

**IN THE HIGH COURT OF ENUGU STATE OF NIGERIA
IN THE HIGH COURT OF ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
BEFORE HIS LORDSHIP HON. JUSTICE C. C. ANI (Ph.D., MCI Arb.)
ON FRIDAY THE 1ST DAY OF FEBRUARY, 2019**

CHARGENO: E/55C/2016

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA (EFCC) ---- COMPLAINANT

AND

NICHOLAS EMENIKE

RASO CONSTRUCTION COMPANY

NIGERIA LTD

}

---- DEFENDANTS

JUDGMENT

This is a case being prosecuted in this Court by the Economic and Financial Crimes Commission, (EFCC). The Defendants were arraigned before this Hon. Court via a two Counts Charge and proof of evidence filed on the 14th day of April, 2016. The Charge states thus:

COUNT ONE

That you, Nicholas Emenike, while being Director of Raso Construction Company Nigeria Ltd. and Raso Construction Company Ltd. on or about the 14th day of April, 2015 at Kenyetta in Enugu within the jurisdiction of the High Court of Enugu State with intent to defraud obtained goods valued at Four Million, Four Hundred and Sixty Seven Thousand, Five Hundred Naira, only (N4, 467, 500.00) from Mr. Obiora Atansi when you falsely represented that one Eastern Prime Managers, a Company owned by one Rev. Anabanna Ikeunauba gave Raso Construction Company Nigeria Ltd. a building

Contract worth One Billion, Seven Hundred Thousand Naira to execute at Zion Hill Estate, Enugu, which pretence you knew to be false and thereby committed an offence contrary to Section 1 (1) (a) of the Advance Fee Fraud and Other Related Offences Act, 2006 and Punishable under Section 1 (3) of the same Act.

COUNT TWO

That you, Nicholas Emenike while being Director of Raso Construction Company Nigeria Ltd. and Raso Construction Company Nigeria Ltd. on or about the 14th day of April, 2015 at Kenyetta in Enugu within the jurisdiction of the High Court of Enugu State did obtain credit from one Mr. Obiora Atansi by issuing him a Diamond Bank Plc Cheque no. 063250525 dated 15/5/2015 for the sum of Four Million, Four Hundred and Sixty-Seven Thousand, Five Hundred Naira, only (N4, 467, 500. 00) which when presented for payment within three months of issuance was dishonoured on the ground that there was insufficient fund in the account on which the cheque was drawn and you there by committed an offence contrary to Section 1 (1) (b) of the Dishonoured Cheque Offences Act, Cap D11 Laws of the Federation 2004 and punishable under Section 1 (1) (b) (i) of the same Act.

The Defendants were arraigned on the 27th of March, 2017 and they pleaded "Not Guilty" to the two counts. In the course of trial, the Defendants were absent in court on several occasions: **11/12/2017, 22/1/2018, 27/1/2018, 17/4/2018 and 21/5/2018**. After numerous adjournments as a result of the Defendants' absence, on 26/6/2018, the learned Counsel for the Prosecution applied to the Court in line with Section 352 (1)(a) of the Administration of Criminal Justice Act, 2015 to issue Bench Warrant and Order for Surety to show cause. The Court on

24/9/2018 further granted the Prosecuting Counsel's Application for trial in absentia in line with *Section 352 (4) of Administration of Criminal Justice Act, 2015*.

The trial of this case commenced on 24th of October, 2018 with the Prosecution opening its case with the evidence of PW1, Obiora Atansi. The Prosecution also called a second witness in the course of the trial, Benjamin Nuhu of the EFCC as PW2 to prove her case. The Prosecution witnesses tendered a total of 9 exhibits, respectively before closing her case on the **25th of October, 2018**. The exhibits are marked as follows:

1. Statement of the Complainant, Obiora Atansi to the EFCC on 6/10/2015 -**Exhibit A**
2. Petition to EFCC dated 15/9/2015 written by C. P. Chibuzor Esq. with four attachments -**Exhibit B—B4**;
3. Raso Construction Company Ltd. LPO dated 14/4/2015 **Exhibit C**;
4. Diamond Bank Cheque dated 15/5/2015 issued by the Defendants in favour of PW1-**Exhibit D**;
5. Letter from Diamond Bank dated 27/10/2015 with attachments-**Exhibit E-E10**;
6. Letter from CAC on Rasa Construction Company, dated 14/3/2016-**Exhibit F**;
7. Response from CAC on Eastern Prime Manager Ltd. dated 29/2/2016-**Exhibit G**;
8. Statements of the 1st Defendant, Nicholas Emenike to the EFCC dated 20/10/2015 and the one of 17/3/2017-**Exhibits H and J** respectively.

The Prosecuting Counsel, Onome Marshal Umukoro Esq. on his part, filed his final Written Address on 12/11/2018, which was adopted in Court on 21/1/2019 by Michael Ani Esq. learned Counsel for the Prosecution and the case was set down for judgment.

FACTS OF THE CASE:

On the 14/4/2015, the 1st Defendant bought iron rods from Obiora Atansi, PW1 worth Four Million, Four Hundred and Sixty-Seven Thousand, Five Hundred Naira (**N4,467,500.00**) only and issued him a cheque for the said amount to be cashed on **15/5/2018**. The 1st Defendant informed PW1 that he had a building contract at Zion Hill Estate, Enugu where he would use the said iron rods. When the date in the cheque was due, PW1 went to Diamond Bank to cash the cheque which was returned unpaid and he called the 1st Defendant several times for his money and when the 1st Defendant stopped answering his calls, he realized that he has been duped. He reported the matter to EFCC whose investigation revealed that the 1st Defendant used the iron rods for construction of road in Umunya, Anambra State and for building his personal house in his village Ogbunka, Anambra State.

EVIDENCE OF THE WITNESSES

PW1- OBIORA ATANSI (The Complainant)

Part of the evidence of PW1 in Court on 24/10/2018 can be summarized thus:

On 14/4/2015, one Nnachetam brought Nicholas Emenike, the 1st Defendant to his shop and Emenike requested to buy iron rods from him. They negotiated the price of the rods and Emenike gave him an LPO to supply the rods to the Company, the 2nd Defendant. Emenike wrote a cheque of ~~N~~ 4, 467, 500.00 (Four Million, Four Hundred and Sixty-Seven Thousand, Five Hundred Naira). He supplied the iron rod at Emenike's

Office at Ezionye Filling Station. When he went to cash the cheque at the Bank, the Bank said that there was no money in the account. He started calling Emenike on the phone, but he was not picking up his calls. He went to Emenike's house three times and did not see him. He went back to the place he dropped the rods and did not find the rods there again. It then dawned on him that he has been duped. He then reported the matter to EFCC where he made a statement.

PW2-BENJAMIN NUHU (EFCC Detective)

PW2 gave evidence *inter alia* as follows:

On 15/9/2015, the EFCC Enugu Zonal office received a written petition authored by Chibuzor Esq. on behalf of Atansi Obiora against Mr. Nicholas Emenike. The Petition was assigned to his unit for investigation and the Petitioner was invited. He came and adopted his petition and submitted the original copies of the LPO and Diamond Bank cheque to the Commission. He wrote a letter to CAC to confirm whether the Defendant Company was registered with the CAC. He also wrote a letter to Diamond Bank and he received response from the CAC and Diamond Bank.

The response from CAC revealed that the 2nd Defendant is a registered company belonging to the 1st Defendant, Nicholas Emenike who is a Director in the Company. The response from Diamond Bank revealed that as at the period when the cheque was presented, there was insufficient fund in the account on which the Cheque was drawn. The 1st Defendant claimed that he was awarded a contract by Eastern Prime Managers Company to build houses at Zion Hill Estate, Enugu. He wrote to CAC to confirm if Prime Eastern Manager was registered with CAC and responses received from CAC revealed that the company does not exist. He mobilized his team and arrested the 1st Defendant after he

failed to honour the invitation extended to him. The 1st Defendant volunteered a written statement wherein he stated that he used the said iron rods for construction of road in Anambra and building of his personal house in Ogbunka, Anambra State. The 1st Defendant told him that he does not know the office of Prime Manager that gave him contract and also the location of Zion Hill Estate. The 1st Defendant took him to his village wherein he saw the Defendant's personal house newly built by him with said Iron rod and that he equally saw the road constructed by the 1st Defendant with the said rods.

EVALUATION OF EVIDENCE AND DETERMINATION OF ISSUES

Two issues are called for determination in this case as distilled by the learned Prosecution Counsel viz:

- 1. Whether the prosecution has proved beyond reasonable doubt the essential elements of obtaining goods by false pretence against the Defendants to warrant their conviction.**
- 2. Whether the prosecution has proved the offence of issuance of dud cheque against the Defendants beyond reasonable doubt.**

ISSUE NO. 1

Whether the prosecution has proved beyond reasonable doubt the essential elements of obtaining goods by false pretence against the Defendants to warrant their conviction.

Learned prosecuting Counsel quoted Section 1(1)(a)&(b) of the Advance Fee Fraud & Other Fraud Related Offences Act, 2006 which provides as follows:

- 1(1) *Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud;*
- (a) *obtains, from any other person, in Nigeria or in any other country for himself or any other person;*
 - (b) *induces any other person, in Nigeria or in any other country, to deliver to any person commits an offence under this Act.*

He also quoted Section 20 of the same Act, which defines "false pretence" to mean;

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

He quoted from the case of **Rev. Victor Mukoro v. Federal Republic of Nigeria (2015) LPELR-24439(CA)**, where the Court of Appeal Per Ogakwu, J.C.A. gave the ingredients of obtaining money by false pretences thus:

It is hornbook law that the ingredients or elements that are required to be proved to establish the charge of obtaining money by false pretences are: 1. That there was a pretence. 2. That the pretence emanated from the accused person 3. That the pretence was false. 4. That the accused person knew of the falsity of the pretence or did not believe in its truth. 5. That there was an intention to defraud. 6. That the property or thing is capable of being stolen. 7. That the accused person induced the owner to transfer his whole

interest in the property. See Alake Vs. The State (1991) 7 NWLR (Pt 205) 567 At 591, Onwudiwe Vs. FRN (2006) LPELR (2715) 1 at 55 and ODIAWA vs. FRN (2008) ALL FWLR (PT.439) 436. (Pp.21-22, paras. F-C).

He also referred to the cases of **Alake v. The State (1991) 7 NWLR (Pt. 205) 567**; **Nwankwo v. Federal Republic of Nigeria (2003) 4 NWLR (Pt. 809) 1**, and **FRN v. Helen Banke Laoye (2007-2011) E.C.L.R VOL.2** on the elements or ingredient of the offence of obtaining money by false pretence.

Arguing in proof of the elements or ingredient of the offence of obtaining money by false pretence, learned Counsel submitted that the evidence from PW1 is to the effect that there was representation by the 1st Defendant who purchased iron rods from him worth Four Million, Four Hundred and Sixty-Seven Thousand, Five Hundred Naira (**N4,467,500.00**) only on the pretence that he had a contract to build houses at Zion Hill Estate, Enugu where he will use the iron rods. Equally, PW1's evidence was that he went to Diamond Bank to cash the cheque and when the cheque bounced owing to insufficient fund in the 2nd Defendant's account, he started calling the 1st Defendant who stopped picking his calls and he went to the house of the 1st Defendant thrice and did not see him. That he also visited the place where he parked the rods for the Defendant and the rods were no longer there.

Learned Counsel further submitted that the 1st Defendant knew that the said representation he made was false. That based on the evidence of PW2 who investigated the petition made against the 1st Defendant and his Company, the said Company belongs to the 1st Defendant and that Exhibit E-E10 has equally shown that the account is operated solely by the 1st Defendant (i.e. sole signatory to the account). He also argued that

the 1st Defendant cannot hide under his Company used in giving a cheque to PW1 as the principle of lifting the veil will be applied to show that the 1st Defendant is the sole directing mind of the 2nd Defendant, Raso Construction Company Ltd. He referred to the case of **Aminu Musa Oyebanji v. The State (2005) LPELR-2471 (SC)** on the circumstances in which the veil of incorporation will be lifted, where the Supreme Court held that one of the occasions when the veil of incorporation will be lifted is when the company is liable for fraud.

Mr. Umukoro for the Prosecution further stated that the Evidence led showed that the 1st Defendant made a representation to PW1 which was false and that as a result of the said representation, PW1 was induced to deliver iron rods worth N4,467,500.00 to him. That also as shown in the evidence, the 1st Defendant was not awarded any contract as the said Company he claimed awarded contract to him does not exist.

On whether this Court can convict the 1st Defendant solely on his confessional statement made on 28/10/2015, learned Counsel recapped the definition of confession given by per Ariwoola, J.S.C. in the case of **Idowu Okanlawon v. The State (2015) LPELR-24838(SC) Pp. 46-47, paras. C-A**, thus:

A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime and this includes both extra-judicial and judicial confessions. It also includes an incriminating admission made that is not direct and positive and short of a full confession. See; Section 28 of the Evidence Act, 2011. In the same vein, confession has also been held to be a criminal suspect's oral or written acknowledgement of guilt, which often includes details about the crime alleged. In other words, a

confession is an acknowledgement in express words by the accused person in a criminal case, of the truth of the main fact charged or of some essential part of it. SEE; ONUOHA VS THE STATE (1987) 4 NWLR (PT.15) 331; AKPAN VS STATE (2001) 15 NWLR (PT.737); (2001) 11 SCM 661 (2001) 7 SC (PT.1) 124; NWACHUKWU VS THE STATE (2002) 12 SCM 143; (2002) 7 SC (PT.1) 124; (2007) 17 NWLR (PT.1062) 31; DARE JIMOH VS. THE STATE (2014) 10 NWLR (PT.1414) 105; (2014) ALL FWLR (PT.733) 1855; (2014) 17 WRN 1; ALUFOHAI VS STATE (2015) 3 NWLR (PT.1445) 172.

He also posited that the Supreme Court, in the case of **Ifeanyi Chiyenum Blessing v. Federal Republic of Nigeria (2015) LPELR-24689 (SC)**, Pp. 41-42, paras. F-C held that the law is that a free and voluntary confession is sufficient proof of guilt if it is direct, positive and unequivocal with reference to the offence charged. He expressed the view that 1st Defendant's confessional statement is voluntary, direct, positive and unequivocal, and that he can be convicted on the confession.

Learned Counsel added that the 1st Defendant's confessional statement **Exhibit H** made on **28/10/2015** fulfilled the requirement of *Section 17 (2) of Administration of Criminal Justice Act, 2015* as it was taken in the presence of his friend and business partner Mr. Attah Longinus.

RESOLUTION OF ISSUE NO.1

Section 1 of the Advanced Fee Fraud and Other Related Offences Act, 2006 provides as follows:

- (1) *Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud-* (a) *obtains, from any other person, in Nigeria or in any other country, for himself or any other person; (b) induces any*

other person, in Nigeria or in any other country, to deliver to any person; or (c) obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, is guilty of an offence under this Act. (2) A person who by false pretence, and with the intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for is guilty of an offence under this Act.

(3) A person who commits an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not more than 20 years and not less than seven years without the option of a fine.

Exhibit F, Letter From CAC, shows that Raso Construction Company Ltd. was registered with the CAC on 16/3/2011. The Company has two Directors, one Sila Rakan and the 1st Defendant, Emenike Nicholas Onyemaechi. The Diamond Bank Account Opening Form for the 2nd Defendant, Raso Construction Company Limited, shows that the 1st Defendant, Emenike Nicholas is the sole signatory of that account. See Exhibit E2. I can see the LPO issued by Raso Construction Company Limited for the supply of various sizes of rods for a total sum of ₦4, 467, 500.

I have also read the statement of the 1st Defendant made to the EFCC on 28/10/2015. In that statement he tried to give reasons why he could not pay the money on the LPO and the cheque, but admitted that he used the rods to execute another contract involving road construction in

Anambra State and also to construct his personal house in his village, Ogbunka in Anambra State. See Exhibit H.

Exhibits D and B4 show that as at 19/9/2015 when the Complainant, Mr. Obiora Atansi presented the Cheque for payment at the Bank, there was no funds in the account of the 2nd Defendant for payment of the sum.

The evidence of PW1, PW2 and all the documents presented to this Court as exhibits all go to corroborate the confession of the 1st Defendant that he convinced the Complainant that he needed iron rods for some job, issued him with a cheque and that as at the time the cheque was presented, the sum on the account was too low to satisfy the sum on the cheque he issued. Furthermore, he admitted that rather than returning the said rods or using them for the purpose for which he requested for them, he used them for other personal purposes. Of course, investigation revealed that the 1st Defendant was not awarded any contract as the said company he claimed awarded contract to him does not exist. This clearly shows that the representation he made from the beginning was false.

It is trite law that a voluntary confession of guilt, if fully consistent, probable, direct, positive, unequivocal with reference to the offence charged and is coupled with a clear proof that a crime has been committed is usually accepted as sufficient proof of guilt. See **Ifeanyi Chiyenum Blessing v. Federal Republic of Nigeria, 2015, (supra), Ogoala v. The State (1991) 2 NWLR (Pt. 175) 509; Adio v. The State (1986) 2 NWLR (Pt. 24) 581; Mohammed v. State (2007) 11 NWLR (Pt. 1045) and Osung v. The State, (2012) 18 NWLR (Pt. 1332) 256.**

On the issue of corporate criminal liability of the 2nd Defendant, I will say that Section 65 of *CAMA* makes a company criminally and civilly liable to

the same extent as if it were a natural person for any act of its members or Directors while carrying on in the usual way, the business of the company:

Provided that-

- (a) *the company shall not incur civil liability to any person if that person had actual knowledge at the time of the transaction in question that the general meeting, board of directors, or Managing Director, as the case may be had no power to act in the matter or had acted in an irregular manner or if, having regard to his position with or relationship to the company, he ought to have known of the absence of such power or of the irregularity;*
- (b) *if in fact a business is being carried on by the company, the company shall not escape liability for acts undertaken in connection with that business merely because the business in question was not among the business authorized by the company's memorandum.*

“Lifting the veil” refers to situations where the judiciary or legislature decide that the separation of the company and its members are not to be maintained. This process has been described in various metaphors like: *lifting, peeping, penetrating, piercing or parting the veil of incorporation*. See Alan Dignam and John Lowry, *Company Law* (Oxford University Press, 2009), at 31. See also Ani Comfort Chinyere “Corporate Liability for Crimes” in *Apogee Journal of Business, Property and Constitutional Law, AJBPCL*, vol. 1. No. 2, October – December 2009, pp. 46-64.

The case of **Aminu Musa Oyebanji v. The State (2005) LPELR-2471 (SC)** cited by the learned Counsel for the prosecution is apt. In that

case, the Supreme Court gave the circumstances in which the veil of incorporation will be lifted, thus:

The circumstance in which the veil of incorporation of a company will be lifted was succinctly stated in the case of ALADE V ALIC (NIG) LTD & ANOR (2010) 19 NWLR (PAT 1226) 111@ 130 E-H AD 142 C-E wherein the court held per GALADIMA JSC that one of the occasions when the veil of incorporation will be lifted is when the company is liable for fraud as in the instant case". In ADEYEMI V LAN & BAKER (NIG) LTD (2000) 7 NWLR (PART 663) 33@ 51 PER MUNTAKA-COOMASSIE JSC AT 142 C-E, "it must be stated unequivocally that this court, as the last court of the land, will not allow a party to use his company as a cover to dupe, cheat or defraud an innocent citizen who entered into a lawful contract with the company only to be confronted with the defence of the company's legal entity as distinct from its director. PER KEKERE-EKUN JSC PP41-42 PARAS D-D.

This instant case is such that the veil of incorporation can be safely lifted and the person behind the veil is no other person than the 1st Defendant. Also in this instant case, the 1st Defendant as the Director of the 2nd Defendant; the sole signatory of the 2nd Defendant's account in question and also the person that personally transacted with the Complainant, can be described as the directing mind of the 2nd Defendant. In *Tesco Supermarkets Ltd v Nattrass*(1972) AC 153. Lord Reid said:

The person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company.

Considering all the foregoing, it is my respectful view that the Prosecution has established the elements of the offence of obtaining property by false pretence as stated in the case of **Rev. Victor Mukoro v. Federal Republic of Nigeria (2015) LPELR-24439(CA)**. The prosecution has shown from the evidence led that there was a pretence by the 1st Defendant; that the pretence emanated from the 1st Defendant; that the pretence was false; that the 1st Defendant knew of the falsity of the pretence; that there was an intention to defraud; that the property or thing i.e. iron rods are capable of being stolen and that the 1st Defendant induced the owner, Mr. Obiora Atansi to transfer his whole interest in the property, that is the iron rods.

It can safely be said that the prosecution has proved the charge of obtaining property by false pretence against the Defendants beyond reasonable doubt. The first issue is resolved in favour of the Prosecution

ISSUE NO. 2

Whether the prosecution has proved the offence of issuance of dud cheque against the Defendants beyond reasonable doubt.

Learned Counsel for the Prosecution on this issue, submitted that the Prosecution has proved the offence of issuance of dud cheque against the Defendants beyond reasonable doubt by showing and proving conclusively that the 1st Defendant issued a dud Cheque to Obiora Atansi, PW1 knowing fully well that there was no fund standing in his Company's account. That the Cheque was paid in by PW1 on the due date and the Cheque was returned unpaid as a result of insufficient funds, Contrary to *Section 1(1)(a) of the Dishonoured Cheques (Offences) Act Cap D11 laws of the Federation Revised Edition 2007* and Punishable under Section 1(1) (b) of the same Act.

He stated that the ingredients that the Prosecution needs in proof of the offence of issuance of Dud Cheque was chronicled in the celebrated case of **Abeke v. State (2007)9 NWLR Pt 1040 411** as follows:

- (a) that the Accused Person obtained credit by himself.
- (b) that the Cheque was presented within three months of the date thereon;
- (c) that on presentation, the Cheque was dishonoured on the ground that there was no sufficient funds or insufficient funds standing to the credit of the Drawer of the Cheque in the Bank on which the Cheque was drawn.

He further stated that in the instant case, the Prosecution has duly discharged that burden of proof by showing in its evidence before the Court particularly, **Exhibit D** that the due date on **Exhibit D** is **15/5/2015** and PW 1 presented Exhibit D which was returned unpaid based on insufficient funds in the Diamond Bank Account of the Defendants. That the balance at the time of presentation of the Cheque was ~~N~~3,102.50 (Three Thousand One Hundred and Two Naria, Fifty kobo) while the amount on Exhibit D (Cheque) was the sum of Four Million, Four Hundred and Sixty-Seven Thousand, Five Hundred Naira (~~N~~4,467,500.00) only. He referred to **Exhibits E- E10**, the Statement of Account of the Raso Construction Company Nigeria Ltd. which clearly and unambiguously showed that the Account of the Defendants had insufficient funds standing to the credit of the Drawer, when the Cheque was presented. He also stated that the Prosecution, to further prove its case put in Prosecution Witnesses 1 & 2, who gave detailed and comprehensive testimony that the Cheque **Exhibit D** was not honoured because of insufficient funds. That PW1 also proved before the Court through **Exhibit C**, the existence of a transaction bordering on purchase

of iron rods which led to the issuance of the Dud Cheque by the 1st Defendant.

Mr. Umukoro went further to summarize the evidence of the prosecution thus:

- 1) That there was a transaction between the Defendants, and Obiora Atansi, PW1.
- 2) That Prosecution was able to prove that Exhibit D was issued by the Defendants in favour of PW1 whereas the 1st Defendant knew that he had insufficient funds in his company's account.
- 3) That the Prosecution through the evidence of PW 1 & 2 and the Statement of Account, **Exhibit E- E10** has clearly established the fact that **Exhibit D** was presented within three months of the due date on the Cheque.
- 4) And that the Cheque was returned unpaid based on the fact that the Account of the Drawer had insufficient funds.

Furthermore, learned Counsel stated that the Prosecution has proved that there was *mens rea* and *actus reus* on the part of the Defendants. That the *mens rea* could be deduced from the fact as evidenced by PW1 and PW2 and shown in **Exhibit D** that at the time **Exhibit D** was issued by the Defendants, they had the knowledge that the account had insufficient funds. That the *actus reus* is on **Exhibit E-E10** and that the PW 1 told the Court that the 1st Defendant issued him **Exhibit D**. That it is also in evidence that the account of the Raso Company Ltd. had insufficient funds.

He concluded by asserting that the evidence adduced by the Prosecution has established conclusively the elements of the offence of

Issuance of Dud Cheque and has proved beyond reasonable doubt the guilt and culpability of the Defendants.

RESOLUTION OF ISSUE NO. 2

Section 1(1) (a) of the Dishonoured Cheques (Offences) Act Cap D11 laws of the Federation Revised Edition 2007 under which the prosecution hinged the second charge against the Defendant provides as follows:

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 sufficient funds were standing to the credit of the drawer of the Cheque in the Bank on which the Cheque was drawn, shall be guilty of an offence and on conviction shall- (i) in the case of an individual be sentenced to imprisonment for two years, without the option of a fine; and (ii) in the case of a body corporate, be sentenced to a fine of not less than N5,000.

I have also seen Exhibit D, which is a Diamond Bank cheque issued by the 1st Defendant to the Complainant for the sum of N4, 467, 500. The due date on the face of the cheque is 15/5/2015. The said cheque has an endorsement on the face of it "DAR". Exhibit B4 is a Diamond Bank Deposit Request Form. It shows that Obiora Atansi and Sons Ltd. requested to deposit a cheque for the sum of N4, 467, 500. into account No. 0026534580 on 19/08/2015.

It is clear from the evidence before this Court that there was a transaction between the Complainant and the PW1 for the supply of iron rods for which the cheque, Exhibit D was issued. See also the LPO, Exhibit C and the Sales Invoice, Exhibit B1. Exhibit B4 shows that the cheque was actually presented for payment on 19/08/2015. The endorsement "DAR" on the Cheque, Exhibit D is an indication that the cheque could not be honoured.

Now, besides the statement of account of the 2nd Defendant, the question to ask is whether the cheque was presented within 3 months or later than 3 months it was issued. In the case of **Abeke v. The State (supra)**, the accused was charged under Section 1 (1)(b) of the Dishonoured Cheques (Offences) Act No. 44 of 1977 with obtaining a credit of N3,300.00 (Three Thousand Three Hundred Naira) by means of a cheque which when presented on due date was dishonoured on the ground that the accused/appellant had no sufficient funds in her account to cover the face value of the cheque. The Supreme Court further held *inter alia*, that the accused committed a criminal offence under Section 1 (2)(b) of the Dishonoured Cheques (Offences) Act when she issued a cheque in settlement of an obligation, which cheque, when presented less than 3 (three) months afterwards, was returned unpaid. The conviction and sentence of the accused/appellant by the lower Court was accordingly affirmed and the appeal dismissed for lack of merit.

In calculating when the cheque was issued, it is the date on the face of the cheque that will be relevant. The date on the cheque is 15/5/2015, while the cheque was presented for payment on 19/8/2015. Clearly, it shows that the cheque was presented for payment later than 3 months from the time of issuance, contrary to the assertion of the prosecuting Counsel. It was presented at 3 months and 3 days. The element of the

offence which requires that the cheque ought to have been presented not later than 3 months is lacking. For this reason, this offence of issuance of a dishonoured cheque cannot stand as an essential element of that offence is missing.

The prosecution has therefore failed to prove the second charge against the Defendant and issue No. 2 is resolved in favour of the Defendants. In the final analysis, the Defendants are acquitted on the 2nd Count of issuing a dud cheque, while they stand convicted on the first Count of obtaining property by false pretences as charged.

SENTENCE: I hereby sentence the Defendants, to a term of Seven(7) years imprisonment. The prison term shall be served by the 1st Defendant, NICHOLAS EMENIKE who is also the *alter ego* of the 2nd Defendant.



Ani Comfort Chinyere (Mrs.) PhD., MCI Arb.

Presiding Judge

1/2/2019

Appearances:

Defendant is absent. One of the sureties, Mr. Patrick Oporum is present.

Counsel:

Michael Ani Esq. for the Prosecution (EFCC).

G.O. Enih, former Counsel for the Defendants is present

C. P. Chibuzor holding a watching brief for the Complainant.



Ani Comfort Chinyere (Mrs.) PhD., MCI Arb.

Presiding Judge

1/2/2019