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**IN THE HIGH COURT OF JUSTICE EKITI STATE OF NIGERIA
IN THE ADO EKITI JUDICIAL DIVISION
HOLDEN AT ADO – EKITI**

**BEFORE HIS LORDSHIP: HON. JUSTICE J. O. ADEYEYE - JUDGE
ON THURSDAY THE 29TH DAY OF MARCH, 2018**

CHARGE NO. HAD/73^C/2016

BETWEEN:

THE STATE OF EKITI..... COMPLAINANT

AND

BOLANLE SUSAN OSASONA..... DEFENDANT

JUDGMENT

The defendant is facing eight count charge of obtaining money by false pretence and issuance of dishonoured cheques contrary to and punishable under Section 419 of the Criminal Code Law, Laws of Ekiti 2012 and Section 1 (1) (b) (1) of Dishonoured Cheques (offences) Act, Laws of the Federation of Nigeria, 2004 respectively. The defendant was formally arraigned before the Court on 25th day of April, 2017 during which she pleaded not guilty to each count on the information. The prosecution called four witnesses and closed its case while the defendant testified in her defence and called no witness.

The complainant in the case, Otunba Tayo Idowu gave evidence as PW1. He described himself as a Civil Servant as well as a businessman. He knew the defendant when they were both in the Ministry of Agriculture, Ekiti State. He said sometime in April, 2015 the defendant informed him that she was awarded a contract by Ekiti State Government and invited him to join her in executing the contract. That he told the defendant he was not interested in the contract but

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agreed to borrow her money to execute the contract. That on 22/4/2015 he made good his promise by borrowing the defendant the sum of Six Million Naira. That he borrowed the defendant additional Two Million Naira on 15/5/2015. On 9/6/2015 he gave her another Three Million Naira and on 12/6/2015 also added Two Million Naira to the money he borrowed the defendant. The witness added that they entered into agreement on each transaction in respect of which the defendant used her vehicles as collateral for the loan. He stated further that it was when he later requested for the payment of his money that the defendant told him that she was not awarded any contract by the State Government but spent his money on something else and promised to pay the money. He further stated that after sometime, the defendant gave him a cheque for Seven Million, Two Hundred Thousand Naira. That the second cheque was for ₦2.4 Million and the third cheque for ₦3.6 Million. That when he presented the cheques through his account for payment at Fidelity Bank, Ado-Ekiti, all the cheques were rejected/returned unpaid on the ground that there was no money in the account of the defendant. He called the defendant and informed her and all the defendant could do was the promise to pay. Witness added that when he paid the cheques through his account, the cheques went for clearing and after three days he got a call from the Bank that the cheques were returned unpaid. The witness described himself as a Licensed Money Lender. He said he made about four different agreements with the defendant. He maintained that the original copies of the agreements have earlier been tendered in another case. Copies of the agreements were produced and tendered in the case as exhibits. The cheques issued by the defendant were also admitted in the case as exhibits. The statement of account of the witness was tendered as Exhibit C in the case.

Under cross examination, the witness admitted he knew the defendant very well before the loan transaction. That after the transaction he started dating

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the defendant. He denied prosecuting the defendant because she dumped him for another man.

Remilekun Okunola Esther was PW2 in the case. She stated that the defendant and herself are friends and are both natives of Aaye Ekiti. That sometime in 2015 the defendant told her that the State Government gave her contract and that PW1 had promised to give her a loan to execute the contract. That the defendant wanted her to act as guarantor for the loan and she obliged her. That the defendant took her to PW1 who demanded for the particulars of the defendant car. She said PW1 gave the defendant a loan of Three Million Naira. The witness stated further that one day, the defendant called her that she was ready to pay back the loan and wanted her to witness the repayment. They both went to Heritage Bank, Ijigbo where they met PW1. In her presence, according to her, the defendant gave PW1 Stanbic Bank Cheque for Three Million Six Hundred Thousand Naira. She said when PW1 later alleged that she guaranteed a loan of Thirteen Million Naira, she denied the allegation and reported the case to the Police. She added that she reported the case to the Police when she discovered that the defendant forged her name and signature on documents she knew nothing about.

The witness was cross examined by defendants counsel.

Eniola Aderemi Mathew was PW3. He testified that sometime in 2015 the defendant told him that she was awarded a contract and needed money to execute the contract. He said the defendant told him to follow him to PW1 who had agreed to borrow her money to guarantee the loan. That the defendant took him to PW1 and introduced him to PW1 as her friend who wanted to take a loan from him. That the defendant told PW1 that she was ready to use her vehicle as collateral for the loan. He said PW1 approved a loan of One Million Eight Hundred Thousand Naira for him which he gave to the defendant. That when it

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was time to repay the loan, the defendant and himself went to PW1 and in his presence, the defendant issued a cheque for Seven Million Two Hundred Thousand Naira which was more than the money PW1 gave him. That when he asked the defendant why she did that, the defendant told him she had earlier borrowed money from PW1. He said when the cheque was not honoured, PW1 started to trace him with Police and he was eventually arrested and arraigned before the Court with the defendant.

When the witness was cross examined, he said he did not in any way benefit from the loan the defendant took from PW1.

Sergeant Isichei Linda investigated the case and testified as PW4. She said the case was reported on 9/9/15 and referred to them for investigation. She confirmed that the case was reported through petition. She was one of the officers who investigated the case. During the course of the investigation of the case, she visited Stanbic Bank to clarify the account of the defendant. On 22/9/15 a letter was written to Stanbic IBTC Bank to investigate the account of the defendant because the complaint was that the defendant issued dishonoured cheque. He said the Bank gave the Police team that investigated the case the statement of account of the defendant from May 2015 to September, 2015. The witness further stated that the complainant (PW1) gave the Police team particulars of the vehicles used as collateral by the defendant. The witness also said she recorded the statement of the defendant which was admitted in evidence as Exhibit 'E'. The statement of account of the defendant was tendered in evidence as Exhibit 'F'. The vehicle particulars were also tendered in evidence.

The defendant as DW1 stated that she knew the complainant (PW1) in the case when they were both in the Ministry of Agriculture in 2006. She also described PW1 as her man-friend and that they started their amorous relationship in 2006 which lasted till April, 2015 when she got married. She

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described PW2 who she introduced to PW1 as her friend and bridesmaid during her wedding. She added that PW2 used to be her guarantor whenever she wanted to take loan from PW1. She said she got to know PW4 in 2015 when PW1 lodged a complaint against her. She said she was arrested by the Police on the allegation that she borrowed money from PW1 without paying. She stated that she explained to PW4 that the due date was 17/8/2015 and that she was arrested on 15/8/2015. She denied that she issued cheque to PW1. The defendant stated that in 2015 PW1 came to her shop and promised to give her loan. She agreed to take the loan from him. She said PW1 told her that his style was to ask for a signed blank cheque. That the first loan he gave her was One Million Naira with interest of ₦200,000. She said she paid the loan with interest within a month. The defendant said when she asked the PW1 about the blank cheque she gave him, he said she should not bother because he has torn the cheque. She stated further that she later took another loan of Two Million Naira with interest of ₦400,000.00 from PW1. That as usual PW1 requested for a blank cheque as collateral just like she did in the earlier transaction. That they both went to the Bank to collect the money. PW1 gave her the agreement form which she filled. PW2 as guarantor signed and PW1 gave her a cash of Two Million Naira. That by the time she wanted to pay back the money, she called PW1 and suggested that the money be paid into his account but PW1 declined and instead came to her shop to collect cash. She said after three weeks, she approached PW1 for a loan of Three Million Naira. He obliged her and they went through the same process. She paid back the loan within a month. She said thereafter she approached PW1 for a loan of Six Million Naira which he gave her. That after a month when he wanted to pay the money with interest of One Million, Two Hundred Thousand Naira, she called PW1 to inform him. PW1 said she should hold on because he was in Ibadan. She said she had PW1's account number with

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Bank PHB she therefore paid One Million Two Hundred Thousand into the account. She said she did that because PW2 had advised her to stop paying PW1 by cash because he could deny the payments she was making. That PW1 did not like it when he discovered that she paid money into his account. She said she later discovered that PW1 was dating PW2. That when she discovered this, she told PW1 to continue with her friend (PW2) as she was about getting married. That PW1 initially protested but they later settled and he attended the wedding ceremony. That three months after her wedding, PW2 told her that PW1 wanted to take steps to recover his money from her because her decision to get married did not go down well with PW1. She said she told PW2 she was ready to pay PW1 because she did not want anything to disrupt her wedding. She said she was in the process arrested and sentenced to six months imprisonment for forging the signature of PW2. She denied that she obtained money from PW1 under false pretence as there were written agreements in respect of her transactions with PW1. She also denied that she issued dishonoured cheques as the cheques were issued as collateral for the loan as requested by PW1.

Under cross examination, the defendant agreed she took a loan totaling Fourteen Million Five Hundred Thousand Naira from PW1. She said the loan was advanced to her five times. The defendant also confirmed that Exhibits A, A1, A2 and A3 are the loan agreement between PW1 and herself. She also agreed that Exhibits B, B1 and B2 are the cheques she was referring to as signed blank cheques. She confirmed that she gave Exhibit H – H6 to PW1. Still under cross examination, the defendant denied that she told PW1 that she got a contract of ₦30,000,000.00 from Ekiti State Government.

As said earlier, the defendant closed her case without calling any other witness apart from herself testifying in her defence. The defendant counsel did not file final written address in the case.

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Mr. Gbenga Adaramola of counsel, Learned Director of Public Prosecution, raised the issue whether the prosecution has proved the offences of obtaining money by false pretence and issuance of dishonoured cheques against the defendant beyond reasonable doubt.

It is submitted that by virtue of Section 137 (1) of the Evidence Act, the onus is on the prosecution to establish the guilt of an accused person in criminal cases beyond reasonable doubt. **He referred to Haruna v. State (1990) 6 NWLR (pt 125) 157.**

On the charge of obtaining money by false pretence, **he referred to the case of Madu & ors v. FRN (2016) LPELR – 40315 (CA) where Abdullahi JCA** put the ingredients of the offence of obtaining by false pretence as follows:

- (a) that there is a pretence;
- (b) that the pretence emanated from the accused person;
- (c) and that it was false;
- (d) that the accused person knows of its falsity or did not believe in its truth;
- (e) that there was an intention to defraud;
- (f) that the thing was capable of being stolen;
- (g) that the accused person made the owner to transfer his own interest in the property.

He also cited in support **the cases of Amadi v. FRN (2005) 18 NWLR (pt 1119) 259 at 265 – 266; Onwudiwe v. FRN (2006) All FWLR (pt 319) 77 at 812; Alake v. State (1991) 7 NWLR (pt 205) 567.**

Learned counsel contended that it was established in the case:

- (i) that the defendant approached the complainant (PW1) for a loan which was granted in series,

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- (ii) the complainant granted the loan to the defendant because she had informed him of the existence of a Thirty (30) Million Naira contract from Ekiti State Government which she wanted to execute.
- (iii) that the alleged contract did not exist as at that time and the defendant merely manipulated the complainant in order to get the said loan from him.

It is contended that the oral testimony of the defendant contradicted the statement she made to the Police (Exhibit E) and relying **on the case of Emmanuel Ogar Akong Edoko v. The State (2015) 2 LPELR – 7** urged the Court to reject both as unreliable. It is submitted that in view of the facts established in the case and the inconsistent evidence of the defendant, the Court should hold that the prosecution has proved its case beyond reasonable doubt against the defendant.

On the charge of Issuance of Dishonoured Cheques, Learned Director of Public Prosecution referred to Section 1 (1) and 2 of the Dishonoured Cheque (offences) Act, Cap 102, LFN and submitted that the ingredients of the offence are;

- (a) that the accused obtained credit for herself;
- (b) that the cheques were presented within three months of issuance thereon, and
- (c) that on presentation, the cheques were dishonoured on the ground that there was no sufficient fund standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn.

He cited in support **the case of Abeke v. The State (2007) vol. 151 LRCN**. It is argued that flowing from the above, the following questions he raised call for an answer. The first question is, did the defendant obtain any credit facility for herself from the complainant? Learned Director of Public Prosecution

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answered the question in the affirmative. It is said that the defendant never denied obtaining the said loan facility from the complainant. He referred to both the evidence of the defendant in Court and her extra judicial statement marked as Exhibit E in the case as well as the evidence of the complainant and PW2.

The second question he raised is, did the defendant issue cheques to the complainant? He referred to the evidence of PW1, PW2 and Exhibits A, A1 and A2 which were all identified and confirmed by the defendant.

The third question raised by the Learned Director of Public Prosecution is, did the complainant present the said cheques issued by the defendant to his bank within three months of the issuance of same? In answer to the question, counsel referred to the evidence of the complainant to the effect that Exhibits B, B1 and B2 issued to the complainant by the defendant were returned unpaid. He argued that on the face of the Exhibits tendered in the case, the cheques were presented within three months. Learned counsel said the fourth question on the issue is, were the cheques dishonoured by the bank on the ground of no funds or insufficient funds in the account of the defendant? In answering the question counsel referred to Exhibit F which is the statement of account of the defendant and evidence of PW4 which confirmed that the defendant did not have enough money in her account. He urged the Court to convict the defendant for the offence of issuance of dishonoured cheques as provided for under the law.

On the issue of blank cheques allegedly issued by the defendant as collateral, learned counsel referred to Exhibits G and H released by the defendant as collateral and the fact that the defendant never mentioned blank cheque in her statement to the Police. Learned counsel submitted that the allegation by the defendant that she gave the complainant a blank cheque is an afterthought aimed at exculpating her from the crime and therefore urged the Court to discountenance same. He called in aid **the case of Edoko v. State**

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(Supra). He finally submitted that the prosecution has proved successfully and beyond reasonable doubt the ingredients of the offence of issuance of Dishonoured Cheque by adducing credible and uncontradicted evidence.

The defendant is charged in counts 1, 2, 3, 4 and 5 of the information with the offence of obtaining money by false pretence, all contrary to Section 419 of the Criminal Code. For the prosecution to succeed in a case of obtaining money by false pretence, the prosecution must prove the following ingredients of the offence;

- (1) that there is a pretence;
- (2) that the pretence emanated from the accused person;
- (3) and that it was false;
- (4) that the accused person know of its falsity or did not believe in its truth;
- (5) that there was an intention to defraud;
- (6) that the thing is capable of being stolen;
- (7) that the accused person induced the owner to transfer his whole interest in the property.

The prosecution in support of the charge adduced evidence to show that sometime in April, 2015 the defendant approached the complainant (PW1) for a loan to finance a contract allegedly awarded by Ekiti State Government. On 22/4/2015 the complainant gave a loan of Six Million Naira to the defendant. According to PW1, on 15/5/2015 he gave additional loan of Two Million Naira to the defendant. The loan was increased by Three Million Naira on 9/6/2015. On 12/6/2015, PW1 gave another loan of Two Million Naira to the defendant. The prosecution tendered Exhibits A, A1, A2 and A3 which are different loan agreements duly executed by the defendant in respect of the loan facilities.

The defendant in her evidence before the Court did not deny that she took the said loans from the complainant. She admitted that she took loans from PW1

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respect of which they entered into agreements. In her written statement to the Police which was tendered in the case as Exhibit 'E', the defendant equally admitted that she took loans from PW1. In Exhibit E, the defendant stated thus:

"I know one Mr. Otunba Tayo Idowu in year 2008 up to date and we have been transacting business of getting a loan from him which I do pay back with interest on it, but around three months ago I was given a contract of over 30 Million Naira which I told Otunba Idowu Tayo and he later loan me some amount of money which accumulated to ₦14.5 Million which I could not be able to search those people again and have already put ₦18.5 Million into the business.....An original paper of a 4 Matic Benz with Plate Number: PST 359 DC.....And a Datsun Altima with Registration Number: UC 122 AAA, A Mazda Bus with Plate Number: KTU 437 XP.....was used as collateral" (sic).

From the evidence adduced by both PW1 and the defendant, the fact that the complainant (PW1) gave the defendant some amount of money as loan is not in dispute. It is established in the case that both parties entered into loan agreements which were duly signed by both the defendant and the complainant. It is also established in the case that the defendant submitted the particulars of her three vehicles as collateral for the loans. In **Onwudiwe v. F.R.N (Supra)** at 812, the Supreme Court, on how the offence of obtaining by false pretences is proved, had this to say:

"For the offence of obtaining by false pretences to be committed, the prosecution must prove that the accused had an intention to defraud and the thing is capable of being stolen. An inducement on the part of an accused to make his victim part with a thing capable of being stolen or to make his victim deliver a thing capable of being stolen will expose the accused to imprisonment of the offence."

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While it is clear that money is capable of being stolen, it is however not clear in this case that the defendant had intention to defraud. The false pretence on the part of the defendant is not clear. If the defendant had intended to defraud the complainant (PW1) she would not have submitted the particulars of her vehicles as collateral for the loan and would probably not have entered into any agreement with the complainant. Again there was no inducement on the part of the defendant to make the complainant (PW1) part with his money. All the defendant told PW1 was that she needed money to execute a contract. She did not promise the complainant anything. PW1 in his evidence said the defendant wanted them to jointly execute the contract but he declined. There is therefore no inducement on the part of the defendant. Inducement means something that is given to somebody to persuade him to do something. See Oxford, Advanced Learner's Dictionary, 6th Edition, page 610. In this case, the defendant did not promise the complainant (PW1) anything in return for the loans except the interest that would be paid on the loans which is normal in a loan transaction. **The cases of Madu & ors v. FRN (Supra); Amadi v. FRN (Supra); Onwudiwe v. FRN (Supra) and Alake v. State (Supra)** are not relevant to this case. In **Madu & ors vs. FRN (Supra)** for example, the accused person told the complainant he has soap on ground to sell and told him to deposit ₦2.5 Million into his account and after the necessary payment, it was discovered that no soap was on ground. The relevant consideration is that the complainant deposited his money with the appellants on the false pretence by the appellants which at the time the 1st appellant communicated with the complainant was aware, he was not into soap but made the complainant to believe him and led him to deposit his money with the appellants. The resultant consequence of which, the complainant was defrauded by the appellants as no soap or his money was recovered. The facts of the case at hand are distinguishable from

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Madu's case. The inducement in Madu's case was the promise to supply soap. In this case at hand, the defendant did not promise the complainant (PW1) anything except the repayment of the loan for which there were collateral and genuine agreements. The prosecution has therefore failed in this case to establish that there was an intention to defraud and that the defendant induced the complainant (PW1) to transfer his whole interest in the money he borrowed to the defendant. The charges of obtaining money by false pretences in my humble opinion are not sustainable as what happened between the defendant and PW1 was entirely civil in nature. The law is settled that where the essential ingredients of an offence are not proved, the accused is entitled to an acquittal. **See Shande v. State (2004) LPELR - 739 (CA) (2005) 1 NWLR (pt 907) 218.** In the light of the above, the defendant is acquitted and discharged of all the charges of obtaining money by false pretences in counts 1, 2, 3, 4 and 5 of the information.

The defendant is charged in counts 6, 7 and 8 with issuance of dishonoured cheques contrary to and punishable under Section 1 (1) (b) (i) of Dishonoured Cheques (offences) Act, Laws of the Federation of Nigeria, 2004. The Supreme Court in the case of Abeke v. State (2007) All FWLR (pt 366) 644 at pages 666 – 667 set out the duty on the prosecution in proving the guilt of an accused person under Section 1 (1) (b) of the Dishonoured Cheques (Offences) Act. The duty on the prosecution under Section 1 (1) (b) of the Dishonoured Cheques Offences Act is to prove:

- (a) that appellant (accused) obtained credit by herself;
 - (b) that the cheque was presented within three months of the date thereon;
- and

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- (c) that on presentation, the cheque was dishonoured on the grounds that there was no sufficient fund or insufficient funds standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn.

On the first ingredient of the offence, it is common ground in the case that the complainant (PW1) granted loans to the defendant. PW2 and PW3 confirmed that the defendant took loans from the complainant (PW1). The defendant confirmed that Exhibits A, A1, A2 and A3 were the loans agreements between PW1 and herself. It is therefore not in doubt that the defendant obtained credit facilities for herself from the complainant (PW1).

In count 6 of the charge on the information, the defendant was alleged to have on the 22nd day of May, 2015 issued in favour of Otunba Tayo Idowu (PW1) a Skye Bank Plc Cheque number 00000021 on Account Number 4110005958 which cheque was dishonoured. In count 7, the defendant was alleged to have on the 7th day of July, 2015 issued in favour of PW1 a Stanbic IBTC Bank Plc Cheque Number 00000006 on Account Number 0014756282 which cheque was also dishonoured. It is alleged in count 8, that the cheque number 00000031 on Account Number 4110005958 issued on 22/5/15 in favour of the complainant was also dishonoured.

The complainant (PW1) in his evidence in support of the charge said when he paid the cheques issued by the defendant through his account that the cheques were returned unpaid. The cheques were produced in the case and tendered as Exhibits B, B1 and B2. The defendant denied that she issued dishonoured cheques. She insisted she signed blank cheques as collateral for the loan at the request of the complainant (PW1). When Exhibits B, B1 and B2 were shown to her during cross examination, the defendant confirmed that the Exhibits were issued by her but insisted they were blanks cheques she signed as collateral as requested by the complainant for the loans she obtained from him.

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The statement of the defendant to the Police Exhibit E was silent on the allegation of dishonoured cheques.

From the above pieces of evidence, it is established that the defendant issued three cheques, Exhibits B, B1 and B2 to the complainant (PW1). The defendant and the complainant (PW1) however disagreed on the purpose for which the cheques were issued. While the complainant said the cheques were issued for the payment of the loans the defendant obtained from him (PW1), the defendant maintained that it was the complainant who requested that she signed blank cheques as collateral for the loans. Exhibits B, B1 and B2 which the defendant agreed during cross examination were the cheques she referred to as signed blank cheques were not blank after all. The three cheques were fully endorsed with the necessary amount to be paid and the date of issue indicated on them. The handwriting on the three cheques is similar and nothing to suggest that any of the words on the three cheques were written by different persons. In my view, the contention of the defendant that she merely issued signed blank cheques as collateral for the loans is an afterthought.

One of the essential elements of the offence is that the prosecution must prove that the cheques were presented within three months of the date thereon. In this case, evidence adduced by the prosecution did not reveal that Exhibits B, B1 and B2 were presented for payment within three months of the dates on the cheques. All the complainant (PW1) said in his evidence is that when the defendant gave him the cheques she told him when to present the cheques and he was within the time limit when he presented same. This piece of evidence in my humble opinion did not meet the requirement of the law. PW1 did not tell the Court the dates on the cheques to know when the cheques were issued and the dates the cheques were presented for payment. It will appear the prosecution placed heavy reliance on Exhibit 'C' in proving this particular element of the

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offence. Learned Director of Public Prosecution, Gbenga Adaramola Esq in his final written address referred to Exhibit C and submitted that Exhibit C revealed the dates the cheques were presented for payment at Fidelity Bank, Ado-Ekiti. Exhibit C is the Statement of Account of the complainant (PW1) which was tendered through him. Considering the circumstances under which the said Exhibit was produced and tendered in the case, I doubt if it is legally valid to serve the purpose for which it was tendered which is to prove that the cheques were presented for payment within three months of the dates on the cheques and that they were returned unpaid. Exhibit C which is a computer generated document was not tendered through the official of the Bank who prepared the document but through PW1. Exhibit C, being a computer generated document should be produced and tendered in compliance with Section 84 of the Evidence Act. In my view Exhibit C is legally inadmissible, the prosecution having failed to lay the necessary foundation for its admissibility as required by law and should be expunged from the record of the Court. **See FRN VS. Fani Kayode (2010) 14 NWLR (pt 1214) 481.**

On duty of Court to expunge or discountenance wrongly admitted evidence, the Court of Appeal, Lagos Division in **Ezeugo v. State (2013) LPELR – 19984 (CA)** held as follows;

"Indeed, it's trite law, that a trial court is under an onerous duty to admit and act upon only on an evidence which is properly admissible within the purview of the provisions of the Evidence Act and other relevant statutory provisions. Where, however, the trial court inadvertently admits such an inadmissible evidence, as in the instant case, the court is under a duty not to act on it, See R. vs ELL's (1910) 2 KB 746; STIRLAND vs DPP (1944)AC 315 at 327; (followed by the Supreme Court in) WAHAB ALAO LAWAL Vs THE STATE (1966) ALL NLR 107; (1966) NMLR

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343; AJAYI vs OLUFISHER 1961 FSC 90. In the case of *Minister of Lands, Western Nigeria vs. Nnamdi Azikwe & ors (unreported): Supreme Court SC No. 169/68*, judgment dated January 31, 1968, it was held by the apex court that – *"It is not within the competence of the parties to a case to admit by consent or otherwise a document which by law is inadmissible"* per Coker JSC. Therefore where such evidence is in error or otherwise admitted in evidence, as in the instant case, then the Appeal court has the duty to reject (discountenance) such evidence and accordingly consider the case in the light only of legally admitted evidence"

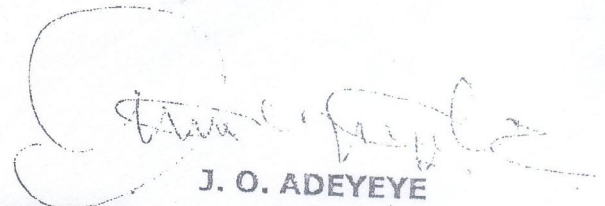
See also **Mohammed v. State (2010) LPELR-9019 (CA); Subairu v. The State (2016 LPELR-40835(SC).**

Flowing from the foregoing, I hold the view that Exhibit C is inadmissible and same shall be discountenanced at this stage. Having knocked out Exhibit C by reason of its inadmissibility, it follows that there is no evidence to prove that the cheques were presented within three months of the dates on the cheques. The only conclusion that can be drawn from that is that the prosecution has failed woefully to prove one of the essential ingredients of the offence of dishonoured cheques. It is trite law that the prosecution is said to have proved its case beyond reasonable doubt, when it has proved all the ingredients of a particular offence with which the accused person is charged. See **Isiaka vs. State (2011) LPELR – 8833 (CA)**. In this case where the prosecution has failed to prove one of the ingredients of the offence of dishonoured cheques, it cannot be said that the prosecution has proved its case beyond reasonable doubt. The defendant in the circumstance is entitled to an acquittal. She is accordingly discharged and acquitted.

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In sum, the defendant having not been found guilty of any of the charges against her is hereby discharged and acquitted of all the counts of the information.


J. O. ADEYEYE
JUDGE

APPEARANCES

Gbenga Adaramola Esq. (DPP) with
Mosheed Abiola Esq.

C. O. Omokhafa Esq. with
Mrs. Iyanu Olumuagun-Ogunrinde

- For the State

- For the Defendant

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IN THE HIGH COURT OF JUSTICE EKITI STATE OF NIGERIA
IN THE ADO EKITI JUDICIAL DIVISION
HOLDEN AT ADO-EKITI

CHARGE NO: HAD/73^C/2016

BETWEEN:

THE STATE..... COMPLAINANT

AND

BOLANLE SUSAN OSASONA..... DEFENDANT

ENROLMENT OF JUDGMENT

Upon the criminal information filed by the Attorney General and Commissioner of Justice, Ekiti State preferred against the defendant to wit: -

- COUNT I: That you Bolanle Susan Osasona on or about the 22nd day of April, 2015 at Ado-Ekiti within the jurisdiction of this Honourable Court by false pretence with intent to defraud did obtain the sum of Six Million Naira only from one Otunba Tayo Idowu.
- COUNT II: That you Bolanle Susan Osasona on or about the 15th day of May, 2015 at Ado-Ekiti within the jurisdiction of this Honourable Court by false pretence with intent to defraud did obtain the sum of Two Million Naira only from one Otunba Tayo Idowu.
- COUNT III: That you Bolanle Susan Osasona on or about the 9th day of June, 2015 at Ado-Ekiti within the jurisdiction of this Honourable Court by false pretence with intent to defraud did obtain the sum of Three Million Naira only from one Otunba Tayo Idowu.
- COUNT IV: That you Bolanle Susan Osasona on or about the 12th day of June, 2015 at Ado-Ekiti within the jurisdiction of this Honourable Court by false pretence with intent to defraud did obtain the sum of Two Million Naira only from one Otunba Tayo Idowu.
- COUNT V: That you Bolanle Susan Osasona on or about the 30th day of June, 2015 at Ado-Ekiti within the jurisdiction of this Honourable Court by false pretence with intent to defraud did obtain the sum of Two Million Five Hundred Thousand Naira only from one Otunba Tayo Idowu.

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COUNT VI: That you Bolanle Susan Osasona on or about the 22nd day of May, 2015 at Ado-Ekiti within the jurisdiction of this Honourable Court did issue in favour of one Otunba Tayo Idowu a Skye Bank Plc Cheque with Number 00000021 on Account Number 4110005958 which cheque was dishonoured.

COUNT VII: That you Bolanle Susan Osasona on or about the 7th day of July, 2015 at Ado-Ekiti within the jurisdiction of this Honourable Court did issue in favour of one Otunba Tayo Idowu a Stanbic IBTC Bank Plc Cheque with Number 00000006 on Account Number 0014756282 which cheque was dishonoured.

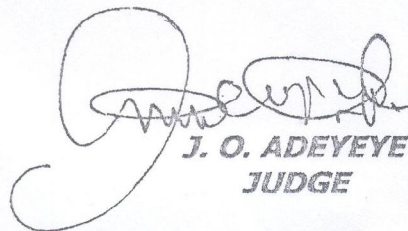
COUNT VIII: That you Bolanle Susan Osasona on or about the 7th day of July, 2015 at Ado-Ekiti within the jurisdiction of this Honourable Court did issue in favour of one Otunba Tayo Idowu a Skye Bank Plc Cheque with Number 00000031 on Account Number 4110005958 which cheque was dishonoured.

IT IS HEREBY Certified that this case came up for hearing before His Lordship Hon. Justice J. O. Adeyeye – Judge this Thursday the 29th day of March, 2018.

AND the Court having listened to the evidence of prosecution witnesses and that of the defendant, and having also gone through the written addresses which was adopted by Gbenga Adaramola (DPP) for the State and Iyanu Olumuagun-Ogunrinde for the defendant, Court adjudged and ordered as follows: -

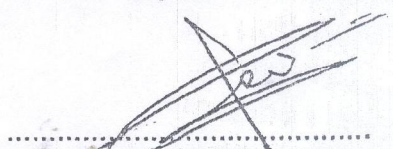
"The defendant in the circumstance is entitled to an acquittal. She is accordingly discharged and acquitted.

In sum, the defendant having not been found guilty of any of the charges against her is hereby discharged and acquitted of all the counts of the information."



J. O. ADEYEYE
JUDGE

ISSUED at the High Court Registry, Ado-Ekiti under the SEAL of the Court and the Hand of the Presiding Judge this Thursday the 29th day of March, 2018.



MRS. ADEWUMI O. O.
DIRECTOR, LITIGATION DEPARTMENT

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