting counsel in his argument at page 5 line 1, conceded that count three has failed. In the light of this concession, count three is hereby struck out as no offence has been proved against the accused persons in that count.

We are now left with counts 1 and 2 of the charge to deal with.

For ease of reference the provisions of section 1 (1) (b) of the Dishonoured Cheque (Offences) Act are reproduced hereunder:

"1 (1) (b) Any person who-

Obtains credit for himself or any other person, by means of a cheque that, when presented for payment not later than three months after

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the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn, shall be guilty of an offence and on conviction shall- (i) in the case of an individual be sentenced to imprisonment for two years, without the option of a fine; and (ii) in the case of a body corporate be sentenced to a fine of not less than N5000.00.

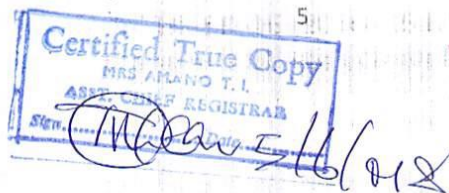
The first issue proposed by the learned defence counsel shall be utilized in determining this case. And the issue as stated is thus:

WHETHER THE PROSECUTION HAS PROVED THE CHARGE AGAINST THE ACCUSED PERSONS BEYOND REASONABLE DOUBT IN THE CIRCUMSTANCES OF THIS CASE, AND AS A COROLLARY, WHETHER THIS CASE DOES NOT FALL WITHIN THE EXCEPTION IN SECTION 1 (3) OF THE DISHONoured CHEQUES (OFFENCES) ACT, CAP 102 LAWS OF THE FEDERATION OF NIGERIA?

The burden of proving the guilt the accused persons is upon the prosecution. And the prosecution is said to have proved the guilt of the accused beyond reasonable doubt, when it has proved all the ingredients of the particular offence the accused person is charged with. See OLUDOTUN V THE STATE (2010) 15 NWLR (PT 1217) 490.

The ingredients of the offence of dishonoured cheque which the prosecution is expected to prove are:

- 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 the 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. See ABEKE V STATE (2007) 9 NWLR (PT 1040) 411

We shall now examine the evidence of the parties as presented before the court.

PW1 Udoka Ebudide director of Ekenweofia Enterprises testified that he is a building materials dealer and supplier. That the 2<sup>nd</sup> accused asked him on phone to see one of his workers named Paul Okorji at Home Builders Ltd in Enugu. That he met Paul Okorji at the premises of the Central Bank of Nigeria, Enugu. That Paul Okorji asked if he could supply rods, nails and wood. That he confirmed that he could supply same, but that there has to be an agreement in writing to that effect. That the agreement was entered into, and thereafter the LPO'S (local purchase orders) were issued to him. That he supplied all the items as requested. That three FCMB cheques were issued to him. That he called the 2<sup>nd</sup> defendants several times before he presented the cheques, but he did not pick his calls. That he presented the cheques to two banks for payment. One was paid into Diamond bank account, while the other was paid into Ecobank account, but all the cheques were returned unpaid. That he consulted his lawyer, one Barrister Machie who wrote a petition to EFCC on the issue. He was invited by EFCC, where he made a statement to them. The three cheques are admitted in evidence as



exhibits A, B, and C, while his statement to EFCC is exhibit D. The letter by his lawyer to EFCC and the LPO's are marked as exhibit E.

The PW2 Irene Ngozi Asindi testified that she received a letter from the EFCC, requesting for the account opening package of Home Builder Nigeria Ltd. That the copies were sent in three different sets including statements of accounts authenticated and signed by her. That in the statement of account presented on the 11<sup>th</sup> of December 2013, three of the cheques issued and presented by their customer through clearing were returned unpaid with a remark "DAR. "That in banking industry "DAR "means that drawer's attention is required. And the reason behind it is that the customer's account is not sufficiently funded to accept the incoming debt, i.e. the cheque presented. That she was invited in 2015 to make a statement, which she did. She tendered in evidence exhibits F, G, and J.

PW3 James Ebiboloukemi, a detective told the court that a complaint was received on behalf of Udoka Ebudide, and upon the receipt of the complaint, it was minuted to him for investigation. That the petition was against the defendants in this case. That the petitioner was invited to their office. The petitioner adopted his petition, and thereafter, he wrote a letter to FCMB, and also to Corporate Affairs Commission requesting for the status of Home Builder Nigeria Ltd. The response from FCMB shows that the defendants account was not funded. At that point he invited the defendants. He showed the 2<sup>nd</sup> defendant the petition, which he read and understood. He administered the words of caution on him, which he understood and signed. Thereafter, he volunteered his statement. He wrote the investigation report and sent to his sectional head for vetting and



signature. This report is tendered in evidence as exhibit K. exhibits L and M are the letters from C. A. C. Exhibits N. O. P. and Q. are letters received from the C.B.N. the statements of the accused are exhibits R and R1. The contract agreement is admitted as exhibit S.

The defendant, Alhaji Abdulwahab A. A. Abdulraman, testified that sometime in late 2013, they had a contract with the complainant to supply some building materials to their site for a contract they had with the Central Bank of Nigeria in Enugu. The contract with the C.B.N. had gone up to 70% as at the time they engaged the complainant. He was to supply them with materials and was to be paid on local purchase order (LPO). However, he insisted that before he could do so, he needed a postdated cheque from them. That they told the complainant that it was not their practice to issue postdated cheques, they were sure to pay him. And that the CBN will pay them. That they agreed that the cheques should not be presented without a clarification that there was money in the account. That the clarification will be by coming to his office or sending a text message and getting a reply from him. That when it was one week to the due date, they tried to get in touch with the complainant by inviting him to a meeting, which he did not honor. And when he eventually came, he told them that he had presented the cheques, contrary to the agreement with him.

Now exhibit S shows that Home Builder Nigeria Ltd entered into a contract with Udoka Ebudide for the supply of building materials to their site at the CBN Enugu. For this transaction, a cheque in respect of LPO No. 000034 dated 24<sup>th</sup> October 2013, for the sum N9,329,932.00. was issued to Mr. Ebudide. The cheque No. is 17315282 and is dated 10<sup>th</sup> December 2013.



The second cheque is in respect of LPO No. 000038 dated 21<sup>st</sup> November 2013 for the sum of N1,080,500.00. The cheque No. is 17315285 and dated 10<sup>th</sup> December 2013. This second cheque is not covered by the agreement exhibit S.

Now the second cheque for the sum of N1, 080,500.00. is the charge covered by count two. Although the evidence of both the prosecution and the defence show that this cheque was post-dated, no evidence was given as to the date on which it was issued. This cheque is not covered by exhibit S. The date on the face of this cheque is the 10<sup>th</sup> day of December 2013. And it is said to have been presented for payment on the said 10<sup>th</sup> day of December 2013, and it was returned unpaid due to insufficiency of funds in the account of the drawer. But the statement of account of the 1<sup>st</sup> defendant which is attached to exhibit F. shows that as at 11<sup>th</sup> day of December 2013, when the said cheque was presented for clearing, the 1<sup>st</sup> defendant's account had a credit balance of N2,464,796.98, that sum of money was sufficient to pay the figure on the face of that cheque. Therefore, it was wrong for the bank to have returned that particular cheque unpaid. I find the accused persons not guilty in count two.

I will now deal with count one. Exhibit S was executed on the 28<sup>th</sup> of October 2013. And the said exhibit S referred to cheque No. 17315282 exhibit C which is for the sum of N9,329,932.00. For this cheque to have been mentioned in exhibit S, it follows that it was issued on the same on the same date as exhibit S. That is to say that the cheque was issued on the 28<sup>th</sup> day of October 2013. There is no doubt all that there were insufficient funds to pay the cheque exhibit C on the 11<sup>th</sup> day of December 2013 when it went through clearing. However, the 2<sup>nd</sup> defendant gave evidence that he told the Mr.

Certified True Copy  
MRS AMANO T. I.  
ASST. CHIEF REGISTRAR  
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Ebudide that the CBN always paid them promptly and that his money will be paid. It appears to me that he believed this state of affairs at that time he entered into the contract in exhibit S. Was that a reasonable belief on the part of the defendants in this case? I think it was. This is because according to their belief, he CBN, always paid them promptly. This is even so because at that time the contract the accused persons had with the CBN had not been terminated. The contract with CBN was terminated on the 13<sup>th</sup> October 2014, about 9 months afterwards. See exhibit P.

Now section 1 (3) of Dishonoured Cheques (offences) Act provides as follows: "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."

After a calm consideration of the evidence before the court and the arguments of counsel on either side, I have come to the conclusion that count one comes within the exception provided by section 1 (3) of the Act.

On the whole it is my decision that the prosecution has not proved the guilt of the accused persons beyond reasonable doubt. Consequently, the two accused persons are hereby discharged and acquitted.

F. A. I. ASEMEBO, ESQ.

COUNSEL FOR PROSECUTION.

IKEAZOR AKARAIWE, ESQ.

COUNSEL FOR DEFENCE.



HON. JUSTICE A. A. NWOBODO  
JUDGE



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