

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT JABI ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE**

**ON THURSDAY THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2015**

**CHARGE NO: FCT/HC/CR/52/2011**

**BETWEEN:**

COMMISSIONER OF POLICE.....COMPLAINANT

**AND**

UBONG JOHN UDOFIA.....ACCUSED PERSON

**JUDGMENT**

The Accused person was on 13<sup>th</sup> December, 2011 arraigned in this Court on a 3-count charge of:

- (1). Deceitfully collecting the sum of N3, 642, 425 under false pretence punishable under Section 1(3) of the Advance Fee Fraud and Other Related Offences Act, 2006.
- (2). Issuing Oceanic Bank International Cheque no: 1823925 for the sum of N2, 350, 948.00 to one Maimuna Ibrahim in repayment of money he deceitfully collected from her between May and June 2010 but which cheque was on presentation in the bank on 21<sup>st</sup> June, 2010 dishonoured for lack of funds and thereby committed an offence contrary to Section 1 of the Dishonoured Cheque Act, LFN 2004; and
- (3). Issuing Oceanic Bank International Plc Cheque with no: 18239321 for the sum of N1, 291, 437.00 to one Maimuna Ibrahim in repayment of money he deceitfully collected from her between May and June 2010 and which on presentation in the bank on 5<sup>th</sup> July, 2010 was returned unpaid for lack of funds and thereby committed an offence contrary to Section 1 of Dishonoured Cheque Act, LFN 2004.

He pleaded not guilty to each count of the charge, and thereafter the case proceeded to trial.

The Prosecution called two witnesses to wit: Maimuna Ibrahim who testified as Pw1 and was cross examined by the defence Counsel and Mr. Kimfa Fadip- the Investigating Police Officer (IPO) who testified as Pw2 and was cross examined by the defence Counsel.

At the close of the Prosecutor's case, the Accused through his Counsel raised a No Case to Answer Submission which the Prosecutor opposed. The parties filed and exchanged Written Addresses in this regard. In its Ruling delivered on 8<sup>th</sup> February, 2013 the Court upheld the submission with respect to Count 1 of the charge and discharged the Accused on that. It however dismissed the submission with respect to Counts 2 and 3 of the charge.

The Accused thereafter testified for himself as Dw1 in defence of the said Counts 2 and 3 of the charge. He was cross examined by the Prosecuting Counsel. He closed his case on 12<sup>th</sup> March, 2014. This done, his learned Counsel however filed a Motion on Notice seeking for an Order of the Court staying further proceedings in the case pending the hearing and determination of the Interlocutory Appeal he filed against the Court's Ruling of 3<sup>rd</sup> February, 2014. The application was heard and in a Ruling delivered on 11<sup>th</sup> June, 2014, the Court dismissed same. The parties were then given time frames within which to file and exchange Final Written Addresses which they did after some hitches. The Accused person through his Counsel adopted his Final Written Address on 5<sup>th</sup> November, 2014, the Prosecuting Counsel being absent and having no Final Written Address in the file of the Court at the time of the proceeding. This has now set the stage for this Judgment.

I have carefully read the said Written Address of the Accused person. I have also weighed the evidence of both the Prosecution and Accused person in support of and defence of the Counts 2 and 3 of the charge. The crucial question is whether or not the Prosecution has proved beyond reasonable doubts the ingredients of the offence of issuing dishonoured cheques per the Oceanic Bank International Plc Cheque nos: 1823925 and 18239321 by the Accused to Maimuna Ibrahim as provided by Section 1 of the Dishonoured Cheque Act LFN 2004.

Section 1 of the Dishonoured Cheques Act provides thus:-

"1(1). Any person who -

- (a). obtains or induces the delivery of anything capable of being stolen either to himself or to any other person, or
- (b). obtains credit for himself or any other person, by means of a cheque that, when presented for payment not later than three months after 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 to 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 N5, 000.00.

2. For the purposes of subsection (1) of this Section –

- (a). The reference to anything capable of being stolen shall be deemed to include a reference to money and every other description of property, things in action and other intangible property;
- (b). A person who draws a cheque which is dishonoured on the ground stated in the subsection and which was issued in settlement or purported settlement of any obligation under an enforceable contract entered into between the drawer of the cheque and the person to whom the cheque was issued, shall be deemed to have obtained credit for himself by means of the cheque notwithstanding that at the time when the contract was entered into, the manner in which the obligation would be settled was not specified.

As rightly submitted by the learned Counsel for the Accused, to successfully secure conviction under the above section of the Dishonoured Cheques Act, the Prosecution must prove beyond reasonable doubts the following ingredients of the offence: -

- (1). The cheque was issued by the Accused person to the nominal complainant.
- (2). The cheque was presented to the bank within three months from the due date.
- (3). The cheque was dishonoured for lack of funds in the drawer's Account on which the cheque was drawn.

In this case, what is the evidence presented to the Court by the Prosecution witnesses and the Accused having regard to the above ingredients of the offence.

A summary of the testimony of the Pw1 is that sometime in 2010, a friend of her's introduced the Accused person to her. The Accused told her that he got a contract and needed money to execute it. That she should contribute the sum of N1, 291, 817.00 which she did. In July 2010, the Accused came to her again and said he needed the sum of N2, 250, 000.00 which she also gave to him for the same contract. The Accused then gave her two cheques in the sum of N3, 642, 426.00. Before he issued the cheques to her, he wrote two agreements which he signed. The agreements reflected the fact of his collecting the above monies from her. The Agreements dated 5<sup>th</sup> May 2010 and 21<sup>st</sup> June, 2010 were tendered and admitted as Exhibits A and B respectively.

After executing the contract however and he was paid, the Accused refused to give her her money despite her several telephone calls on him. The Accused issued the cheques dated 5<sup>th</sup> May, 2010 in the sum of N1, 291, 437.00 and the second one in the sum of N2, 350, 949.00.

When she presented the cheques at Oceanic Bank in repayment of the monies she gave to the Accused, the bank dishonoured them. When she asked the bank, why the cheques were dishonoured, she was told there was no money in the Accused person's Account. While the dishonoured cheque dated 5<sup>th</sup> July, 2010 was admitted as Exhibit C, that dated 21<sup>st</sup> June, 2010 was admitted as Exhibit D.

After the cheques were dishonoured, she called the Accused on phone and informed him but he did not say anything. Her several other efforts to reach him on phone came to grief as his phone was switched off. She then decided to report the matter to the Police. When the Accused was brought to the Police Station, he wrote an undertaking to the effect that he was going to pay her the monies which he did not honour. He rather sued her to Court but the case was later dismissed. Till date he has not paid the money to her.

Under cross examination, the witness testified inter alia that she did not enter into any joint venture agreement with the Accused, rather he said he needed money to finance a business and that she should contribute which she did. That she is not a Money Lender. He promised to give her 20% of the amount contributed from the profit of the contract. She knew the Accused through Ifeoma Abba. Apart from the contribution, he has been giving money to the Accused which he paid back after the business. She was only helping him by giving him money but not for profit making. Exhibit B is not a loan agreement.

She reiterated that the Accused collected the sum of N2, 459, 124 from her on 21<sup>st</sup> May, 2010, and that after signing the agreement on 21<sup>st</sup> May, 2010 the Accused gave her a cheque for N2, 350, 948.00 payable on 21<sup>st</sup> June, 2010,

When shown Exhibit C, she confirmed the Accused person issued it to her after signing it and she presented it to the Bank twice and it was dishonoured. She was told on enquiry that there was no money in the Accused's account. The dates when she presented it to the bank are on it. She presented it on the date written on it i.e. 5<sup>th</sup> July, 2010.

When shown Exhibit D, she said she also presented it to the bank.

The Pw2 (Kumfa Fadip) who was the Investigating Police Officer (IPO) in the case testified inter alia that on 16<sup>th</sup> September, 2010, a Petition was written by one Maimuna Ibrahim against the Accused complaining of cheating and issuance of dud cheque. The Petition was endorsed to the Office of Commissioner of Police and assigned to his team for investigation.

On receipt of it, his team arrested the Accused person and recorded his statement under caution under his supervision. The Accused recorded his statement in his own handwriting. After this, the Accused was taken before the Assistant Commissioner of Police. Before this, he did read over the statement to the Accused before he signed it. The Statement was then tendered and admitted as Exhibit E.

Testifying further, he stated that the Assistant Commissioner of Police interviewed both the Accused and the nominal Complainant. In the course of this, the Accused made undertakings to refund the amount endorsed in the two cheques issued to the nominal complainant. The undertaking dated 5<sup>th</sup> October, 2010 was tendered and admitted as Exhibit G while that dated 13<sup>th</sup> December, 2010 was admitted as Exhibit H.

Testifying further, he stated that after the Accused had written the statement and undertakings, he visited Oceanic Bank to ascertain if the Accused actually had money in his Account with it when he issued the cheques. He wrote letter in this regard to the Oceanic Bank. It was however replied by Ecobank Plc having been merged with Oceanic Bank. In the reply, the bank attached the detailed Statement of Account of the Accused. A copy of the Reply with the attached Statement of Account was admitted as Exhibit I.

He testified further that the attached Statement of Account is in respect of a Company Account in which the Accused person is the sole signatory. The name is IB- Klens Nigeria Limited. He went through the Statement of Account and discovered that the two cheques were issued by the Accused person in the months of June and July, 2010. However as at that time there was not enough money in his said account to cover the amounts on the cheques. The cheques were then returned as dud having gone through clearing.

Concluding, he stated the Accused did not redeem the amount covered in the two cheques. He made undertakings to refund the amounts but did not do so.

Under cross examination, the witness testified inter alia that he was the leading investigating Police Officer in the case. He reiterated that the nominal complainant wrote a Petition to the Commissioner of Police and it was endorsed to the office of Deputy Commissioner of Police (CID) for investigation. One of the IPO's counter signed the statement of the Accused person. He denied being absent when the Accused wrote his statement at the Police Station. He insisted he interviewed the Accused and the nominal Complainant. He said he has served the Nigeria Police for 33years and does not know the nominal Complainant as a Money Lender. When shown Exhibits A and E, he insisted the nominal Complainant is not a Money Lender. That she complained therein that she entered into a joint venture Agreement with the Accused person following his approaching her to bring part of the money he needed to execute a contract which she did.

He identified Exhibits C and D as the dishonoured cheques issued by the Accused to the nominal Complainant. That the mark "DAR" on them means "Drawers Attention Required". This means the cheques bounced. The phrase implies there is no money in the Accused's Account to sustain the cheque. He also has a letter from the bank confirming this.

Dwelling further, he testified that the Police is not a debt recovery agency. They investigated the criminal aspect of the transaction which is issuance of dud cheque.

The witness also identified Exhibits G and H as undertakings made by the Accused at the Police Station. That therein the Accused promised to pay the sum of money on the cheques which if he paid would have been used as Exhibits against him but he did not pay. He denied the undertakings having been made under duress.

Under re-examination, he testified that the amount in Exhibit C is N1, 291, 437.00 while that in Exhibit D is N2, 350, 948.00 both totaling N3, 971, 385.00.

In his defence, the Accused testified for himself as Dw1. He testified inter alia that he knows the Complainant – Maimuna Ibrahim. She is a Money Lender. He borrowed money from her in 2009. He first borrowed N600, 000.00 from her. They made a Loan Agreement after borrowing the money. He did not sign any other document apart from the loan agreement. He has not issued the complainant a dud cheque. He issued her a post dated cheque as collateral for the money he collected from her. He did not have any contract transaction with the nominal Complainant. He denied knowing one Kimfa Fadip.

Under cross examination he testified inter alia that he is the Managing Director of IB Klenz Nigeria Limited. He admitted knowing Maimuna Ibrahim. He collected N600, 000.00 initially from her to do a business.

When shown Exhibit A, he said he wrote it and the amount on it is N896, 832.00. By the Exhibit, he was supposed to pay Maimuna Ibrahim a total sum of N1, 291, 437.06. He admitted the amount in Exhibit C is the amount he was supposed to pay her as stated in Exhibit A.

When shown Exhibit B he stated what he was supposed to pay her was N2, 350, 948.00. When shown Exhibit D he said the amount on it corresponds with that in Exhibit B. He admitted he issued Exhibits C and D to Maimuna Ibrahim. He however did not issue them to her to present in a bank but as collateral for the money he collected from her. He nevertheless conceded he has not paid the amounts stated in the cheques i.e Exhibit C and D to Maimuna Ibrahim.

Testifying further, he said he paid the sums of N480, 000.00, and N700, 000.00 to Maimuna Ibrahim in April/May 2009 and November, 2009 respectively. He also paid her N500, 000.00 through her bank in February 2010 and N600, 000.00 on 15<sup>th</sup> June, 2010. Thereafter his business collapsed and then he asked her to come for them to do "checks and balances" but she insisted he should pay her her money.

When shown Exhibit B again he admitted the only money he paid to her in 2010 was N600, 000.00 and the sum was deducted before they arrived at the figure of N2, 350, 948.00 following which he issued Exhibit D to her.

When shown Exhibits G and H, he admitted he wrote them. While Exhibit G was written on 5<sup>th</sup> October, 2010, Exhibit H was written on 13<sup>th</sup> December, 2010.

When shown Exhibit I, he in one breath said it is not the Statement of Account of IB Klenz Nig Ltd and in another, that page 3 of it is a reference Form in respect of I.B. Klenz Nig Ltd with Oceanic Bank. He admitted the photograph on it is his'. He also admitted he has an Account with Oceanic Bank but Exhibit I is not his'. That the name of his company is I.B. Klenz Nig Ltd but account number read out to him is not his company's Account number. He however would not remember the Company's Account number off head.

For the reason that the Account number in the Statement of Account (Exhibit I) was not eligible, the Court granted an adjournment as asked for by the Prosecution to enable Oceanic Bank Plc produce the legible copy of the Account.

The Certified True Copy of each of the signature card, Memorandum and Article of Association of I.B. Klenz Nig Ltd and its Statement of Account with Oceanic Bank Plc were subsequently admitted in evidence as Exhibits J to J2 respectively.

The witness on being shown Exhibit J1 admitted the picture and signature on it are his and the name I.B. Klenz Nigeria Limited appearing on it is the name of his company. When shown Exhibit J2, he also admitted he is the sole signatory to the Account. When shown page 4 of Exhibit J2, he admitted equally that by the transaction therein between 17<sup>th</sup> June, 2010 to 31<sup>st</sup> August, 2010 the highest credit balance was N20, 942.52. He also admitted that there is no credit balance of up to N2, 350, 000.00 in the Account from the inception of the Account on 22<sup>nd</sup> October, 2003 to 22<sup>nd</sup> February, 2013.

Though the Accused was granted an adjournment to enable him call a second witness as requested by him, he did not call any. He however closed his case on 12<sup>th</sup> March 2014. He thereafter filed a Motion on Notice for Stay of Proceedings pending the hearing and determination of his Interlocutory Appeal. The motion was as aforesaid dismissed and parties next given time frames within which to file and exchange Final Written Addresses of which only the Accused filed and adopted one as earlier stated.

I have given due consideration to the foregoing evidence of the Prosecution witnesses and that of the Accused person. As earlier stated, the burden of proof lies on the Prosecution to prove beyond reasonable doubts the ingredients of the offence of issuing of dishonoured cheque as provided for under Section 1 of the Dishonoured Cheque Act. I have earlier set out the ingredients. For ease of reference I have reproduce them again as follows: -

- (1). The Accused issued the cheque to the Complainant for settlement of an obligation.
- (2). The cheque was presented for payment in a bank within three months from the due date.
- (3). The Cheque was dishonoured for lack of or insufficient funds in the Drawer's Account in the bank upon which the cheque was drawn.

In this case, it is the Prosecution's case per the testimony of Pw1 that the Accused person in May 2010 and July 2010 while being the sole signatory to IB, Klenz Nig Ltd and using that name borrowed the sums of N1, 076, 198.00 and N2, 950, 948.00 from the Complainant for the purpose of executing a contract which sum would be paid back with a return of 20% of the profit of the contract. The two sums of money total N3, 642, 425.00. In connection with this the parties executed two agreements admitted as Exhibits A and B.

By the Pw1's account, per her statement to the Police (Exhibit E) after executing the Contract and being paid for same, the Accused issued her with two cheques drawn in the name of his above mentioned company for the total sum of N3, 642, 425.00. While the first cheque dated 21<sup>st</sup> June, 2010 was in the sum of N2, 350,



948, the second dated 5<sup>th</sup> July, 2010 was in the sum of N1, 291, 437.00. When she presented the cheques in the bank on the due dates being 21<sup>st</sup> June, 2010 and 5<sup>th</sup> July, 2010 and subsequently, they were dishonoured by the bank for lack of funds. The cheques were admitted as Exhibits C and D respectively.

The Pw2 (The Investigating Police Officer) testified how he investigated the case upon the Pw1's complaint being referred to his team and found that the Accused person was the sole signatory to the Account of I.B Klenz Nig Ltd whose cheques the Accused issued to the Pw1 and that the said Company's Account with Oceanic Bank (Later merged with Ecobank Plc) had no funds on it to sustain the two cheques hence they were dishonoured. He tendered Exhibit I in this regard.

Both in his Statement to the Police (Exhibit F), examination in chief and cross examination, the Accused person admitted he knew the nominal Complainant (Pw1) and that he borrowed money from her in 2009 as shown in Exhibits A and B and was supposed to pay her the sums as stated in Exhibit C to her. He also admitted being the Managing Director and Chief Executive Officer of IB Klenz Nigeria Limited. He admitted as well under cross examination that he issued Exhibits C and D to the Complainant. He however did not issue them to her to present to a bank but as collateral for the money he collected from her.

From the foregoing, it is evident the Accused does not contest having borrowed the sums of money stated in Exhibits A and B from the nominal Complainant as well as having issued the cheques Exhibits C and D to her. By the records too, it is apparent that under cross examination he admitted he was the sole signatory of the company IB Klenz Nig Ltd on whose Account Exhibits C and D were drawn and that between 22<sup>nd</sup> December, 2010 and 22<sup>nd</sup> February, 2013 there was no credit balance of up to N2, 350,000.00 in it. Indeed he admitted that the Account never had a credit balance of up to this amount from inception to 2013. The highest credit balance was N20, 942.52.

By the foregoing, the Court holds the clear view that the Prosecution has proved beyond reasonable doubts the first element of the offence of issuance of dishonoured cheque i.e. issuance of the cheque by the Accused person to the nominal Complainant.

With regard to the 2<sup>nd</sup> ingredient i.e. that the cheque was presented within 3 months from due dates, it is the Accused person's case that the cheques were presented more than 3 months after due date i.e. in December, 2010. He also did contend the cheques were not issued to the complainant for presentation to the bank but as collateral for money he collected from her.

I have given a serious thought to the foregoing defence. A perusal of the Accused person's Statement to the Police (ie Exhibit F) and the Agreements (Exhibits A and B) the parties executed in respect of the transaction does not

support his contention that the cheques were given as mere collaterals and not to be presented to a bank for payment as no such intention was indicated or stated in them. It does appear to me that if it was the intention that the cheques were to serve as mere collaterals which were not to be presented to the bank for payment, the Accused would have clearly stated so in his Statement to the Police which was made at a time the Pw1 has laid a complaint of issuing dud cheques to her to the Police and he was confronted with the allegation. Indeed, a close reading of his said Statement shows he stated therein that at the time he gave the post dated cheque to the Pw1, he “was thinking that there will be money.”

Besides Exhibit F, a reading of Exhibit G which the Accused admitted he wrote shows he undertook therein to pay the monies he owes the Pw1 by instalments failing which the law will take its course against him. He never indicated there that he issued Exhibits C and D as mere collaterals not to be presented to the bank. If indeed that was his intention, Exhibit G was a veritable opportunity to raise or reiterate the contention. The Court’s understanding of his undertaking in Exhibit G which was made on 5<sup>th</sup> October, 2010 is that he was simply trying to redeem the sums of money endorsed on Exhibits C and D which he issued in June and July, 2010.

Beyond these, a perusal of the backside of Exhibits C and D shows the Accused clearly expressed his desire or intention for the cheques to be presented to and paid by the bank given his endorsement thereat. In Exhibit C, he expressed the intention under his hand thus:

“Confirmed payment by Ubong John Udofia. Pls pay her with FCDA ID Card No. 21699.” He then appended his signature twice and his GSM telephone number being 08034502408 .

Likewise at the back of Exhibit D he stated thus: -

“Confirmed payment by me. Pls pay her with FCDA ID Card No. 21699”

Atop these he signed his signature twice, wrote his telephone number being 08034502408 and the date of issuance being 21<sup>st</sup> June 2010.

The foregoing endorsements by the Accused person at the backside of Exhibits C and D clearly in my view shows he intended the cheques to be presented for payment and not used as mere collateral. They clearly put a lie to his instant contention. The contentions therefore do not induce belief in me. I therefore reject them.

With respect to the issue of the cheques being presented three months after the due date, the Pw1 testified without contradiction under cross examination she presented the cheque twice and it was dishonoured. That she presented it on

the date written on it i.e. 5<sup>th</sup> July, 2010. It is noteworthy this piece of evidence by Pw1 was not contradicted or discredited by the Accused.

Besides, a perusal of the Accused person's Statement to the Police shows he acknowledged the cheque was presented to the bank. He however, expressed gratitude to God it was not stamped "stamped in the Bank as Dutch Cheque". This statement was as shown on it made by the Accused and signed by him on 29<sup>th</sup> September, 2010. The cheque (Exhibit C) having been issued by him on 5<sup>th</sup> July, 2010 and he did acknowledge in his statement made on 29<sup>th</sup> September, 2010 the Exhibit was presented to the bank, it becomes apparent that at least, Exhibit C was not presented to the bank after 3months of the due date being 5<sup>th</sup> July, 2010. This, his line of defence therefore collapses in the light of his self made Exhibit F as well as the uncontradicted evidence of Pw1 which I believe.

This said, the next ingredient is whether or not the cheques were dishonoured in the bank upon presentation for lack of funds or sufficient funds to sustain them.

In this regard, the Pw1 testified in her evidence in chief that she presented the cheques (Exhibits C and D) to the bank which is in Area 8 Garki, Abuja for payment but they were dishonoured for lack of funds. That when she asked the bank official why the cheques were dishonoured she was told there was no money in the Account of the Accused. After the cheques were dishonoured she called the Accused and informed him of the development but he did not say anything. Thereafter, her several efforts to get him on phone were fruitless as his phone was switched off. She then decided to report the matter to the Police.

When cross examined on the issue the Pw1 insisted that she presented Exhibit C to the bank twice and it was dishonoured. That she presented it to the bank on the date written on it being 5<sup>th</sup> July, 2010. That she was told on enquiry by the bank that there was no money in the Account. The Accused did not contradict the piece of evidence with any evidence to show the cheque was honoured on presentation in the bank.

Besides, the Accused person himself in his Statement at the Police Station (Exhibit F) admitted he issued a post dated cheque to the Pw1 with the hope that there will be money in which event he will withdraw it and pay her "by hand."

He expressed gratitude to God that the cheque was not stamped "stamped in the bank as a Dutch Cheque". The Accused person's statement undoubtedly indicates the cheque he issued to the Pw1 was not honoured though, according to him, it was not stamped "stamped in the bank as a dutch cheque" for which reason he thanked God.

Beyond the statement however, a look at the two cheques (Exhibits C and D) shows they clearly had the words "DAR" marked on them twice by the bank. This

in essence shows they were presented to the bank twice by the Pw1 as she testified. I have given a thought to the implication of a bank marking the words "DAR" on a cheque presented to it for payment. In **STANDARD TRUST BANK LTD V BARRISTER EZENWA ANUMNU (2008) 14NWLR (PT.1106) P.125**, the Court of Appeal while dealing with the imports of the bank writing the phrases "Drawer Confirmation Required," "Drawer Attention Required" and "Refer to Drawer" on a cheque held thus: -

"Drawer Confirmation Required", "Drawer Attention Required" and "Refer to Drawer" mean the same things in banking operation, as they are warnings to dishonouring a cheque. A cheque is returned unpaid after being so marked. The connotation to a third party is that there is no fund or no sufficient fund in the account to accommodate the dishonoured cheque: see also: **DIKE V ACB LTD (2000) 5NWLR (PT.657) P. 441**.

The foregoing decisions of the Courts clearly illustrate the point that in marking Exhibits C and D issued by the Accused to the Pw1 and the latter presented them to it for payment, that the Accused had no fund or did not have sufficient funds in his Account with it to accommodate the value of the cheques. By marking the cheques with the said "DAR" on the two occasions they were presented to it the bank loudly meant to be understood that the Accused had no funds or sufficient funds in his Account with it on both occasions to sustain the cheques.

The foregoing imports of marking Exhibits C and D "DAR" are buttressed by the contents of Exhibits J and J2. Exhibit J is a Certificate issued by Ecobank Plc wherein the Accused holds an Account in the name of IB-Klenz Nig Ltd pursuant to the provision of Section 84 of the Evidence Act. Exhibit J2 is the Accused person's Statement of Account held in the above name and which details out the transactions in the Account. The Pw2 did testify that in the course of his investigation he discovered that the Accused person's Account with Oceanic Bank (later merged with Ecobank and now Ecobank) in the name of IB – Klenz Nig Ltd did not have a credit balance up to the tune of the sums in Exhibits C and D issued by the Accused in the months of June and July 2010 to sustain the cheques. The Accused did not lead any evidence in contradiction of this testimony. I have on my own part examined the said Statement of Account which is Exhibit J. It did not in the month of June 2010 have a credit balance of N2, 350, 948.00 to sustain Exhibit D. Likewise, it did not in the month of July 2010 have a credit balance sufficient to sustain the value of Exhibit C. Indeed, at no time in the year 2010 did it have a credit balance sufficient to accommodate the value of both Exhibit C and D. The Accused himself did admit under cross examination he maintains the Account in the name of IB Klenz Nig Ltd with Ecobank Ltd per Exhibit J1 and he is the sole signatory to it. He also admitted that it is correct that in the Statement of Account (Exhibit J2) the highest credit balance he had in the Account from 17<sup>th</sup> June, 2010 to 31<sup>st</sup> August, 2010 was

N20, 942.52. That there is no credit balance in it up to the sum of N2, 350, 000.00 from 22<sup>nd</sup> December, 2008 till 22<sup>nd</sup> February, 2013.

From the foregoing pieces of evidence of both the Prosecution witnesses and the Accused himself, the Court is left in no doubt that not only did the Accused person issue the Pw1 (the nominal Complainant) with Exhibits C and D in repayment of monies he borrowed from her for business, the Exhibits were on presentation to the bank dishonoured for lack of sufficient funds to sustain their values hence the bank dishonoured them. In the circumstances, the Court holds the Prosecution has proved beyond reasonable doubt the 3<sup>rd</sup> ingredient of the offence of issuing dishonoured cheque consistent with the provision of Section 1 of the Dishonoured Cheques Act.

In the light of these, the Court holds the Prosecution has proved beyond reasonable doubt the ingredients of the offence of issuing dishonoured cheques as provided by Section 1 of the Dishonoured Cheque Act with which the Accused was charged in this case. The Accused is accordingly convicted with respect to Counts 2 and 3 of the Charge preferred against him. He is discharged and acquitted with respect to Count 1 consistent with the Court's Ruling of 8<sup>th</sup> February, 2013 on his no case to Answer Submission.

Before I drop my pen, it needs be stated that the Accused Counsel's contention that the Police in this case embarked upon recovery of civil debt contrary to Section 4 of the Police Act; is unavailing. This is because, a reading of Exhibit E ie the Pw1's Statement to the Police clearly shows her complaint was with regard to the Accused issuing her with a dishonoured cheque in the attempt to settle the monies he borrowed from her for business. The testimony of the Pw2 also is to the effect that upon endorsement of the Pw1's complaint to his team, they investigated the allegation of issuance of dishonoured cheque by the Accused person. The fact of the Accused person writing undertakings to pay the debts does not detract from the fact that a case of issuance of dud cheque was disclosed in the Pw1's complaint/statement and the Police through the Pw2 and his team investigated same and thereafter charged the Accused to Court for same.

All said, the accused is convicted as stated above.

**SIGNED**  
**HON. JUDGE**  
**12/ 2/2015.**

**COURT:**

Allocutus, if any.

**SIGNED  
HON. JUDGE  
12/ 2/2015.**

**MRS. NWACHUKWU:**

The Accused having been convicted on the two Counts of the Charge has so many responsibilities. He has both parents and siblings and children to take care of. It was due to the economic situation in the Country that his business collapsed. He has made frantic efforts to pay the money to no avail. If given the opportunity to offset the debt he will offset it. If the Court can give him an option of fine instead of imprisonment. He is a first time offender and has no criminal record. It was the helpless situation he found himself in that led to this problem. We pray the Court to temper justice with mercy.

**MR. LOUGH:**

We thank the Court for the well considered Judgment. The Judgment is consistent with the spirit of the drafters of the Dishonoured Cheques Act. The essence of the Act is to ensure that a cheque is received as legal tender.

Secondly, this trial lasted for close to 4 years Judgment was given today. The Accused had ample opportunity within this period to pay up the debt but he remained adamant. The Accused even filed a civil suit against the nominal complainant and the Police before this Court which was dismissed with a N20, 000.00 cost against him.

The essence of criminal justice administration is to deter offenders. We therefore urge the Court to pass sentence that will deter other persons from committing similar offences.

Lastly, we pray the Court to Order the Accused to pay compensation to the nominal complainant in the total sum of N3, 641, 385 representing the value of the two cheques upon which he was convicted.

**COURT:**

I have listened to the submissions of Counsel for the Accused by way of Allocutus and the response of the Prosecuting Counsel. The learned Prosecuting Counsel has not drawn the Court's attention to any provision of the law or judicial authority on the basis of which the Court can direct the Accused to pay compensation by way of the value of the two dishonoured cheques to the nominal complainant. The Dishonoured Cheques (offences) Act Cap D11 2004 on its part has not made any provision in this regard. In the circumstances, the Court has no basis to honour the invitation extended to it by the Prosecuting Counsel. The application is rejected. The nominal complainant can always exercise her options in civil actions to recover the monies covered by the said cheques.

With regard to the submissions of the Counsel for the Accused, much as there is no evidence of record of previous criminal conviction against the Accused before the Court which makes him a first time offender for which he ought to attract a compassion of the Court, a reading of Section 1(1) of the Dishonoured Cheques (offences) Act Cap D11 LFN 2004 shows the provision has not allowed the Court exercise of discretion with regard to sentencing of an Accused person convicted under it. For clarity, I reproduce the provision of the Section. It provides thus: -

“1(1). Any person who –

- (a). Obtains or induces the delivery of anything capable of being stolen either to himself or to any other person; or
- (b). Obtains credit for himself or any other person, by means of a cheque that, when presented for payment not later than three months after 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 option of a fine; and
  - (ii). In the case of a body corporate, be sentenced to a fine of not less than N5, 000.00.

By the use of the word “shall” in the Section, it is evident that the law maker intends that the Court upon convicting a person under the Section is under a duty or mandatorily required to sentence him to imprisonment for two years without option of a fine. As it is the duty of the Court to apply the law as provided, the Court has not room for exercise of discretion in this matter so as to either give the Accused an option of fine or lesser term of imprisonment. In the circumstances the Accused person’s prayer is rejected, the Accused is sentenced to 2 years imprisonment without option of fine on each count with effect from today. The two years shall run concurrently.

**SIGNED**  
**HON. JUDGE**  
**12/ 2/2015.**

**LEGAL REPRESENTATIONS:**

1. Mr. Lough for the Prosecution
2. Mrs. Nwachukwu for the Accused person.