

**IN THE HIGH COURT OF ENUGU STATE OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
BEFORE HIS LORDSHIP HON. JUSTICE C.O. AJAH, PhD
ON MONDAY THE 17TH DAY OF SEPTEMBER, 2018**

CHARGE NO. E/29C/2016

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

NWABUEZE AKOBUNDUACCUSED PERSON

JUDGMENT

The Accused person is standing trial before this court on a two court charge as follows:

"COUNT 1:

That you Nwabueze Akobundu on or about the 21st April 2015 at Enugu, within the Enugu Judicial Division of the High Court of Enugu State issued a fidelity Bank of Nigeria Plc cheque No. 16080232 dated 21-04-2015 for the sum of three Million Naira (N3,000,000.00) payable to EMCYN IND LTD, which when presented for payment was dishonoured on the grounds that no sufficient funds were standing to the credit of the account on which the cheque was drawn and thereby committed an offence contrary to section 1(1) (b) of the Dishonoured cheques (offences) Act Cap D11 Law of the Federation of Nigeria 2004 and punishable under section 1 (1) (b) (1) of the same Act.

COUNT 2:

That you Nwabueze Akobundu on or about the 30th April 2015 at Enugu, within the Enugu Judicial Division of the High Court of Enugu State issued a Fidelity bank of Nigeria Plc cheque No. 16080234 dated 30-40-2015 for the sum of Six

million and Five Hundred Thousand Naira (N6,500,000.00) payable to EMCYN IND. LTD which when presented for payment was dishonoured on the grounds that no sufficient funds were standing to the credit of the account on which the cheque was drawn and thereby committed an offence, contrary to section (1) (1) (b) of the Dishonoured Cheques (Offences) Act Cap D11 Laws of the Federation of Nigeria 2004 and punishable under Section 1 (1) (b) (i) of the same Act.”

When the charge was read over and explained to the accused person in both English and Ibo Language to the satisfaction of the court, the accused stated that he perfectly understood the charge and the accused person pleaded not guilty to the offences as alleged.

In proof of the charges against the accused person, the prosecution called a total of three witnesses, PW1, PW2 and PW3, and tendered a total of Nine (9) Exhibits as follows: Exhibits 1, 1A to 1E, 2, 3, 4, 5, 6, 7, 8 and 9 and were all admitted in evidence.

With the evidence of the three prosecution witnesses and the Exhibits tendered and admitted, the prosecution closed its case.

In his defence, the accused person testified as the lone witness for the prosecution. He testified as DW1 and tendered Exhibits ‘10’, ‘11’, ‘12’, ‘13’ and ‘14’ and they were all admitted in evidence by the court. With the evidence of the DW1 the defence closed its case. The defence counsel, K.E. Owuamalam Esq filed his final written address for the defence while the prosecuting counsel, Habila Jonathan Esq, filed his own final written address for the prosecution and served same on the defence counsel, K.E. Owuamalam Esq who in response filed a reply on points of the law.

PW1: The PW1 is Mr Festus Chukwuemeka Nwobodo, a practicing Chattered Accountant, who lives at Lagos, the PW1 decided with his family to expand the family business in Kernel Crushing because his work is restricted to only qualified accountants which all the family members are. PW1 contacted Mr Joshua Eze, who introduced DW1 (accused person) who lives in Owerri to PW1. DW1 accepted that he can handle it and mentioned names of various companies he has handled their own, one of them happened to be PW1's client Adam River Estate, which PW1 confirmed from them. PW1 invited DW1 and his lawyer, who drew up the Technical Agreement for PW1 and DW1 which detailed date of delivery and amount involved which was about Fifty-Six Million Naira (₦56,000,000).

On the day for the signing of the technical agreement PW1 issued DW1 various cheques dated same dates of fourty three million six hundred thousand Naira (₦43,600,000) for the cost of the five machines, DW1 will supply at the rate of thirty thousand dollars each, the balance of the ₦43,600,000 cheques is for the fabrication cost assessed ₦32,430,000.

After three months, no work was done, PW1 called DW1. The DW1 told PW1 to give him two or 3 weeks that he was doing the fabrication in his site in Owerri. After 5 weeks nothing was done, DW1 asked for one or two weeks that he is looking for special utility vehicle to carry the equipment to the factory. After two weeks DW1 brought to PW1's factory, a Hopper Electric Motors and some other Irons that have no relevance to Palm Kernel Oil Machinery which was confirmed by two companies PW1 called. When it was apparent that the DW1 cannot supply the Expeller machines he ought to import from outside the country at the cost of 30,000 USD each the PW1 demanded for the refund of his money after doing checks and balances with the DW1

DW1 issued to PW1 three cheques (₦3,000,000, ₦3,000,000, ~~₦6,500,000~~) dated different dates, which is the remaining balance of 50% since DW1 has paid 60% of the cost of the fabrication and also wrote a technical undertaking to bear the difference of the resulting exchange rate. The first cheque bounced on presentation it to the bank, PW1 informed DW1 and he requested for 10 days to pay the money. DW1 paid the ₦3,000,000 (₦800,000, ₦1,200,000 and ₦1,000,000) respectively .

The remaining two cheques were also presented for payment but there were returned unpaid due to lack of fund in the drawers account.

PW1 got two companies on his research online with his children about the Palm Kernel Oil processing and their machinery. One of the company Max structural ltd, PW1 went to the company and they told him that the price for the machine is ₦6,000,000 and not ₦4,950,000 which was the prevailing price at time PW1 paid DW1 for the machines

PW1 consulted his lawyer, they wrote a petition against DW1 for the offence of obtaining by false pretence to the Economic and Financial Crime Commission. The EFCC carried out their investigation and brought the DW1 to court for issuing dud cheques.

PW2: Mr Okezie Oke, PW2 a staff of Fidelity Bank Plc on the June 2016. Fidelity Bank got two letters from Economic and Financial Crimes Commission (EFCC) requesting for photocopies of account opening document and statement of Account of BISCON Engineering and EMCYN Industries our customers, which the bank did by extracting from the original files of the customers and the statement of account generated from the computers, which was in good condition and was compared with the statement in the system. The statement was signed by the signatures to the bank outward mails and was sent to EFCC.

In September 2015, the bank got another letter from EFCC requesting the reason why cheques were not paid, the bank responded that at the time the cheques were presented to the bank, the issuer account was not funded.

PW3: Mr James Ebiboloukemi, PW3 is a public servant with Economic and Financial Crimes Commission EFCC at Enugu. Sometimes in 2014 a petition was received by the Commission's Zonal Office at Enugu by Emeka Nwobodo, the Managing Director of EMCYN Industries Ltd against the defendant Nwabueze Akobundu, the Managing Director of BASICON Engineering Co. Ltd. The PW1 stated that he employed the services of the defendant sometimes in 2014 to fabricate and install a 60 MTK propeller machines for palm kernel production. The PW1 alleged that the contract was about ₦56,000,000 but that he paid the defendant about ₦43,000,000 to start the job. That PW1 entered agreement with the defendant which contains two phases of job, to buy machines and to install the machine, fabricate and make it work. The defendant was unable to finish the job as agreed. The complainant called the defendant they discussed why he didn't finish the job, they both agreed that the outstanding balance of the contract which is ₦12,500,000 to be given to the defendant to buy the five machines, which the defendant issued a cheque in respect of that. The complainant presented the cheques and they were returned unpaid. That was why the petitioner petitioned to their office. PW3 called the PW1 (the petitioner) and showed him the petition, PW1 adopted it. After that a letter of investigation was sent to CAC to verify if the defendant's company was registered, and the response was that the company was registered and the defendant is one of the Director's of the company. A letter was also written to the Fidelity Bank Nigeria Plc to know how the money was paid into the complainant's account and why the cheque was returned unpaid. Response was received. An invitation letter was sent to the defendant and he responded. The

petition was read to him in front of other colleagues of the PW3 and he agreed to respond to the petition.

The defendant made a voluntary statement and was granted bail. A meeting was arranged between the complainant, defendant and the Zonal Head after which an investigation report was then written, moved to the Sectional Head and subsequently moved to the Legal Department for advice and possible prosecution.

Under cross-examination, the PW3 stated that in the course of interview in their officer, the DW1 mentioned the companies he worked for that has not paid him but the DW1 did not back up his claims with documents to enable them investigate the veracity of the claim. He stated that they could not have investigated people who are not implicated in the petition without documents.

DW1: Engineer Nwabueze Akobundu. DW1 who lives at No 4 Chief Okam Street Owerri, Imo State runs a company, BASICON Engineering Co. Ltd, that specializes in designing and fabrication of industrial machines. Sometimes in June 2014, One Mr Joshua Deliverance Eze came to my office and inquired about Palm Kernel Oil processing plant, DW1 informed him that they build the auxiliary, that the other unit of the plant called expellers are imported, DW1 gave him the invoice for the auxiliaries and address of the importer.

On July 2014, Mr Joshua Eze came back with PW1, who asked for DW1's similar work references, which DW1 told him PW1 said he knows one of the company Aden River Estate Ltd, that he is their current Auditor that he will verify from them that was the only time PW1 came to Owerri. On 13th August 2014 we signed the contract agreement at Enugu, PW1 told DW1 that he is a novice in engineering, that DW1 will help him buy the equipment (auxiliaries and Expellers) which was included in the agreement.

On the 15th of August 2014, DW1 went back to the factory site of EMCYN Industries Ltd which the PW1 is the managing Director, DW1 discovered that the building is low, which will give them problem. It EMCYN Industries Ltd six weeks to build according to DW1's specification but the fabrication of other listed equipments in the contract were ongoing from 9th November to 5th December 2014 DW1 finished the installation of the auxiliaries PW1 asked what is delaying the installation of the expellers, DW1 told him, that he is expecting money from companies he just completed work for, but none has paid.

On 30th December 2014, DW1 went to PW1's house with his elder brother and reassured PW1 that he shall soon raise money to buy the expellers. DW1's elder brother offered PW1 his certificate of occupancy of his house at Umuahia, Abia State as a reassurance but he refused to collect the document.

On 12th December 2014 PW1 invited DW1 to his house in Enugu, PW1 asked DW1 why they were yet to supply the expeller, DW1 told PW1 that they are yet to receive their payment. PW1's Lawyer was present and a police officer. PW1 asked DW1 the way forward, DW1 reminded PW1 of the outstanding balance of ₦12,000,000 for the auxiliaries already delivered to his site, which was deducted from ₦24,750,000 which was the cost of the expellers. DW1 wrote three posted cheques for the balance of ₦12,450,000 with different date and also wrote an undertaking to pay the money.

On 15th March 2015, PW1 called DW1 that he has not received any money, that he is going to present the cheque. DW1 paid ₦3,000,000 (₦800,000, ₦1,200,000 and ₦1,000,000) respectively to PW1.

DW1 was invited by the EFCC, where DW1 made a statement and also gave EFCC a draft of ₦1,500,000 in favour of the EFCC, as instructed by EFCC which

was not paid to PW1 because it was trapped in the single Treasury Account of the Federal Government. DW1 also made subsequent payment of ₦3,000,000 and ₦2,000,000 respectively to EMCYN Industries.

In his written address the counsel for the accused person K.E Owuamalam Esq, raised three issues for determination thus:

- “(i) Whether the DW1 had any intention of defrauding the PW1’s company of the credit the DW1’s Company obtained from PW1’s company when he issued, on behalf of his company for payment of the said credit, the cheques in issue in this case to PW1’s company through the PW1.*
- (ii) Whether the two cheques, the subject of this trial, issued by DW1 in favour of the PW1’s company were indeed presented by the PW1 to Fidelity Bank Nig. Plc for payment as alleged by the prosecution.*
- (iii) Where answer to issue (ii) is in the affirmative, whether DW1 has proved to the satisfaction of this court that he had reasonable grounds to believe and infact did believe that each of the post dated cheques in this matter issued in February 2015 would be honoured if presented for payment within three months from the dates in April 2015 they were due for cashing.”*

In resolving these issues the learned counsel for the accused person submitted as follows:

In respect of issue (i), the Learned counsel for the accused submitted that for the prosecution to succeed in a dishonoured cheques offences, it must first and foremost discharge the burden of proving that the accused who drew the cheques had a guilty mind and had the intention from the outset to defraud the drawee of the credit he obtained for which the cheques were meant to pay. He cited the case of *BOLANLE ABEKE VS. THE STATE* (2007) 9 NWLR (Pt. 1040) 411.

In respect of issue (ii) the learned counsel for the accused person K.E. Owuamalam Esq submitted that one of the ingredients the prosecution must prove in a dishonoured cheques offences is to establish beyond reasonable doubt that the person to whom the cheque in question was issued presented it to the bank for payment within three months from the date the cheque was due. He also referred the court to the case of *BOLANLE ABEKE VS. THE STATE* (Supra) at 416.

In respect of the issue (iii) the learned counsel for the accused person submitted that the DWI has proved that he had reasonable grounds to believe and infact did believe that the cheques would be honoured on presentation within three months from their due dates and satisfied the requirement in section 1 (3) of the Act.

The learned counsel for the accused person therefore urged the court to discharge and acquit the accused person of all the two counts in charge against him.

In his own final written address, the prosecution counsel, Habila Jonathan Esq, formulated only one issue for determination thus:

*Whether the Prosecution has Proved the
Offence of issuance of Dud Cheques
against the Accused Person Beyond
Reasonable Doubt.*

In arguing and resolving this singular issue, the prosecuting counsel, Habila Jonathan Esq's submissions can be summarized as follows:

- (1) Exhibits 10 to 14 were never presented to the PW3 and his team (the EFCC) for investigation and so the PW3 and his team cannot investigate what has not been alleged, because the DW1 did not in any where mention the existence of those phantom contracts in Exhibits 10 to 14 to the PW3 and his team for investigation.
- (2) That Section 1 (1) (b) of the Act does not require the prosecution to produce any document before the court showing name or code of the bank staff who received the cheques on presentation, the time of presentation, receipt, signature of bank and the fact that the cheques were returned unpaid due to insufficient funds standing to the credit of the drawer, the accused.
- (3) That based on Banking practice, the accused would not have received any alert since the PW1 presented the cheques in the same bank as the Drawer's bank. It would have been otherwise if the cheques were paid into an account in another bank other than Fidelity bank.
- (4) That the accused did not mention the documents, Exhibits 10-14 and the institutions concerning thereto to the PW3 and his team because they were not in existence at that time and were fraudulently procured during the pendency of this case.
- (5) A close examination of Exhibit '5A', the statement of Account of the DW1's company from February to July 2015, shows that there was no inflow of funds from the purported places in that period as per Exhibits 10 to 14. The accused was not reasonably expecting any inflow of any cash from any source.
- (6) That Exhibit '9' shows that the accused admitted that the PW1 made presentation of the cheques and they bounced, which contradicts his

evidence in court. Therefore a person who gives inconsistent evidence is not entitled to the honour of credibility, such a person does not deserve to be treated as a witness of truth. See *AGBAOSI VS. IMEVERE* (2014) 1 NWLR (Pt. 1389) 556 at 602.

(7) Where there are material contradictions in the evidence adduced by a party in a case, both versions must be rejected because the court cannot pick and choose which of the conflicting versions to follow. Those conflicting evidence must be rejected. See *KAYILI VS. YILBUK* (2015) 7 NWLR (Pt. 1457) 26 at 77 (Per Ogunbiyi JSC as she then was).

Finally, at pages 13 to 14 of his written address, the learned counsel for the prosecution analysed some possible situations flowing from the evidence of the parties and the facts leading to this case and finally urged the court to hold that the prosecution has proved its case and convict the accused person accordingly.

In his reply on points of law the learned counsel for the accused person dwelt heavily on the issue of non presentation of the cheque by the PW1 to the bank for payment and asked the court to discontinue the distinction between presentation in the same bank and presentation in Another Bank and return a verdict of discharge and acquittal in favour of the accused person.

I have gone through all the testimonies of the witnesses in this case and all the exhibits tendered by the parties. I have also read through and benefitted immensely from the written addresses of the counsel in this case. I must commend both counsel for a job a well done. Their respective presentations are quite commendable. Their researches are quite indepth and their analyses are quite graphic, well articulated and well applied.

However, in resolving the issues formulated by the parties, I will adopt the three issues formulated by the counsel for the accused persons because their resolution will also resolve the sole issue formulated by the prosecuting counsel.

On the first issue formulated by the counsel for the accused person which is whether the DW1 had any intention to defraud the PW1's company of the credit DW1's Company obtained from the PW1's Company when he issued, on behalf of his company for payment of the said credit the cheques in issue in this case to PW1's Company through the PW1.

By this the counsel for the accused raised the issue of *Mens rea* as provided in Section 1(3) of the Dishonoured cheques Act. To properly resolve this issue, one needs to understand how the issuance of this cheque came about. The issuance of this cheque ought to be a refund of money legally had and received by the accused from the PW1's Company for the purchase of Machineries for the building of a palm kernel cracking factory for the PW1's company which the DW1 and his company failed to do and misappropriated the money by using the money to do over trading.

The total money given to the DW1's company is not just the money covered by these cheques. The total money given to the DW1's company for the fabrication, installation and purchase of some machineries for the PW1's factory in Enugu amounted to Forty Three Million Six Hundred Thousand Naira (N43,600,000.00) which is about 60% of the total contract price of the entire contract. Out of this amount of N43,600,000.00 the DW1's company was to use N24,750,000.00 to purchase and supply five units of machineries at a unit post of USD 30,000.00 or N4,950,000.00 at the exchange rate then at N165.00. The DW1 and his company neither supplied these machineries to the PW1's Company nor refunded then the

money they collected to do so. It was the failure of the DW1 and his company to either supply the machineries to the PW1's company or refund the money they collected to do so that led to the issuance of these cheques, the subjectmatter of this case. So the *mens rea* for the offence has been formed even before the issuance of this cheques. These cheques were actually issued as a cover up for an already very bad situation but the cheque have further deteriorated the situation.

The *mens rea* in this case was formed at the time the DW1 and his company misappropriated the money given to them by PW1's company for the supply of machineries to them and they converted the money and refused or neglected to do the supply or refund the money. The DW1 and his company had the intention of converting and misappropriating the money given to them by the PW1's company.

The issuance of these dud cheques are the *actus reus* in furtherance of that *mens rea*.

In BOLANLE ABEKE VS THE STATE (2007) 9 NWLR (Pt. 1040) 411, the Supreme Court (Per Niki Tobi JSC as he then was, now of the blessed memory) stated as follows:

"I entirely agree with the appellant that to convict on the above subsection, (ie section 1(1) (b) of the Dishonoured cheques (offences) Act 2004) the prosecution must prove that the accused had mens rea and actus reus.... 'Mens rea' means a guilty mind. And 'actus reus' means a guilty act. In cases of strict liability, mens rea comes before actus reus. In other words, the accused develops the guilty mind before the guilty act.

..... the guilty mind instigates the guilty act or flows into the guilty act."

In the instant case, there is no evidence anywhere that the DWI and his company were expecting any money or cash inflow from any source. If there were any, the DWI did not disclose them to the PW3 and his team for investigation.

The production and reliance on Exhibits 10 to 14 by the accused person in open court is a mere after thought. They do not avail the accused person of any benefit. They are evidentially worthless in this case and since they are worthless, they have no evidential or probative value and their weight in evidence is not heavier than the weight of the paper on which they are written the trite law is that where a document earlier admitted in evidence does not carry any probative value, it is worthless and the judge should expunge the document or discharge it in the course of evaluating totality of the evidence to enable him arrive at a proper decision. See NWABUOKU VS. ONWORDI (2006) AFWLR (Pt. 331) 1236 AT 1252 (Per Niki Tobi JSC of the blessed memory). A cheque is not an ordinary document. The issuance of a dud cheque is a criminal act. As was stated by Oguntade JSC (as he then was) in his leading judgment in BOLANLE ABEKE VS THE STATE (Supra)

"The issuance of a cheque has certain connotations in law. A cheque issued by a drawer and accepted by the drawee service two purposes. One is that of documenting the particular transaction. The other is that, it is a machine of payment, the issuance of which has far reaching implications in law...."

There is no doubt that the appellant committed an offence under section 1 (2) (b) above. She had issued a cheque in settlement of an enforceable contract

which said cheques was dishonoured when presented not later than three months after the date of the cheque."

This is exactly the situation in the present case. I am of the opinion that the prosecution has proved both the *mens rea* and *actus reus* of the offences of issuing a dud cheque under section 1(1) (b) of the Act. I therefore resolve the first issue in the affirmative the.

The second issue as formulated by the counsel for the accused person is whether the two cheques, the subject matter of this trial, issued by the DW1 in favour of the PW1's company were indeed presented by the PW1 to the Fidelity Bank Nigeria Plc for payment as alleged.

The PW1 in his evidence in chief stated as follows

"On the due date of the first cheque for N3,000,000.00 I deposited it in the bank and it bounced.

.....I called him on the approaching of the second cheque date and he said that on his honour none of the remaining cheques would bounce, that I need not call him that I should go ahead and present them for payment. I presented the remaining cheques and they all bounced."

Under cross-examination, the PW1 stated as follows:

"The accused assured me that the remaining cheques will be cashed on presentation and that I do not need to call him. The remaining two cheques bounced on

presentation and subsequently the accused stopped picking my calls.”

From the evidence of the PW1, it is established that he actually presented the cheques for payment on the assurances of the accused person, but the cheques bounced on presentation.

In Exhibit 6A, Fidelity Bank Nigeria Plc in reply to the EFCC’s letters, Exhibits ‘4’ and ‘6’, stated that the referenced cheques been Fidelity Bank Plc Cheques Numbers 16080232 and 16080234 *“were returned unpaid because the account was not funded.”*

By Exhibit 6A, Fidelity Bank of Nigeria Plc confirmed that the said cheques were presented for payment but were returned unpaid because the account was not funded.

In Exhibit ‘9’ the accused in his statement to the Economic and Financial Crimes Commission (EFCC) accepted and confirmed that these cheques were presented but returned unpaid. He stated in Exhibit ‘9’ as follows:

“When the first cheque for N3m failed I promptly call (ed) Mr Emeka Nwobodo...

....However the last two cheques for N3m and N6.5m didn’t go through.”

However, in his evidence in court as the DW1 the accused person stated towards the end of his testimony as follows:

“Since I issued the three cheques to the PW1 I have not received any debit alert, or charges for issuing cheques without funds from my bank which is the

practice. I believe the PW1 did not present those cheques based on my understanding with him."

This is very unfortunate for the accused person. He had admitted in exhibit '9' that the PW1 presented the cheque for payment. The Fidelity Bank Nigeria Plc confirmed that the cheques were presented and returned unpaid due to no funding of the account (see Exhibits 4,6 and 6A). The PW1 confirmed that he presented the cheques. Why is the accused person lying over a naked truth? The law is that an accused may be lying because he is guilty. An accused may also be lying not because he is guilty but because he is stupid or afraid or both and whether he is guilty or not. See HARUNA VS. POLICE (1967) NMLR 153. See also BOLANLE ABEKE VS. THE STATE (Supra) (Per Niki Tobi JSC of the blessed memory).

I am of the opinion that the change of mind by the accused to deny the presentation of the cheques in open court is of no moment. See WILLIAM VS. STATE (1975) 9-11 sc 139 at 148. I am indeed satisfied that the prosecution have proved that the cheques were presented as required by law. I therefore resolve the second issue in the affirmative.

The third issue formulated by the counsel for the accused person is whether the DW1 has proved to the satisfaction of this court, that he had reasonable grounds to believe and infact did believe that each of the postdated cheques in this matter issued in February 2015 would be honoured if presented for payment within three months from the dates in April 2015 they were due for cashing.

In resolving this issue, I want to state that the court deals with hard evidence and careful logic. The court does not deal with mere speculations, conjectures or hopeful presumptions as the accused would want the court to do. There is no

concrete and convincing evidence forming the basis of any reasonable expectation that the cheques would be cashed or paid on presentation. These cheques were issued by the accused person to the PW1's company merely to postpone the dooms day or to afford a momentary respite from an imminent doom. The doom is not foisted on the accused by any outside force or person. The doom was brought on the accused person by himself. Why did he misappropriate or embezzle the money given to him to do a supply of machineries, a contract from which, if performed, he would have reaped great profit. He then used the money to do over trading instead of performing the job for which it was meant. This is the height of financial malversation and it is a crude form of corruption. A whole sum of N24,750,000.00 was given to the accused in buck to do a job, he embezzled the money and failed to do the job leaving the PW1 and his company in a double jeopardy. Job not done and money not seen. And the accused issued multiple cheques to liquidate the sum of that that was given in buck when he knows fully well that he had no money in his account and there was no reasonable expectation that the cheques would be paid on presentation.

Then the cheques were dishonoured and the accused is now pleading reasonable expectation, of an inflow of cash into the account. The accused person should have waited for the reasonably expected inflow of cash to come first and he could have used it to do his overtrading and not using a fund that does not belong to him to do over trading to the detriment of the PW1 and his company.

Where were Exhibits 10-14 when the PW3 and his team were investigating the matter? Why didn't the DW1 bring the existence of Exhibits '10' to '14' to the attention of knowledge of the PW3 and his team so that they would carry out discreet investigation on them.

The DW1 is now raising them first in open court when it would be impossible to verify their veracity and accuracy through investigation by the appropriate agency.

A cursory to examination of Exhibits 1C (1) (2) & (3), 4 to 4A, 5 and 5A reveals unreasonability of any hopeless expectation of inflow of cash into the account. The court is an adjudicatory body not an investigative agency to investigate the truthfulness of Exhibits 10 to 14 presented by the accused.

The trite law is that he who alleges must prove. The accused person have failed to prove that allegation. I therefore resolve issue three in the negative.

On the whole, I am of the firm view that the prosecution have proved the offence of issuance of dud cheque against the accused person beyond reasonable doubt.

I therefore resolve the sole issue of the prosecution on the affirmative because the evidence adduced by the prosecution are compelling and conclusive of the guilt of the accused person. See OKUNADE VS. THE STATE (2015) 61 (Pt. 111) NSCQR 1568 at 1617 (Per C.C Nweze JSC); OBUE VS STATE (1976) 2. S.C. 141.

In the circumstances I hereby hold that the guilt of the accused has been proved beyond reasonable.

The case of the prosecution succeeds while all the defences put forward by the accused person fails as same has collapsed like a pack of cards.

Accordingly, I hereby convict the accused person of all the Counts of the charge as follows:

Count 1

The accused is convicted as charged.

Court 2

The accused is convicted as charged.

ALLOCUTUS by

Owuamalam Esq: We intend to plead for the court to temper justice with mercy. I plead with the court to give most lenient sentence by way of fine. It is in evidence that the whole money covered by the cheques has been paid back to the PW1 and his company. Based on this I plead with the court to reduce the sentence to fine. The convict was detained by the EFCC for three days.

Jonathan:- The law is clear. We leave the issue of sentencing at the discretion of the court.

Court:- Is there any record of previous conviction against the convict?

Jonathan:- There is no record of previous conviction.

Court:- Under section 1 (1) (b) (1) of the Dishonoured cheque (offences) Act Cap D11 Laws of the Federation 20004, where a person is found guilty of an offence under the Act the person shall "be sentenced to imprisonment for two years without the option of fine" in the case of an individual and in the case of a body corporate body, be sentenced to a fine of not less than ₦5,000.00. In the instant case the accused is an individual and not a corporate body. That being the case the appropriate sentence will be two years imprisonment without option of fine. The law did not give the court any room for discretion because the Act used the word "shall" which imports a mandatory directive that must be obeyed.

Sentence:- Based on the above provisions of the law the convict is sentenced as follows:

Count 1:- In respect of count 1 the convict is sentenced to two years imprisonment without option of fine.

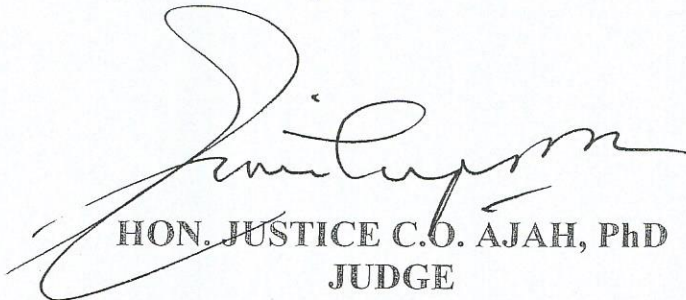
Count 2:- In respect of count 2 the convict is also sentenced to two years imprisonment without option of fine.

Both sentences to run concurrently. The convict has the right of appeal to Court of Appeal of Nigeria in accordance with the provisions of the extent laws and rules in that regard.

Appearances:

K.E. Owuamalam Esq for the accused person,

Habila Jonathan Esq for the complainant



HON. JUSTICE C.O. AJAH, PhD
JUDGE
17/9/2018