IN THE COURT OF APPEAL
IN THE EKITI JUDICIAL DIVISION
HOLDEN AT ADO-EKITI

ON MONDAY THE 24TH DAY OF JUNE, 2019

BEFORE THEIR LORDSHIPS

HON. JUSTICE UZO I. NDUKWE-ANYANWU - JUSTICE, COURT OF APPEAL
HON. JUSTICE FATIMA OMORO AKINBAMI - JUSTICE, COURT OF APPEAL
HON. JUSTICE PAUL OBI ELECHI - JUSTICE, COURT OF APPEAL

CA/EK/66C/2018

BETWEEN:

THE STATE ========== APPELLANT

AND

BOLANLE SUSAN OSASONA ========== RESPONDENT

JUDGMENT
DELIVERED BY HON. JUSTICE UZO I. NDUKWE-ANYANWU, JCA

This is an appeal against the judgment of the High Court of Ekiti State delivered on the 29th day of March, 2018 by Hon. Justice J. O. Adeyeye.

The facts briefly stated are as follows:

The Respondent, Bolanle Susan Osasona, was arraigned before the High Court of Ekiti State and charged with the following offences.

COUNT ONE

STATEMENT OF DEFFENCE

OBTAINING MONEY BY FALSE PRETENCE contrary to and punishable under Section 419 of the Criminal Code Law, Laws of Ekiti, 2012.

PARTICULARS OF OFFENCE

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 TWO

STATEMENT OF DEFFENCE

OBTAINING MONEY BY FALSE PRETENCE contrary to and punishable under Section 419 of the Criminal Code Law, Laws of Ekiti, 2012.

PARTICULARS OF OFFENCE

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 THREE

STATEMENT OF DEFFENCE

OBTAINING MONEY BY FALSE PRETENCE contrary to and punishable under Section 419 of the Criminal Code Law, Laws of Ekiti, 2012.

PARTICULARS OF OFFENCE

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 FOUR

STATEMENT OF DEFFENCE

OBTAINING MONEY BY FALSE PRETENCE contrary to and punishable under Section 419 of the Criminal Code Law, Laws of Ekiti, 2012.

PARTICULARS OF OFFENCE

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 FIVE

STATEMENT OF DEFFENCE

OBTAINING MONEY BY FALSE PRETENCE contrary to and punishable under Section 419 of the Criminal Code Law, Laws of Ekiti, 2012.

PARTICULARS OF OFFENCE

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.

COUNT SIX

STATEMENT OF DEFFENCE

ISSUANCE OF DISHONOURED CHEQUE contrary to and punishable under Section 1 (1) (b) (i) of Dishonoured Cheques (Offences) Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

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 SEVEN

STATEMENT OF DEFFENCE

ISSUANCE OF DISHONOURED CHEQUE contrary to and punishable under Section 1 (1) (b) (i) of Dishonoured Cheques (Offences) Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

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 EIGHT

STATEMENT OF DEFFENCE

ISSUANCE OF DISHONOURED CHEQUE contrary to and punishable under Section 1 (1) (b) (i) of Dishonoured Cheques (Offences) Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

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:**00000031** on **Account Number: 4110005958** which Cheque was dishonoured.

The Defendant now Respondent pleaded not guilty to all the eight Counts. At the trial the Appellant then Prosecution called four witnesses while the Respondent in her defence testified for her self.

At the close of the case of both parties, the trial court found the Respondent innocent of the offences and thereafter discharged and acquitted her on all the offences.

The Appellant being dissatisfied with the decision of the trial court thus filed this instant appeal via a Notice of Appeal dated 30th day of April, 2018 but filed 2nd of May, 2018.

In accordance with the rules of this Court parties have filed their respective brief.

The Appellant filed its brief on October 11th, 2018 and a Reply brief on April 15, 2019. In its brief, the Appellant distilled three issues for determination as follows:

1) **Whether or not the offence of Obtaining Money of (Sic) False Pretence was proved against the Respondent beyond reasonable doubt which should have consequently led to her conviction and sentencing before the Trial Court (GROUND 1);**
2) **Whether or not the Trial Judge erred in Law when His Lordship *Suo-Motu* expunged and discountenanced the legally admitted documentary evidence (i.e. Exhibit C) as contained on page 136, lines 12-15 of the Record of Appeal (GROUND 3); and**
3) **Whether or not the offence of Issuance of Dishonoured Cheques was proved beyond**

reasonable doubt against the Respondent which should have warranted her conviction and sentencing before the Trial Court (GROUND 2).

The Respondent on the other hand filed her brief on the 9th day of January, 2019 and in her brief adopted the issues formulated by the Appellant as follows:

1. Whether or not the offence of obtaining money by false pretence was proved against the respondent beyond reasonable doubt which should have consequently led to her conviction and sentence before the trial Court (GROUND 1).
2. Whether or not the trial Judge erred in Law when His Lordship *Suo motu* expunge and discountenanced the legally admitted documentary evidence (i.e. Exhibit C) as contained on page 136, lines 12-15 of the Record of Appeal (GROUND 3); and
3. Whether or not the offence of Issuance of Dishonoured Cheques was proved beyond reasonable doubt against the respondent which should have warranted her conviction and sentencing before the Trial Court (GROUND 2).

ISSUE 1

In arguing this issue, learned counsel for the Appellant listed the ingredients of the offence of obtaining by false pretence as laid down in the case of **MADU & ORS V FRN (2016) LPELR - 40315 (CA)** as follows:

i. That there is a pretence;
ii. That the pretence emanated from the accused person;
iii. And that it was false;
iv. That the accused person knows of its falsity or did not believe in its truth;
v. That there was an intention to defraud;
vi. That the thing was capable of being stolen;
vii. That the accused person made the owner to transfer his own interest in the property.

He referred also to the case of **AMADI V FRN (2005) 18 NWLR (Pt 1119) 259; ONWUDIWE V FRN (2006) ALL FWLR (Pt 319) 77; ALAKE V STATE (1991) 7 NWLR (Pt 205) 567.**

It is the contention of counsel that the trial court was wrong in discharging the Respondent of the offence of obtaining by false pretence on grounds that the Appellant did not prove false pretence, intention to defraud and inducement.

It is the contention of counsel for the Appellant that based on the evidence on record it can be deduced that the Respondent collected the sum of ₦14.5 Million from Pw1 under false pretence. In support of his argument, counsel referred to the following facts:

a. The Respondent paraded herself as having received a contract worth ₦30 Million from the Ekiti State Government to everybody including PW1, PW2 and PW3.
b. She used it to collect a loan worth ₦14.5 Million from Pw1 on the pretence that she was awarded a ₦30 Million contract from Ekiti State Government.
c. She used the said contract to obtain favours from Pw2 and Pw3 too.
d. She secured the loan obtained from Pw1 with a defective collateral (i.e. her vehicles which have been seized by another creditor)
e. It was later discovered that the said contract of ₦30 Million was non-existent.
f. The Respondent admitted that she did not use the loan to execute the said ₦30 Million contract from Ekiti State Government.

Counsel also submitted that the Respondent having issued Pw1 a dud cheque in repayment of her loan raised the presumption of false pretence which the Respondent in her evidence failed to disprove. He referred to Section 419B of the Criminal Code Law, Cap C16, Laws of Ekiti State.

He thus urged this court to hold that the Appellants proved the offence of obtaining by false pretence against the Respondent beyond reasonable doubt, set aside the judgment of the trial court, convict and sentence the Respondent accordingly.

Learned counsel for the Respondent submitted that the Appellant having failed to prove the ingredients of the offence of obtaining by false pretence as listed in the case of **MADU & ORS V FRN (SUPRA)** through its witnesses (PW1-PW4) the trial court was right in discharging the

Respondent of the offence. He submitted that there was no false representation between the Respondent and PW1. Counsel referred to the following fact to buttress his point:

i. it was the Pw1 that suggested/offered to grant her the loan. He referred to the evidence of Pw1 at page 60 of the record.
ii. The Respondent offered her vehicles as collateral for the loan.
iii. He also submitted that the fact the loan was put into writing by Pw1's lawyer shows that the Respondent had no intention to defraud Pw1. He referred to Exhibits A - A3.
iv. That the Respondent paid the interest on the loan showed that she had no intention to defraud. He referred to the evidence of DW1 under cross-examination which was not challenged.
v. That the Pw1 and the Respondent had earlier had similar loan transaction which the Respondent did not default in

Based from the above facts, it is the contention of counsel that the Respondent never falsely represented herself to Pw1. He submitted that the transaction between the Respondent and Pw1 is simply a civil transaction and to which Pw1 has instituted a civil action against the Respondent and her guarantors for the recovery of the loans.

He thus urged this court to resolve issue 1 in favour of the Respondent.

Learned counsel for the Appellant in his reply submitted that it is trite law that the fact that there is in existence a criminal action is no bar to subsequent institution of a civil suit against the same party and vice versa. He referred to the case of **ONAH V MADUKA ENTERPRISES (NIG)**

LTD (2007) 13 WRN 176; IBE V IBHAZE (2016) LPELR - 41556 (CA); OKONKWO V OBUNSELI (1998) 7 NWLR (Pt 558) 502.

On the issue that there was no false representation, counsel submitted that it was the Respondent that approached Pw1 informing him that she was awarded a contract of over N30 Million by the Ekiti State Government which made Pw1 grant her loan. He referred to the evidence of Pw1 and Exhibit E.

He submitted that the evidence of the Respondent was contradictory showing that she was untruthful. He referred to the oral evidence of the Respondent wherein she denied that she never told Pw1 that she was awarded ₦30 Million contract and Exhibit E which state otherwise.

He also submitted that the collateral and agreement cannot exculpate the Respondent as she used same to deceive the Pw1 into giving her more loans knowing fully well that the collateral was seized by another Respondent's lender/creditor. He referred to the evidence of Pw3 at page 69 and lines 11 to 13 on page 70 which were not contradicted.

ISSUE 2

Learned counsel for the Appellant submitted that the trial judge was wrong to suo moto expunge Exhibit C (original copy of Pw1's Statement of Account) due to non-compliance with Section 84 of the Evidence Act.

It is the contention of counsel Exhibit C was admitted into evidence after the required foundation for tendering same was properly laid by Pw1 and

without any objection from the Respondent or her counsel. Counsel went further to describe the "proper" foundation laid by pw1 as follows:

> *".....when I paid the cheques through my account, the cheques went for clearing and after three days they called me from the bank that the cheques were returned unpaid. I requested for my Statement of Account."*

According to counsel, the fact that PW1 mentioned in his evidence above caption that he requested for Exhibit C from his Bank and same was addressed to him duly stamped and signed by his Bank, the trial court was wrong to have held that the Appellant did not comply with Section 84 of the Evidence Act when tendering Exhibit C. he referred to the cases of **FEDERAL REPUBLIC OF NIGERIA V FEMI FANI KAYODE (2010) 14 NWLR (Pt 1214) 481; LUFTHANSA GERMAN AIRLINES V WILLIAM BALLANYNE (2012) LPELR - 7977 (CA).**

He also contended that the fact that the Respondent or her counsel did not object to the tendering of Exhibit C, same ought to have been deemed admitted as regular and proper before the trial court. He referred to the cases of **ROSEHILL LTD V GTB (2016) LPELR - 41665 (CA); MADU & ORS V FRN (2016) LPELR - 40315 (CA).**

He thus urged this court to resolve this issue in favour of the Appellant.

Learned counsel for the Respondent submitted that the trial court has the power to expunge wrongly admitted exhibits. It is the contention

of counsel that the Appellant having failed to properly tender Exhibit C in accordance with Section 84 of the Evidence Act, the trial court was right to suo moto expunge it while delivering its judgment. He referred to the case of **EZEUGO V STATE (2013) LPELR - 19984 (CA); PRINCEWILL EYO ASUQUO & 4 ORS V MRS GRACE GODFREY EYO & 1 ORS (2004) 5 NWLR (Pt. 1400) 247.**

ISSUE 3

Learned counsel for the Appellant submitted for the Prosecution to sustain a conviction for the offence of issuance of dishonoured cheque, the prosecution must prove the following ingredients beyond reasonable doubt:

i. That the accused person obtained credit for himself;
ii. That the accused person issued a cheque to the complainant;
iii. That upon presentation, the cheque was dishonoured on the ground that there were insufficient funds standing to the credit of the accused person;
iv. That the cheque was presented not later than three months from the date of issuance.

He referred to Section 1(1) and 2 of the Dishonoured Cheque (Offences) Act, Cap. 102, LFN, 2004 and the case of **ABEKE V THE STATE (2007) VOL. 151 LRCN.**

It is the contention of counsel that the Appellant did prove beyond reasonable doubt all the elements of the offence of issuing dud cheque.

He submitted that from the oral and documentary evidence of the Respondent, the Respondent obtained loan from Pw1. He referred to Exhibit E, A, A1, A2 & A3 and the evidence of PW1, PW2, PW3 and DW1. He submitted that the Respondent did issue 3 cheques to Pw1 in fulfillment of the loans. He referred to Exhibit B, B1 & B2, the evidence of PW1, PW2 & PW3. He submitted that Pw1 presented the three Cheques (B, B1 & B2) to his bank within three months but they were dishonoured due to insufficient funds in the Respondent's account. He referred to Exhibit C & F.

He thus urged this court to hold that the Appellant proved the offence of issuance of dishonoured cheques against the Respondent beyond reasonable doubt.

Learned counsel for the Respondent on the other hand submitted that the offence of dud cheque was an afterthought by the Appellant in order to convict the Respondent by any means. He submitted that offence was not part of the complaint filed by Pw1 in his petition and that was why the Respondent never responded to/mention same in her statement (Exhibit E) to the police.

Regardless, Counsel submitted that the trial court was right in discharging the Respondent for the offence of issuing dud cheque as there was no evidence to show when the Cheque was issued and presented by Pw1 to the bank. He submitted that the failure of the Appellant to establish that ingredient of dishonoured cheque raised doubt in the case of the Appellant which the trial court rightly resolved in favour of the Respondent. He referred to the evidence of Pw1 to Pw4 and Dw1 wherein

none of the witnesses mentioned the date the cheques were issued or when it was presented to the bank.

He submitted that the attempt by counsel for the Appellant to input when the cheques were presented in his brief of argument is an exercise in futility as a brief of argument cannot take the place of evidence.

He thus urged this court to resolve this issue in favour of the Respondent.

Learned counsel for the Appellant in his reply submitted that the argument of the Respondent's counsel that the offence was an afterthought is contrary to the evidence or record. He referred to the evidence of Pw3 wherein Pw3 stated that they were arrested by police for issuing dud cheques and the evidence of Pw4 wherein Pw4 stated that he wrote to Stanbic IBTC in order to investigate the account of the Respondent in respect of the complaint of issuance of a dud cheque. He thus urged this court to discountenance the argument of the Respondent's counsel in that regard.

As regards to the date the cheques were issued and presented, it is the contention of counsel that the dud cheques (Exhibit B - B2) bear the dates they were issued while the date it was presented and rejected were boldly on the Statement of Account of the Respondent (Exhibit F) tendered by Pw4 which is 13th day of July. He submitted that these documentary evidence supersedes any oral evidence of these facts. He referred to Section 128 (1) of the Evidence Act and the cases of **SOETAN & ORS V STELIZ LTD (2010) LPELR - 9051 (CA); NEPENEKPEN V**

EGBEMHONKHAYE (2014) LPELR - 22335 (CA); VINCENT EGHAREVBA V DR, OROBOR OSAGIE (2009) LPELR - 1044 (SC).

He thus urged this court to allow this appeal and set aside the decision of the trial court and convict the Respondent as charged.

RESOLUTION OF ISSUES

The Appellant in this appeal claimed in the lower court that the Respondent obtained credits from him by false pretenses: To unravel the issues placed before the court to decipher whether, the Respondent did infact obtain credit from the Appellant by false pretenses. In **AGUBA VS FRN, 2014 LPELR 23211**, the Court per SAULAWA JCA held that-

> **"The term false pretenses, denotes the offence (Crime) of knowingly obtaining title to another person properly by misrepresenting a fact with the instant to defraud that person. Also termed obtaining by false pretenses, fraudulent pretenses, larceny by trick; embezzlement, at all (See Black Law Dictionary 9th Edition 2009 page 351-352. See also ONWUDIWE VS F. R. N. 2006 LPELR 2715; IKPA VS THE STATE (2017) LPELR 42590".**

The Appellant in his evidence claimed that the Respondent falsely represented to him that she was awarded a ₦30 Million contract by the Ekiti State Government. Let me quickly say that it was proved that the Respondent represented to PW1, PW2 and PW3 that she was awarded a ₦30 Million contract. A misrepresentation is said to be fraudulent if the

maker intends the assertion to induce a party to manifest his assent and the maker:-

a) Knows or believes that the assertion is not in accord with the facts or
b) does not have the confidence that he stated or implies is the truth of his assertion or
c) knows that he does not have the basis that he states or implies from the assertion" Per **AUGIE JSC in IKPA VS STATE (Supra).**

The Respondent told or represented to the PW1, PW2 that she was awarded a ₦30 Million contract. She invited PW1 to partner with her. The PW1 refused that offer and asserted that he can only loan the Respondent money if she wanted. At this stage it can be deciphered that though the Respondent represented to the PW1 but did it sway the PW1 into partnering with her? The PW1 went ahead to loan the Respondent money in several tranches totaling ₦14.5 Million. See A, A1, A2 & A3. The PW1 is a money lender on record. PW1 drew up 3 loan agreements which the Respondent signed. The Respondent also gave PW1 three (3) cars as collateral. The papers for the cars were tendered as Exhibits G, G1, G2, G3, H, H1, H2, H3, H4, H5 & H6.

The question now paramount is whether it was the Representation that the Respondent was awarded a contract of ₦30 Million that persuaded the PW1 to part with his money?

This smirks of a loan transaction with the loan agreement coupled with the collateral donated to the PW1. Can it be rightly said that the

representation that made the PW1 to part with ₦14.5 Million of his money?

The prosecution in the lower court failed to prove this very vital ingredient of obtaining money by false pretenses. I do not think that the transaction between the PW1 and Respondent was induced by the representation made by the Respondent. PW1 is a known loans shark or money lender. He loans money and charges his interests. He loan everyone that meets his requirement money for repayment on a future date. It is obvious from the loan Agreement Exhibits A, A1, A2 & A3 that it was an ordinary loan transaction. Exhibits G-G3, H-H6 also buttressed the fact that the PW1 requested for collateral for the money loaned to the Respondent.

I believe that whatever the Respondent represented to the PW1 that she was awarded a contract of ₦30 Million was not the basis for this loan transaction. Both parties PW1 and Respondent had had previous loan transactions before and the prosecution was hard pressed to prove that the Respondent obtained money from the PW1 by false pretenses. See **SMART VS THE STATE (1974) LPELR 3076 IKPA VS STATE (SUPRA).**

The Appellant's counsel in his argument stated that, it was later discovered that the collateral given to the PW1 by the Respondent was defective. This is neither here nor there when the collateral was issued or donated for the loan transaction; it behoves on the PW1 to do his own due diligence. The collateral might have been good when it was donated but it appeared that there were other parties vying for the cars donated as collateral.

The PW1 was not persuaded by the award of contract to get into a loan transaction with the Respondent. If the PW1 was persuaded by the ₦30 Million contract awarded he would have done his own due diligence to ascertain the veracity of this award.

I will believe from the forgoing that this was an ordinary loan transaction as held by the lower court. I too must also agree with that decision by the trial court and hold that this issue is resolved against the Appellant in favour of the Respondent.

ISSUE 2

Exhibit C is the arrowhead of this issue. The trial judge expunged this exhibit holding that it was inadmissible and of no effect even after it had been admitted in evidence. The Appellant had tendered Exhibit C through PW1 the owner of the Bank Statement. The learned trial Judge cited **EZEUGO VS STATE (2013 LPELR 19984** where it was held that-

> **"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 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"

What determines the admissibility of evidence or document is governed by Section 6 of the Evidence Act. **FAWEHINMI VS NBA (No2) 1989 2 NWLR Part 105 pg. 558, B. O. N. VS SALAH (1999) 9 NWLR Pt. 618 Pg. 331, ANOZIE VS OBICHERE (2006) 3 NWLR Pt. 981 Pg.145, F. B. N VS. SIBO (2006) 9 WLR Pt. 985 Pg. 261 KUFIO (NIG) LTD VS NSITFMB (2005) 6 NWLR Pt. 922 Pg. 44 JADESIMI VS EGBE (2005) 10 NWLR Pt. 827 Pg. 1.**

The Courts have made a distinction between admissibility of a document and the weight to be attached to it. A document may be admissible in law but when put through the crucible of evaluation and ascription of probative value thereto, it may be found to be a worthless document.

IMB (Nig.) LTD VS DABIRI (1998) 1 NWLR Pt. 533 Pg. 284 BURAIMOH VS KARIMU (1999) 9 NWLR Pt. 618 Pg. 310.

PW1 tendered Exhibit C to show the time frame within which the 3 cheques Exhibits B, B1 & B2 were written, presented and dishonoured. Exhibit C is a document made by the bank. It is only a bank official that can tender it to answer question that may be asked during cross examination. This failure now makes the probative value low. The PW1 who tendered it can only be cross examined on it for basic things. Therefore, the Exhibit C lacks high probative value. Exhibit C is only admissible in law to the extent that it shows that PW1 has an account with the Bank and that he requested for his Bank account when supposedly the cheque didn't go through.

Only an official of the bank can really give the type of evidence on the statement. Exhibit C which the Appellant needed to prove its case against the Respondent. Strictly speaking Exhibit C is not inadmissible but it has no probative value for what the Appellant wanted it to prove.

The proper person through whom a document is tendered is the maker of the document. If a person who is not the maker of a document tenders the document the court should not attach any probative value to the document because the person tendering the document not being the maker of the document cannot answer questions arising from the cross examinations. See **HAMLZACH VS NIG. NAVY (2006) 7 NWLR Pt. 980 Pg. 525.**

The Appellants counsel had argued strenuously that the Respondent's counsel did not object to the tendering of Exhibit C. It has

however been held that where inadmissible evidence is admitted without objection at the trial, failure to object to its admissibility at the trial will not prevent its inadmissibility from being raised and determined on appeal. See **OGIDI VS EGBA (1999) 10 NWLR Pt. 621 Pg. 42.**

So also if a piece of evidence is wrongly received in evidence by the trial court, an appellate court has the inherent jurisdiction to expunge it from the records notwithstanding that counsel at the trial court did not object to the admissibility of the piece of evidence: See **ONOCHIE VS ODOGWU (2006) 6 NWLR Pt. 975 Pg. 65; DAGACHI Of DENE VS DAGACHI OF EBWA (2006) 7 NWLR Pt. 979 Pg. 382.**

The Respondent was charged in Counts 6, 7 and 8 with the issuance of dishonored cheques contrary to and punishable under Section 1 (1) (b) (1) of Dishonoured cheques (offences) Act, Laws of the Federation of Nigeria 2004. The Appellant could not prove the period the cheque was paid into the bank for drawing. The cheques only bore the dates of issue and not date it was paid into the bank. Also there was no remark on the cheques except the bank stamp and no date.

In sum there was no proof that the PW1 presented the cheque within 3 months of the date on the cheques Exhibit B, B1 & B2.

There was still no proof that there was insufficient funds standing to the credit of the Respondent. These ingredients were not proved by the Appellant.

I therefore, hold that the Appellant's issue 2 has been resolved against the Appellant in favour of the Respondent.

ISSUE 3

I have already held in issue 2 that the Appellant did not prove that the 3 cheques Exhibits B, B1 & B2 were presented within 3 months of its issuance. Also the Appellant could not prove insufficiency of funds standing in the account of the Respondent. These ingredient as stated earlier were not proved by the Appellant.

It is not in doubt that the Respondent obtained loans from the PW1 to the tune of ₦14.5 Million. It is also true that the Respondent did issue 3 cheques Exhibits B, B1 & B2 to the PW1. The PW1 claimed that he presented cheques to his bank. The Bank stamp is only on the 3 cheques and nothing more. There was no endorsement on the 3 cheques to signify the date the cheques were presented. There is also no endorsement to indicate whether there was insufficient funds standing to the credit of the Respondent.

In all, issue 3 is also resolved against the Appellant in favour of the Respondent.

All the three (3) issues articulated by the Appellant have all been resolved against it. This appeal is unmeritorious. It is dismissed.

I affirm the judgment of the lower court in discharging and acquitting the Respondent on all the Counts of the charge.

UZO I. NDUKWE-ANYANWU
JUSTICE, COURT OF APPEAL

COUNSEL APPEARANCE:

Gbemiga Adaramola Esq., DPP, Ekiti State (with Abiola A. Moshood Esq., Legal Officer, I. U. Ibrahim Esq. Legal Officer) for the Appellant.

C. O. Omokhafe Esq. for the Respondent.

CA/EK/66C/2018
HON. JUSTICE FATIMA OMORO AKINBAMI, JCA

I have had the advantage of reading in draft the lead judgment of my learned brother **Hon. Uzo I. Ndukwe-Anyanwu, JCA** just delivered.

I agree with the reasons advanced to reach the conclusion that there is no merit in this appeal and it deserves an order of dismissal.

My learned brother has exhaustively dealt with all the issues for determination in this appeal. His views and conclusions accord with mine. Accordingly, I adopt the lead judgment as mine. I also dismiss this appeal as being unmeritorious.

I affirm the judgment of the lower court in discharging and acquitting the Respondent on all counts of the charge.

FOAkinbami

HON. JUSTICE FATIMA OMORO AKINBAMI
JUSTICE, COURT OF APPEAL

APPEAL NO: CA/EK/66C/2018.

HON. JUSTICE PAUL OBI ELECHI, JCA

My learned brother, Hon Justice Uzo. I. Ndukwe Anyanwu JCA had obliged me before now with a copy of the lead judgment just delivered. His lordship has exhaustively considered the issues for determination in this appeal.

I agree with him that the appeal lacks merit and it is also dismissed by me.

Appeal Dismissed.

HON. JUSTICE PAUL OBI ELECHI
JUSTICE, COURT OF APPEAL.