THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
ON THURSDAY THE 26TH DAY OF APRIL 2018
BEFORE THE HON. JUSTICE I.B. GAFAI
JUDGE

CHARGE NO: FHC/AWK/26C/17

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT

AND

CHRIS MADU EZEOBI ..... ACCUSED

FEDERAL HIGH COURT CASHIER SIGN DATE 23/8/2018 AWKA

Accused In Court.
R.E. Ajobiewe for the Prosecution.
I.C. Machie for the Accused; holding the brief of Azubuike Anoliefo.

JUDGEMENT

The Accused herein namely Chris Madu Ezeobi was arraigned in this Court on the 5th of April 2017 on a one count charge for an offence under the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act thus:

> "That you CHRIS MADU EZEOBI sometime in May, 2013 while being the Manager of Nnokwa Micro Finance bank (MFB) in Nnokwa, Idemili South Local Government Area,

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Anambra State within the jurisdiction of the Federal High Court of Nigeria, did knowingly granted and approved an overdraft in the sum of N6,800,000.00 in favour of Uzodimma Chukwuanu doing business in the name & style of Neomasco Enterprises and a current account holder with account number 400235 which said sum is above your limit as the Manger of the bank and thereby committed an offence contrary to section 15(1) (a) (b) of the Failed Bank (Recovery of Debt and Financial Malpractices in Bank Act Cap F2 of the Revised Edition (Laws of the Federation of Nigeria 2004 and punishable under section 16(1) (a) of the same Act."

The charge was read and explained to the Accused in English which he understood to the satisfaction of the Court. He pleaded not guilty to the charge.

At the trial, the Prosecution called three witnesses to prove its charge while the Accused testified as the sole witness in defence of it. The testimonies of the witnesses are reproduced hereunder.

PW1 is Fidelis Asiegbu, the Head of Operations at the Nnokwa Microfinance Bank. His evidence in chief is as follows:

"I am here because of unapproved overdraft case. In May 2013 there were 3 cheques brought by Uzodimma Chikwuanu for lodgment into his account. We lodged them accordingly and sent for clearing. The then MD Mr. Chris Ezeogu granted direct credit on those 3 cheques. We did

not know that the cheques were returned, i.e. they were not honoured. One of the cheques is in the sum of N2m, another N2.1m and the other N2.7m, totaling N6.8m. he has a bank transaction alert; he has the authority to request for our corresponding bank Statement. On reconciliation, we discovered that the cheques were not paid into our Micro Finance Bank account. So the Board of the bank summoned him and asked him about those cheques. He agreed that he has the cheques in his house. He brought the cheques. His suspension was extended. We reported the matter to EFCC. That is all."

Upon cross examination, PW1 stated thus:

"No, Mr. Uzodimma was previously issuing out cheques to us in anticipation of payments just like he did in this case. The cheques were not a collateral but a normal banking operation.
The link between the cheques and the Accused is because the cheques were returned; so it forced the account to be on debit. They are not post dated cheques.
The loan approved to Mr. Uzodimma was N2.5m. The total amount in the 3 cheques was N6.8m. Yes, we called Mr. Uzodimma and told him and he said he was going to pay the money. After we reported to EFCC, he paid N750,000 on the loan. He did not pay the rest. The collateral on the loan was a land. He gave us 4 plots of land as collateral. The value of the lands is about N10m. Yes, it is greater than the loan. Yes, we did our search on the lands. Yes, Mr. Uzodimma has the title to the lands. No, he did not show good faith in repaying that loan. They forced him to pay back; I mean the EFCC forced him to pay back.

Vincent Ejong Esq
SEO (Lit)

Yes, we mandated the Accused to recover the loan. He was to use his half salary during the period of his suspension as facility to recover the loans. No, it is not our practice to do that at all.
Mr. Uzodinma stopped paying the loan because he suddenly died. It was because he defaulted in the payments that we reported the matter to EFCC. Yes, the Accused was before then recovering loans for us and he was doing that conscientiously. Yes, he used to recover loans for us from Mr. Uzodinma. Yes, the Accused has health challenges. Yes, he was making recoveries for us even at that.
Yes, he gave us his land documents. Yes, we went to the family of the deceased but they said they were not concerned. When we went to recover the land other claimants including a bank also came up.
I was not working in the bank when he was sick but I heard so. Yes, that was the time the Accused was brought to salvage the bank. Yes, at a point he did salvage the bank. He was Manager and later promoted and appointed MD.
Yes, the Accused accepted those cheques in the interest of the bank. No, I cannot say whether the N750,000 he paid was in respect of N2.5m loan or the N6.5m. The 3 lands collateral was in respect of the N2.5m loan. The Accused has the Approval hint of N200,000. That is all."

There was no reexamination.

PW2 is Stephen Okechukwu Ezeani the Secretary to the Board as well as the Administration Manager of Nnokwa Microfinance Bank. His evidence in chief run thus:

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SEO (Ag H)

"... I know the Accused. He was our Managing Director. Yes, I know Mr. Uzodinma Chukwuanu; he used the name Namasco Enterprises in doing business with our Bank.
In February 2013, Mr. Uzodinma Chukwuanu applied for a facility of N5m. He provided collateral of 4 plots of land. The Board considered and approved for him the sum of N2.5m for a period of 6 months. In August 2013, for the Bank to do proper reconciliation, it suspended the Accused as its MD; because it was observed during the reconciliation exercise that N6.8m was missing. There were 3 cheques that made up the amount of N6.8m. It was observed that those cheques were not in the custody of the Bank. The Accused produced and handed over the cheques to us i.e. the Bank. The 3 cheques were issued by the Namasco Enterprises written in the name of our Bank. The Board was worried because it never approved such amount to Namasco Enterprises. It was the Accused who approved the 3 cheques. It was outside his approval limit. His approval limit was N100,000. The Management's approval limit is from above N100,000 to N200,000. The Board credit limit is from above N200,000 to N1m. Above N1m is only approved by the Board in compliance with the CBN Regulations.
The 3 cheques are of Sky Bank of N2.7m, then N2.1m and the last N2m; all Sky Bank cheques. The matter was repointed to the EFCC. We gave the EFCC the statement of Account of Namesco Enterprises, the 3 Skye Bank cheques evidence of Bank's approval limit. (PW2 shown some documents) Yes, these are the statement of Account and the 3 cheques."

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SEO (Ag)

The Statement of Account as well as the three cheques mentioned by the PW2 were tendered in evidence through him. In the absence of any objection by the Defence, these were admitted in evidence and marked in the order listed by the PW as exhibits "1", "2", "2A" and "2B" respectively.

Upon cross examination, the PW2 stated thus:

> Yes, I am the Secretary to the Board. Yes, I represent the Management at the Board. Yes, it is the Board and the Management who approve loan. Yes, the MD approves loan. The Management cadre is comprised of MD, Head of Operations, Board credit Officer, Admin Manager, Reconciliation officer. Yes, they all ought to have roles in the approval of loans; but in reality they do not. The cheques are prepared by the MD, and sometimes he gives me the instructions to write the cheques. I cannot say whether or not it was I who made the cheque in favour of the Namasco Enterprises. (PW2 shown a copy of a front loaded cheque on the charge) No these cheques (4 in no) are not prepared. Yes I signed them all."

Through his cross examination, eight copies of cheques already frontloaded under the charge were tendered in evidence by the learned counsel for the Accused. Much as I think it was an unnecessary exercise, same were admitted in evidence and marked in the order assembled and frontloaded under the charge as exhibits "3" to "3C" and "4" to "4C" respectively.

Under further cross examination, PW2 stated:

"It was the MD i.e. the Accused and myself that are the signatories. I signed as a signatory to the Bank's account. No, I did not sign those cheques on behalf of the Management. I signed on behalf of the Bank.
There were landed collateral for the first loan of N5m but was given N2.5m. The total amount owned the Namasco Enterprises by the Bank stands at N9.8m. No, I am not aware that Namasco Enterprises gave the Bank post dated cheques as collateral. We did not sell the land collateral; because the land was encumbered as we discovered that the Namasco had already surrendered it as a collateral also to another bank for another loan. Yes, the documents of title on the land are still with our bank. No, the loan has not been repaid. No, Namasco had not been a performing customer. No, Mr. Uzodinma of Namasco has died. Yes, he paid about N750,000 before he died. That is all."

There was no reexamination.

PW3 is Clifford Ikemba a detective in the EFCC at the time relevant to this case. His evidence in chief is thus:

"On the 5th of November 2013, a case of fraud and issuance of dud cheques was reported by Nnoka Microfinance bank against the said Uzodinma Chukwuanu. It was referred to Bank Fraud Team B of EFCC Enugu office for investigation. At that time, I was the head of Team B that investigated the case.
The team invited the Complainant to know more light on the Petition. He volunteered a Statement. Based on the

statement, we arrested the Accused. I wrote the cautioning words. After showing him the Petition, I asked him if he wished to make a Statement. He said he would. He did. In his Statement, he implicated the Accused and one other called Stephen Ezeani. Based on that implication we invited the Accused and the said Stephen Ezeani. I equally wrote the cautioning words, and they volunteered their Statements in writing.

In the Statement of the Accused, he admitted that he granted a loan facility of N6.8m to Uzodinma Chukwuanu who is the MD of Namasco Enterprises. The said Chukwuanu is however late now.

The Accused claimed in his Statement that he is empowered to grant a loan of up to N200,000 and that the N6.8m loan was granted to the said late Chukwuanu by him. So, we wrote a letter of investigation activities to Nnokwa Microfinance bank requesting for the Board's Resolution and the team was availed a copy of the Resolution. At page 4 of the Resolution it was stated that the MD had the capacity of granting loan of not more that N100,000.

Yes, I can identify the Petition; it was addressed to the Director of EFCC Enugu zone and minuted to Bank Fraud Team B. The Statement of the Accused was made on EFCC Statement form, I wrote the cautionary words. Yes, the Statement of Chukwuanu was made in the same way. The Board Resolution is certified by the EFCC, by me. (PW3 shown 4 documents) Yes, these are the Statements of the Accused, Mr. Chukwuanu, the Petition and the Board Resolution)."

Through his testimony in chief, the four documents mentioned by the PW3 namely a Petition, Statement made by the Accused, Statement by Chukwuanu and the bank's Board Resolution were tendered in evidence and in the absence of any objection were admitted as exhibits "5" to "8" respectively.

Upon cross examination, PW3 stated thus:

"(PW3 shown exhibits "3", "3A", "3B", "4" and "4B"by the Defendant counsel). All except exhibits "4", "4A", "4B" and "4C" were signed by the Accused. Yes, the deceased was given an overdraft. Yes, Mr. Ezeanya is a witness in this case. No, I do not accept that those cheques were used for the money borrowed.

The Accused claimed in his Statement that he in conjunction with Mr. Ezeanya approved the loan. Mr. Ezeanya had no capacity to approve loans as Admin Manager.

I am not aware if those cheques now shown to me as exhibits "3" – "4B" are the cheques used by the Accused beyond his limit.

(PW3 shown exhibits "2", "2A" and "2B" by the Defendant counsel). Yes, these are cheques which the MD of Namasco claimed to have issued on the loan. They were issued as a collateral; that is why they had no dates and that is why we did not pursue that angle of the investigation. That is all."

There was no reexamination and the Prosecution closed its case.

The Accused testified as the sole witness during the defence. His evidence in chief is similarly reproduced here thus:

"…. I worked at Nnokwa Microfinance bank. I was employed in 2002 as an Accountant. I was promoted to Manager and later to the position of Managing Director.
In response to the charge, we the management approved the loan of N8.5m based on the approval given to us by the Board. The approval was documented. Yes, I can recognize it. (DW shown a document). Yes, this is the approval. It is the minutes of the Board meeting of 28/12/12.

Mr. Anachifo: I tender it.

Court: Mr. Anachifo, same document is already in evidence as exhibit "8". Do you still wish to tender it?

Mr. Anachifo: I am sorry. I withdraw it. I however now apply that he be shown exhibit "8". (DW shown exhibit "8") Yes, it is the one. The directive is contained on paragraph 9D of the minutes i.e. exhibit "8". The Bank gave us instruction to give out loans to make profits. So I and the PW2 and the Operations Manager were given the instructions to give out the loans. PW1 and PW2 said they acted on good faith because we made profits from the loan. We had adequate security in addition to the 3 cheques we collected from the borrower we also had his landed property. We acted in good faith. The value of the landed property is

N11,750,000. (DW shown exhibits "2" – "2B") by his counsel) Yes, these are the 3 cheques we collected from him as security in addition to the landed property. That is all."

Upon cross examination, he stated thus:

"My appointment as MD was terminated in 2014. As the MD of that bank, my approval limit was N200,000. It is not true that the loan given was because of my personal relationship with the borrower. We had been giving him loans and he had been repaying and we thus considered him worthy. Yes, exhibits "4" – "4C" were signed by me and Ezeanya (PW2) and head of Operations. Yes, I mentioned this in my Statement to EFCC (exhibit 6). It is not true that I forged the signature of PW2 on those documents. That is all."

There was no reexamination and his learned counsel closed his defence. Both learned counsel later filed their written addresses which they adopted on the 20th of March 2018.

Learned counsel for the Accused Azubuike Anliefo Esq has formulated three issues for determination by this Court thus:

"1. Whether the Evidence of the Prosecution witnesses could be relied on to convict the Defendant?

2. Whether there are doubts arising in the case of the Prosecution to be resolved in favour of the Defendant.

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3. Whether the Prosecution has discharged the burden of proof for conviction."

His learned friend for the Prosecution Ani Ikechukwu Micheal Esq formulated a lone issue thus:

"Whether from the totality of the evidence, the Prosecution has proved its case beyond reasonable doubt against the Defendant to warrant his conviction."

From the thrust of the arguments and submissions canvassed by both, it is my view that the issues for both may be conveniently determined together under the issue formulated by the Prosecution; which, as formulated, will have a net effect of corresponding determinations as well on each of the three issues formulated for the Accused.

As reproduced earlier, the first and second issues for the Accused generally question the reliability of the various evidences of the Prosecution as well as the manner or propriety of prosecuting the Accused, if at all, alone on the evidence of PW2 in particular among others who, as argued by the learned Defence counsel, ought to be adjudged as equally culpable in the commission of the alleged offence. It is on this premise that the learned counsel proceeded to question consequentially in his

third issue whether the evidence of the Prosecution witnesses could therefore be relied upon to convict the Accused. In particular, it is his argument that the totality of the cheques tendered by the Prosecution do not add up to the amount of N6.8m stated in the charge; that the Accused did secure adequate collateral from the defaulting customer as evidence of diligence and good faith; that the cheques by which the loan of the N6.8m was granted the defaulting customer now said to be above the official limit of the Accused as the Managing Director of the Bank was infact co-signed and approved by the PW2; that the loan in issue was subjected to due process of the Bank by its audition by the Bank's Internal Auditor, vetting by the Bank's Credit Officer, endorsement of the loan request by the Bank's Accountant before it was approved by the Accused, PW2 and the Bank's Accountant. Learned counsel further submitted that this Court shall not rely on the evidence of PW3 as he has demonstrated clear bias in his investigation against the Accused, when he avoided to answer questions during his cross examination on the reason why the Prosecution chose to charge only the Accused in this case. It is his submission also that the evidence of PW3 is full of contradictions if considered together

with the evidence of PW2 on material questions on the charge. It is the learned counsel's further submission that there exist a lot of doubts in the Prosecution's case which this Court has a duty to resolve in favour of the Accused. Drawing support from the various weaknesses of the Prosecution's case as argued by the learned counsel, he submitted forcefully that the Prosecution has failed to discharge the duty on it under section 135(1) of the Evidence Act to prove the charge against the Accused beyond reasonable doubt.

As for his learned friend for the Prosecution, his main submission stems from the provisions of section 15(1) and (b) of the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act which he submitted has clearly caught up the Accused based on the evidence of the Prosecution and on the strict liability prescribed for the offence with which the Accused is charged. It is his submission also that the proof of the offence against the Accused does not extend beyond proof of same beyond reasonable doubt. Relying on the decision in **Orakoya vs FRN (2002) 11 NWLR PT 779**, which laid down the ingredients to be proved by the Prosecution on a charge under section 15(1) of the Failed Banks Act, he submitted that the

Prosecution has proved same against the Accused beyond reasonable doubt. To buttress his submission, he referred to the evidence of PW2 who testified inter alia that the Accused granted the loan facility in issue knowing same to be above his limit as the Managing Director of the Bank. It is his further submission that the evidence of PW3 along with the Statement made by the Accused during the investigation, admitted in evidence as exhibit "6" strengthens the Prosecution's contention on the guilt of the Accused on the charge. He also argued that exhibit "8" which is the response of the Bank on the allegation in this case clearly reveal the unlawful act of the Accused in terms of the charge. He further submitted that the evidence of the Accused as DW1 to the effect that it was on the instruction of the Board of the Bank that he granted the loan in question is a mere after thought; as he never revealed this claim to the investigators of this case or mentioned same in his Statement to them i.e. exhibit "6". He submitted also that the acclaimed instruction of the Board as relied upon in exhibit "8" does not show any such instruction by the Board of the Bank. It is also the submission of the learned counsel that the collateral purportedly given the Bank on account of the loan was in fact not so; as it was in respect of an earlier

loan facility which turned out to be encumbered. It is his further submission that the fact that the charge is against the Accused only, not jointly with others he claimed are to be presumed equally blameworthy, does not affect the validity of the charge nor the admissibility of the evidence led on it; drawing support for his submission from the decision in **Akpa vs. The State (2008) 14 NWLR Pt 1106, 94** where the Supreme Court held that it is not an uncommon practice nor an unlawful one by the Prosecution in its discretion to charge whom it pleases; regard had to the mission of such choice. On the whole, he submitted that the Prosecution has proved its charge against the Accused and thus urged the Court to find accordingly.

As employed in the charge, the relevant provisions of 15(1) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act provide thus:

"(1) Any director, manager, officer or employee of a bank who-

(a) knowing, recklessly, negligently, willfully or otherwise grants, approves the grant, or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility or financial accommodation to any person-

(i) without adequate security or collateral, contrary to the accepted practice or the bank's regulations; or

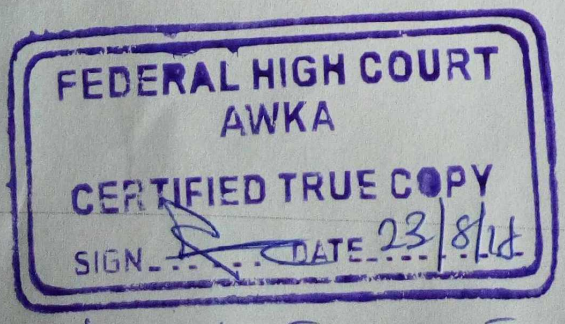
(ii) with no security or collateral where such security or collateral is normally required in accordance with the bank's regulations; or

(iii) with a defective security or collateral; or

(iv) without perfecting, through his negligence or otherwise, a security or collateral obtained; or

(b) grants, approves the grant or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility which is above his limit as laid down by law or any regulatory authority or the bank's regulations; or

(c) grants, approves the grant or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility to any person in contravention of any law for the time being in force, any regulation, circular, or procedure as laid down, from time to time, by the regulatory authorities or by the bank."



Vincent Egong Esq

Of particular interest to the Prosecution as disclosed in the charge however are the provisions of sub section 1(a) and (b) (supra). From the totality of the evidence adduced by both the Prosecution and the Defence, can this Court hold that the Accused did commit the offence(s) provided under those provisions? As reproduced a moment earlier herein, it is clear that the provisions of subsection (1)(a) in particular are various and encompassing to admit of even such allied offences which are neither alleged nor contemplated by the charge in this case. The Court will however restrict itself to the specific allegations in the charge. For the sake of clarity, it should be remembered that from the charge in this case, reproduced in verbatim earlier herein, the Accused is alleged to have:

> "..... knowingly granted and approved an overdraft in the sum of N6,800,000.00 in favour of Uzodinma Chukwuanu..... which said sum is above your limit as the Manager of the bank....."

It is important to understand the scope and meaning of the charge against the Accused. As reproduced here, although so much evidence was led by the Prosecution in proof of the offences in subsection 1(a) (supra), the clear and conveyed allegation in the charge is in reality for the offence provided

Vincent Ejung Esq
SO Court

under subsection (1) (b) of section 15 of the Act; by alleging distinctly that the Accused granted an overdraft facility in the sum that is above and contrary to his limit on it. This is the clear, specific and single allegation in the charge against the Accused. In particular, the Prosecution is not alleging in the charge, as seems to be glaringly misconstrued by both learned counsel, that the charge is in respect of any other than the specific allegation on it; which as I explained, alleges that the Accused granted overdraft facility in the sum above and contrary to the limit set for him by the Bank. I should not be misunderstood here to mean or imply that the entire evidence adduced by both in proof and defence of the offences under subsection 1(a) (supra) which are not the specific allegations on the charge are irrelevant. Far from that; the entire evidence on subsection (1)(a) will arise and become the issues for determination if and only if the evidence before the Court shows primarily the commission of not the specific offence disclosed in the charge but of those in subsection (1)(a) and/or any such allied offences. See **Ndukwu vs The State (2000) 1 NWLR Pt 641, 463. Section 223 of the Administration of Criminal Justice Act 2015** is clear on this thus:

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SEO (LT)

"Where a Defendant is charged with one offence and it appears in evidence that he committed a different offence with which he might have been charged under the provisions of this Act, he may be convicted of the offence which he is shown to have committed although he was not charged with it."

It is in this premise that the Court will now accord more priority on and proceed to determine the evidence adduced by both sides on the specific allegation of the commission of the offence provided under section 15(1) (b) of the Act (supra) as distinctly alleged on the charge by which the Accused was arraigned and prosecuted. For the sake of clarity here let me reproduce the provisions of section 15(1) (b) once again thus:

"(1) Any director, manager, officer or employee of a bank who-

(a) knowing, recklessly, negligently, willfully or otherwise grants, approves the grant, or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility or financial accommodation to any person-

(b) grants, approves the grant or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility

which is above his limit as laid down by law or any regulatory authority or the bank's regulations

is guilty of an offence under this Act."

As constructed, the provisions of section 15(1) (b) (supra) in my considered view create what are in law known as strict liability offences because by their language and intendment, they oust the application of the general principle of criminal liability which requires the positive proof of the intention of the Accused in and surrounding the commission of the alleged offence. In otherwords, what the Court is simply required to do in a determination of the guilt or otherwise of the Accused is to examine the evidence and find whether or not same could amount to a finding that the Accused did commit the offence, even if technically, in total disregard to his intention on it; no matter how commendable, virtuous or blameworthy such intention might be shown on the evidence to be. Much as a Court might find these provisions unfriendly, arbitrary or even seemingly unfair, the Court should have no business enquiring and considering the good or bad intentions of the Accused in the commission of the alleged offence. In **Umoera vs. The Commissioner of Police (1977)SC 12**, the Supreme Court

affirmed this position and went further to lay down important considerations on it in holding that:

> "The strict construction of penal statutes seems to manifest itself in four ways; firstly, in the requirement of express language for the creation of an offence; secondly, interpreting strictly words setting out the elements of an offence; thirdly, in requiring the fulfillment to the latter of statutory conditions precedent to the infliction of punishment, and finally, in insisting on the strict observance of technical provisions..... Therefore, if there is any ambiguity in the words which set out the elements of the act or omission declared to be an offence, so that it is doubtful whether the act or omission in question in the case falls within the statutory words, the ambiguity will be resolved in favour of the person charged....."

In demonstrating the offence of the strict liability, the Supreme Court in **Moses vs. The State (2006) 11 NWLR Pt 992, 458** held that an offence of dangerous driving is an offence of absolute prohibition into which no mens rea enters and that it is no answer to say: "I do not mean to drive dangerously." Such is the character of a strict liability offence. In effect, such otherwise worthy considerations such as the presence or absence of adequate or inadequate collateral on the overdraft facility which the Accused is alleged to have granted, the history of good or poor performance by the beneficiary of the overdraft facility,

the participation or advice of other persons which rightly or wrongly influenced the Accused to grant the overdraft facility in the manner alleged on the charge and such other related considerations have absolutely no role to play in the determination of the guilt or innocence of the Accused on the charge. See **Onakoya vs. F.R.N. (2002) LPELR – 2670 (SC)**; **Michael Adeyemo vs. The State (2011) LPELR – 4485 (CA)**.

Let me at this stage determine the issue raised and relied upon by the Defence to the effect that failure or refusal of the Prosecution to charge some other persons with whom the offence charged was allegedly committed is fatal to its case. With due respects to the learned counsel for the Accused, it is not the position in law. The failure or even outright refusal by the Prosecution to charge any such other persons does not ipso facto render the charge against the Accused bad or even questionable. See **Basil Akpa vs. The State (supra)**.

Thus, at this stage, the pertinent questions on the determination of the printed allegation on the charge are whether or not there are any set limits in the power of the Accused as the Managing Director of the Nnokwa Microfinance Bank Ltd in grant

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of loan or credit facility by the Bank; whether such limit, if any, is one that is valid in law; whether the Accused did in fact grant the overdraft facility in the manner alleged on the charge and if so, whether the evidence adduced at the trial is sufficient to warrant a finding in terms of the charge.

As may be recalled, the provisions of section 15(1)(b) and (c) of the Failed Banks Act reproduced earlier herein provides that any director, manager, officer or employee of a bank who:

"(b) grants, approves.....

(c) grants, approves....."

commits an offence.

It is not in dispute that the Nnokwa Microfinance Bank is among the banks meant and referred to in these provisions. It is also not in dispute that the Bank has by its power through its Board made regulations in respect of the grant of loan or any credit facility. Of particular relevance here is exhibit "8" relied upon by both parties, more particularly by the Prosecution, wherein at its meeting held on the 28th of December 2012, the Board of Directors specifically set limits on power to grant loans or credit facility thus:

" LENDING LIMIT

1. Managing Director can approve N100,000 and below
2. Management Credit Committee N101,000 – N200,000
3. Board Credit Committee N201,000 – 1 million
4. Board in line with CBN guideline."

It is also noteworthy here that the Accused as the Managing Director of the Bank was in attendance at the said meeting and was therefore privy to the making of these instructions or regulations by the Bank. Thus, there is in place a clearly set limit in the power of the Accused as the Managing Director of Nnokwa Microfinance Bank. The set limit in exhibit "8" has not been challenged nor has this Court found its validity questionable in any respects. However, did the Accused grant or approve the grant of the overdraft facility in issue which as may be recalled is in the sum of N6.8m well above his set limit by the Bank? The answer to this question may not be far fetched; but is one that requires a very careful consideration and determination. I have thus restudied the entire evidence in the case; begining with the oral evidences.

As reproduced earlier, PWs 1 to 3 are consistent in both examination in chief and cross examination that the Accused

granted to the late Uzodinma Chukwuanu under his business name the overdraft facility of N6.8m above his limit as the Managing Director of the Bank. Recall here that PW2 was even more blunt on this issue when he testified thus:

> "It was the Accused who approved the 3 cheques. It was outside his approval limit. His approval limit was N100,000. The Management's approval limit is from above N200,000 to N1m. Above N1m is only approved by the Board in compliance with the CBN regulations."

The specific oral evidence of the Accused in defence on this allegation has similarly been reproduced earlier. In particular, it may be recalled once again thus:

> "In response to the charge, we the Management approved the loan of N8.5m based on the approval gwen to us by the Board. The approval was documented.....(DW shown exhibit 8) Yes, it is the one. The directive is contained on paragraph 9D of the Minutes i.e. exhibit "8".

As is now clear, the defence of the Accused here is not that he did not grant or approve the grant of the overdraft facility to the sum of N6.8m but that it was based on the instructions of the Board of Directors of the Bank; which he carried out in good faith. Paragraph 9(d) of exhibit "8" forcefully relied upon by the Accused is reproduced here thus:

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SSO(Lit)

"9d) Only the Admin Manager, Managing Director and Head of Operations will approve payment of any loan of overdraft by signing the in house cheques. But the correspondent bank cheques should be signed by only the Managing Director and the Admin Manager."

I have further examined and considered the Statements made by the Accused to the EFCC during the investigations; now exhibit "6" in the trial. In the Statement he made on the 13th of November 2013, he stated inter alia:

"It was me and Mr. Stephen Ike Ezeanya that signed the Excess of N6.8 million to Mr. Uzodinma. The Board Credit Committee was not informed about the Excess sum to Mr. Uzodinma. I considered His previous performance and His strong promise to return the money before the end of the money (sic)."

It is thus clear that the Accused did grant or approve the grant of the sum of N6.8m overdraft facility. Directly linked to this fact is his claim of the Board's instructions to do what he did as per paragraph 9d of exhibit "8". Examined firstly in isolation and further in conjunction with other portions or facts in exhibit "8", more particularly the Board's clear instructions on lending limits of the Accused and others as reproduced earlier, I do not find paragraph 9d of exhibit "8" as conveying the instructions the

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Accused interpreted into it, nor could any reasonable inference of same be drawn from it or from any other portion of exhibit "8" or indeed in any other piece of evidence before the Court even if not referred by the Accused. The instructions in paragraph 9d are quite different from the clear allegation in the charge and can by no means constitute a defence to the charge. The clear allegation is that the Accused granted the overdraft facility of N6.8m above his set limit under exhibit "8"; which constitutes an offence under section 15(1)(b) of the Failed Bank Act (supra). All the various evidences examined thus far point clearly to the finding that the Accused did in fact do what the Prosecution has alleged in the charge.

As explained earlier, any good intentions or bad motive or professional judgement or folly of the Accused in and surrounding the grant of the excess overdraft facility do not unfortunately count even as a weak not to talk of a strong defence to the charge; being one for an offence that is clearly shown to be in the category of strict liability offences. The proof of such offences, as the one in this case, are relatively easier because the law creating the offences has foreclosed such ordinary, normal, logical, common defences by the Accused in

this case; such as those raised by the Accused in this case; matter how reasonable they may seem. It is in this premise that the Prosecution has proved its charge with relative ease and has done so beyond reasonable doubt in the manner provided under section 135 of the Evidence Act 2011. See **Osetola vs. The State (2012) LPELR-9348(SC); John vs. The State (2011) LPELR-8152(SC); Babarinde vs. The State (2012) LPELR-8367(CA)**. Consequently, the Accused is hereby convicted for the offence under section 15(1)(b) of the Act as alleged in the charge.

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Court: Any records of previous conviction?

Prosecution: None.

Court: Any plea of allocutus?

Mr. Machie: My lord, yes, but on a second thought, I am humbly seeking for an adjournment to enable the substantive learned counsel for the convict to appear personally and do the allocutus.

Prosecution: Not objecting.

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Court: Case adjourned to tomorrow for allocutus. Convict be remanded in prison as today.

(Signed)
I.B. GAFAI
JUDGE
26/04/18

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SEO (Lit)

THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
ON FRIDAY THE 27TH DAY OF APRIL 2018
BEFORE THE HON. JUSTICE I.B. GAFAI
JUDGE

CHARGE NO: FHC/AWK/26C/17

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT

AND

CHRIS MADU EZEOBI .... ACCUSED

Convict In Court.
M.I. Ani for the Prosecution.
Azubuike Anoliefo for the Convict.

Mr. Anoliefo:

My lord, the case is for allocutus. I am sorry for my absence yesterday for the Judgement. I was at the Court Appeal.

Firstly, I appreciate my lordship for generosity. I strongly commend my lord.

I humbly appeal to my lord to be compassionate and tender justice with mercy because:

i. The convict had no ulterior motive.

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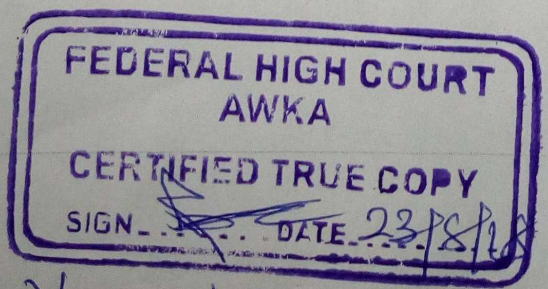
ii. At the trial, it was shown that adequate collateral was utilized.
iii. The convict is gravely ill, with sustained partial paralysis.
iv. Incarceration will hasten his demise.
v. He was employed by the Bank as an accountant and rose to the rank of MD due to his pedigree and impeccable character.
vi. We are all fallible.
vii. He is a first convict.
viii. He deserves only a simple term.
(I observe that learned counsel is literally sobbing, tears running down his checks.)
ix. My lord, I cry from the heart. I have nothing more to add.

Prosecution:

The law is at the bossom of my lord. The penalty in 16(i)(a) is for a term not exceeding 5 years. So recommend to my lord.

Court: Adjourned to Monday the 30th of April for sentence.

(signed)
I.B. GAFAI
JUDGE
27/04/18



Vincent Tyung Esq
SGD Ltd

THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
ON MONDAY THE 30TH DAY OF APRIL 2018
BEFORE THE HON. JUSTICE I.B. GAFAI
JUDGE

CHARGE NO: FHC/AWK/26C/17

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT

AND

CHRIS MADU EZEOBI .... ACCUSED

Convict In Court.
O. Marshall-Umukoro for the Prosecution.
Azubuike Anoliefo for the Convict.

Court: This case is fixed for sentence today. While preparing the sentence over the weekend, I came across an issue which requires further explanation from both sides. The issue was never raised or canvassed at the trial. It was canvassed during the allocutus by the learned for the convict. It is on whether or not there has been full repayment to the bank of the loan granted by the convict.

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Prosecution: I am holding brief. However, for the information I got, the collateral was land and it was sold by the bank. The person who bought could not however take possession due to the interest of a third party on the land. It was sold at N6m. The money i.e. N6m was therefore given back to the person who bought the land. It was refunded to him by the bank. The said land has been subject of litigation between the bank and third parties. So, the position as at now is that there has not been repayment of the loan in this case to the bank.

Mr. Azubuike: Actually, it was 4 plots of land, sold at about N13m altogether. The bank had original title to the bank. In the Statement of account of the bank, the said N6.8m was recovered by the bank from the sale of the lands and the excess of it paid by the bank to the wife of the deceased customer. That is even apart from the earlier sum of N750,000 paid to the bank through the EFCC by the late customer. So, the loam has been settled.

Vincent Eg mg Esq
SEC Ltd

Court: The Court will deliver sentence later in the day.

(Signed)
I.B. GAFAI
JUDGE
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SENTENCE

It may be recalled that Judgement in this case was delivered on Thursday the 26th of April 2018 by which the convict was convicted. Before proceeding to sentence however, the Court invited both the learned Prosecuting counsel and his learned friend for the convict for comment on whether or not there are any previous record of conviction on the convict and whether there are any pleas in allocutus. While the Prosecution replied in the negative, his learned friend for the convict I.C. Machie Esq rose up to address the Court on allocutus. He however instantly changed his mind, informing the Court that he was only holding brief and knew nothing about the proceedings. He thus urged the Court to adjourn the case to enable the substantive learned counsel for the convict appear personally to conduct the allocutus. The case was thus adjourned to the following day

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Solicitor

Friday the 28th of April 2018; whereby the allocutus was conducted as set.

In his plea for the convict, his learned counsel Azubuike Anoliefo Esq began by apologizing to the Court for his absence on the previous day set for the Judgement owing to another appearance he had at the Court of Appeal. Thereafter, he began showering encomiums on the Court for its liberal, unbiased disposition in the conduct of the entire trial; going down memory lane by reminding the Court of several such instances. At a point, the Court had to stop him, urging him to proceed into main purpose of the allocutus.

His first ground for the allocutus is that the Accused never had any criminal or fraudulent intention on the offence for which he was convicted. He also never had any ulterior motive on the loan granted, the non repayment of which is the reason behind the charge. He further contended that the loan was covered under adequate collateral. He further drew the attention of the Court to the age and health of the convict whom he said is gravely ill, suffered and is still suffering from sustained partial paralysis and that incarceration will only hasten his demise. Another ground canvassed by the learned counsel is that the

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convict was employed by the bank as an accountant but rose steadily to the rank of the Managing Director of the bank owing to his pedigree and impeccable character. He finally ended soberly on a passionate not that we are all fallible, just like the convict.

In response, the learned Prosecuting counsel M.I. Ani Esq briefly posited that the penalty for the offence is as provided under section 16(1)(a) of the Failed Banks Act which he recommended. With the time then already past noon and I myself had some other equally important calling to attend to inside town (Friday jumuat prayers), the case was adjourned to today for sentencing.

I have accorded due consideration to each of the grounds of the plea for mercy as advocated by the learned counsel for the convict. Incidentally, except for the ground which postulates that incarceration will hasten the demise of the convict; which I assume the learned counsel is predicating upon pieces of circumstantial evidence such as the age and health of the convict, all the grounds are deducible from the records from me and thus easily provable or discreditable.

It is not in dispute that the convict has record of previous conviction. On the first ground of the allocutus canvassing absence of criminal intention or ulterior motive by the convict in the offence committed, I have no difficulty in agreeing with this assertion as the true reflection of the evidence at the trial. The Judgement itself observed so with sider however that what the Court was trying is a strict liability offence; which as is commonly known does not recognize the intention of an accused as relevant. Recall that in one such position of the Judgement, this Court held thus:

> "As construed, the provisions of section 15(1) (b) (supra) in my considered view create what are in law known as strict liability offences because by their language and intendment, they oust the application of the general principle of criminal liability which requires the positive proof of the intention of the Accused in and surrounding the commission of the alleged offence."

On the ground that the convict is gravely ill, I have no difficulty also in agreeing with the learned counsel that the convict indeed seemed and has always seemed very ill from day one in the proceedings. Indeed, this Court granted him bail on the very day he was arraigned due mainly to the visibly frail health condition he was in. Sadly too, this condition did not get

any better in the course of the trial; because on a number of occasions, I watched as he had to be assisted physically into the dock. That he has a partial paralysis too is not an issue that requires any technical proof because it was visible and glaring to anyone, including this Court. The medical report attached to his motion for bail also states that he has a stroke complication. While I do not share the view that his age is as high as is portrayed, I do believe strongly that his present health predicament is a factor that would sway the mind of the Court in awarding sentence. By mere arithmetic, the convict is now 63 years old because he himself stated his age as 58 in the Statement he made to the EFCC in 2013 which was admitted as exhibit "6" in the trial.

The more I recall the evidence of PW1 under cross examination the more I am inclined to show mercy to the convict. I reproduced same in the Judgement. For the sake of clarity, it is reproduced here again thus:

> "Mr. Uzodinma stopped paying the loan because he suddenly died. It was because he defaulted in the payments that we reported the matter to EFCC. Yes, the Accused was before then recovering loans for us and he was doing that conscientiously. Yes, he used to recover loans for us from Mr. Uzodinma. Yes, the

Accused has health challenges. Yes, he was making recoveries for us even at that."

Recall also when the PW added further that:

"…. the Accused accepted those cheques in the interest of the bank."

Furthermore, while PW2's testimony was perhaps the most in criminating against the convict, the PW2 himself by that evidence and other pieces of evidences at the trial stood equally culpable for the offence for which the convict alone was charged and prosecuted. As I observed in the Judgement however, it is perfectly within the competence of the Prosecution to charge whom it pleases. We must not fail to remember that the cheques which the convict was proved to have signed authorizing the loan to the late customer were infact shown to have been co-signed by PW2. The uncontrovated evidence at the trial also showed that the loan was audited by the bank's Internal Auditor, then vetted by the bank's Credit Officer, then endorsed by the bank's Accountant before it was approved by the convict. As it later turned out, it was only PW2 that was utilized by the Prosecution while there has not been a single comment on the named officers that played specific roles in the commission of the offence.

The underlying truth is that the entire episode would not have been reported to the EFCC if the bank had generated profit and not loss from the loan granted by the convict. Perhaps, just perhaps, the bank would have commended him if the outcome was profitable; perhaps he might even have had a pay rise. That unfortunately in many banks.

As may be recalled, the convict prosecuted under the provision of section 15(1)(a) and was convicted as charged under the provisions of section 16(1)(a) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act. Those provisions are reproduced here thus:

> "(1) A person who commits an offence undersection 15 of this Act is liable on conviction, subject to subsection (4) of this section, in the case of an offence –
>
> (a) under subsection (1)(a), (b) or (c) of that section, to imprisonment for a term not exceeding five years without an option of a fine".

The relevant provisions of subsection (4) of the section are similarly reproduced thus:

> "(4) A property confiscated or surrendered under this section shall be forfeited –
>
> (a) to the bank that suffered the loss".

It is to be noted here that the Prosecution was mainly concerned with the breach of the bank's Regulations by the convict, which it proved by exhibit "8" showing the limits of the officers of the bank in the grant of loan or credit facility; more particularly the convict. It was not concerned with remedy under subsection (4) (supra) and so made no effort whatsoever to lead specific evidence on whether or not the loan in issue has been repaid fully. The Defence too did not help matters here because it kept mute too on the issue during the trial. The issue surprisingly cropped up only in the course of allocutus whereby the learned counsel for the convict canvassed among his grounds for the allocutus the assertion that the loan has been repaid to the bank. Regrettably, there was no response on that line by the Prosecution. Thus, while identifying the issues on the allocutus preparatory to the sentence, I formed the view to hear further from both on the issue. I heard from them accordingly earlier today. While the Prosecution maintains that the loan has not been repaid, the Defence posited in the contrary. They both supplied the Court with their reasons for their respective positions. The crux of their divergence is that the lands given by the late customer that formed the collateral were later sold by

the bank at a price well above the value of the loan as contended by the learned counsel for the convict; while his learned friend posited that the sale was repudiated later as it turned out that the lands were encumbered which has resulted into litigations.

What this Court can decipher in all these is that the bank itself saw no faults in the title deeds presented by the late customer and so proceeded to sell the lands covered under the title deeds believing its action to legitimate and valid; because, just liked the convict stated he did, the bank too is presumed to have further investigated the titled deeds, confined same to be genuine before proceeding to sell the lands. In effect therefore, the bank itself is as equally or indeed even more blameworthy by failing to detect the fraud by the late customer over the title deeds; which it now however shifts all on the convict. The bank should take all legitimate steps to recover the balance of the unpaid loan from the late customer's estate(s) or interests. On the state of the available evidence at the trial and the informations on the issue by both learned counsel earlier today, it will amount to grave injustice to order the convict to repay to the bank the balance of the unpaid loan because, as I explained,

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SEO (Lit)

their focus on that should be directed at the estate(s) or interests of the deceased defaulting customer.

Turning back to the main issue under section 16(1)(a) (supra), I have had an indepth consideration of the entire evidence at the trial; more particularly in the uncontroverted evidence that the convict never had any criminal intention to commit any offence or jeopardize the interest of the bank. I have also taken into account the clear health deficit of the convict in the manner I explained earlier herein. The provisions of section 16(1)(a) (supra) provide for a term of imprisonment not exceeding five years without a option of a fine. The hands of the Court are tied in the award of punishment to imprisonment and nothing else. As provided in the section, the term of imprisonment must not exceed five years. The provisions did not however provide a minimum term of imprisonment but left that to the discretionary consideration of the Court. In the context of all the earlier considerations and determinations, I am of the considered view that the convict shall be sentenced to the barest, reasonable, possible term of imprisonment. Accordingly, I sentence you Chris Madu Ezeobi to a term of One Month

imprisonment with effect from the date of the Judgement in this case.

(Signed)
I.B. GAFAI
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