

IN THE HIGH COURT OF JUSTICE
OYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE THE HONOURABLE JUSTICE E. ESAN- JUDGE

THIS FRIDAY THE 13TH DAY OF JUNE, 2018

SUIT NO.1/67C/2015

BETWEEN:-

COMMISSIONER OF POLICE

...

PLAINTIFF

AND

OLUKAYODE ADEBAYO

...

...

DEFENDANT

Appearances:

The defendant is present.

Bassey Okon for the defendant.

Yusuff Raimi holds a watching brief for the complainant.

JUDGMENT

The defendant was arraigned before this court on the following offences.

COUNT: 1

That you Olukayode Adebayo 'm' on the 1st day of September, 2014 at No. 8m Labe-Odan, Avenue, bodija Area, Ibadan, in the Ibadan Judicial division did issue one Dud Cheque No. 118890856 dated 1//2014 to the tune of N2,800,000.00) Two Million, Eight Hundred Thousand Naira to one Olabode Ezekiel Adeyoti 'm' which on presentation was dishonoured and thereby committed an offence

contrary and punishable under Section 1(1) (b) of the Dishonoured Cheque (offences) Act. Cap D11 Vol. Laws of the Federation of Nigeria 2004.

COUNT: II

That you Olukayode Adebayo 'm' on the 1st day of September, 2014 at No. 8m Labe-Odan, Avenue, bodija area, Ibadan, in the Judicial Division did issue one Dud Cheque No. 11890859 dated 1/1/2015 to the tune of (N2,800,000.00) Two Million, Eight Hundred Thousand Naira to one Olabode Exekiel Adeyoti 'm' which on presentation was dishonoured and thereby committed an offence contrary and punishable under Section 1(1)(b) of the Dishonoured Cheque (offences) Act. Cap. V Laws of the Federation of Nigeria 2004.

COUNT: III

That you Olukayode Adebayo 'm' on the 1st day of September, 2014 at No. 8m Labe-Odan, Avenue, Bodija area, Ibadan, in the Ibadan Judicial Division did issue one Dud Cheque No. 11890858 dated 1/5/2015 to the tune of (N2,800,000.00) Two Million, Eight Hundred Thousand Naira to one Olabode Ezekiel Adeyoti 'm' which on presentation was dishonoured and thereby committed an offence contrary and punishable under section 1(1)(b) of the Dishonoured Cheque (offences) Act. Cap. D11 Vol. Laws of the Federation of Nigeria 2004.

COUNT: IV

That you Olukayode Adebayo 'm' on the 1st day of September, 2014 at No. 8m Labe-Odan, Avenue, Bodija area, Ibadan, in the Ibadan Judicial Division did fraudulently convert the sum of Two Million, Eight Hundred Thousand Naira (N2,800,000.00), property of one Olabode Ezekiel Adeyoti 'm' to your own use with intent to deprive him the ownership permanently and thereby committed an

offence contrary to the Section 383 and punishable under the Section 390 (9) of the Criminal Code Cap. 38, Vol. II Laws of Oyo State, Nigeria 2000

The defendant pleaded not guilty to the charge.

At the trial, the prosecution called three witnesses in proof of its case against the defendant while the defendant testified for himself and called no other witness.

P.W.1 was Adeyoti Ezekiel Olabode. He testified as follows:

He is a Poultry Farmer and he is also into real Estate. He knows the defendant.

Sometime in February 2014, the management of Cedar House approached him through the men's fellowship informing him of a developed property for sale at No. 8 Labe-Odan Avenue, New Bodija. He discovered that the house had not been fully completed and the fittings had not been done.

The house is a block of six flats with four two bedroom flat which they wanted him to purchase.

The defendant, his lawyer, Adetumobi and some other people assured him that the house would be completed within one week.

The house was indeed completed within one week as promised.

Thereafter, he approached Jubilee Life Savings and Mortgage Bank Dugbe for a loan. The house cost ₦42.5 Million. The bank asked for the sum of ₦10 Million as his contribution and agreed to finance the rest. He was given an offer letter and the bank visited the property to ascertain the genuineness of what he wanted to use the money for.

Payment was made to Cedar House Rector Committee to buy four flats.

During the course of handing the property over to him, the defendant approached him and introduced himself as part of the people that built the house and said that they also manage apartments. He informed the defendant that he wanted to rent out the apartment and the defendant presented him with a proposal which he had prepared. He told the defendant that he wanted a tenant who would pay him rent. The defendant further informed him that he had been managing properties in Lagos and Abuja. After looking at the proposal, he agreed.

An agreement on how he would manage the property was prepared by the defendant's lawyer by name Tunji Adetumobi.

According to the agreement, he was to be given three post dated cheques to cover the transaction. He signed the agreement. The said agreement was tendered and admitted in evidence and admitted as Exhibit A.

Continuing with his evidence PW1 stated that upon being given the three post dated cheques by the defendant he handed over the said property to him. The three post dated cheques were each for the sum of ₦2.8m to cover one year, one Cheque for each quarter. When the first Cheque was due on 1st September, 2014, he presented it at Stanbic IBTC Bank, Egbeda Branch, Lagos but the Cheque was returned because there was no money in the account. He immediately called the defendant informing him of the fact he was to pay the sum of ₦1.5m monthly to Jubilee Life Saving starting from June, 2015.

The defendant who is also managing two apartments belonging to another person apologised to him.

He thereafter went to the Chairman of Cedar House to complain about the behaviour of the defendant.

When the second Cheque became due in January, 2015 and it was presented, it was also dishonoured. As at that time, the property had been in use for seven months. When he called the defendant to complain, the defendant told him that the money will be paid.

Thereafter, he saw the defendant with a brand new Toyota Avalon, metallic colour. The defendant paid the sum of ₦1.8m in a staggered manner leaving the sum of ₦1m unpaid for almost one year after he appealed to the defendant severally and travelling up and down to track him down.

The third Cheque upon being presented also bounced. He thereafter decided to report the matter to the Law Enforcement Agency.

The defendant was till date still indebted to him to the tune of ₦3.75 million. The dishonoured Cheques were tendered and admitted in evidence and marked Exhibits B1, B2 and B3 respectively.

Due to the fact that all the cheques he presented at IBTC Bank were dishonoured, the bank denied him a loan when he approached it. At the expiration of the 1year, the defendant told him he would be leaving the property but he told the defendant to pay all his outstanding indebtedness. All efforts to get him to pay the money owed proved abortive. The defendant had been going about doing his business

P.W.1 stated further that upon inspection of the property, he found out that the defendant did not buy all he claimed he bought into the property.

The Electricity bills were left unpaid. The defendant in order to avoid paying electricity bills connected the flats directly to the direct lines.

The defendant was summoned to Nepa Office, Dugbe Branch. The matter was reported to the police at Iyaganku, Police Station. P.W.1 said that he made a

statement at Iyaganku Police Station. The statement was tendered and admitted in evidence as Exhibit C.

Under Cross – Examination, P.W.I testified as follows:

He buys properties and rents them out. He originally wanted to rent out the property in question before the defendant approached him. He only knew the defendant as a member of Cedar House; and that was how the defendant introduced himself to him. The defendant was managing three flats out of the four flats he purchased as he reserved one for himself which he later rented out. As a business man, he did intelligent checks.

He did not know the defendant from the blues but because the defendant was part of those who sold the house to him, he felt he could do business with him. The agreement entered into between himself and the defendant was prepared by the lawyer to the defendant but vetted by his counsel.

The defendant initially resisted the contribution of his lawyer but later accepted it. The defendant told him that it was his lawyer that prepared the agreement in respect of the properties he is managing at Abuja and Lagos.

He made his input in the agreement but his lawyer felt that the money the defendant was apportioning to himself was too high. In Exhibit A, a year was stated to be nine Calendar months.

As regards the remaining three months, the defendant suggested that it be left out incase the flats were unoccupied. The defendant said he was going to charge ₦45,000.00 per day per flat.

He did not do any calculation with the defendant. The agreement was for the defendant to pay him the sum of ₦2.8m per quarter. The three months which the defendant believed would not be occupied did not form part of ₦2.8

million; it was to be calculated differently in case it was occupied which the defendant never did. The defendant staggeredly paid the first ₦2.8 million while he paid only ₦1.8 million in respect of the second Cheque when he paid at his convenience via money transfer.

P.W.1 stated that he read the agreement he entered into with the defendant before signing. A quarter of a year will be three months. As a business man, it had been spelt out that nine months represents one year one cheque was to be cashed every three months. It was during the pendency of this suit that he saw the defendant with a Avalon Saloon Car. He does not know if the Police investigated the source of the car. He saw two brand new cars with the defendant and his wife four months into the business. He knew the value of the two cars.

There were correspondences, between himself and the defendant. He saw a pattern in the defendant's messages which were aimed at depriving him of the proceeds of his property.

There were no regular or main correspondences between himself and the defendant. He lodged at the property. He paid for the first lodging but the second time was when the cheque bounced. The defendant sent him an invoice to pay the sum of ₦75,000.00. He advised the defendant to remove the said sum from the sum of ₦2.8 million he was owing him.

He was very honest with the defendant on his own part but the defendant had not been honest with him. It was from the very first time the Cheque bounced that he started to doubt the defendant. For a fair view, he does not see the defendant as a business man because of the cheques that bounced. The

defendant paid the sum of ₦1.8 million at his convenience leaving a balance of ₦1 million in respect of one of the cheques.

He wants the Court to teach the defendant a lesson that once integrity is removed, there is no business. He said he suffered a lot of damages as a record of this transaction.

P.W. 2 was No. 446119 Cpl. Ajani Adewale, the Investigating Police Officer. He testified that he was serving at State C.I.D. Iyaganku Area Command. He knows the defendant and Olabode Ezekiel (P.W.1).

According to him on 20th June, 2015, P.W.1 wrote a petition to the Assistant Commissioner of Police, Iyaganku Area Command which was referred to him for investigation. He invited the complainant, P.W.1 who elected to make a statement in English Language. He identified the statement Exhibit C to be the statement of P.W.1. The defendant presented 3 cheques to P.W.1 bearing different dates and the bank dishonoured the cheques on presentation.

The petition written by P.W.1 was tendered and admitted in evidence as Exhibit D. He recovered the three cheques from P.W.1 and P.W.1 took him to where he arrested the defendant. He identified the cheques Exhibits B1, B2 and B3.

The defendant made a statement in English Language after being cautioned. The statement was tendered and admitted in evidence as Exhibit E.

The defendant did not deny issuing the three cheques.

P.W. 2 said he went to Stanbic IBTC Bank to ascertain the details of the account of the defendant. When the Bank gave him the statement of account he discovered that there was no fund in the account when the cheques were issued

and when they were presented. The letters to and from Stanbic IBTC Bank were tendered and admitted in evidence as Exhibits F1 and F2 respectively.

From the statement of account he discovered that the defendant was no longer serving or using the account from the time he issued the cheques.

There was insufficient money in the defendant's account on the dates that each of the three cheques was presented to the bank. The cheques are dated 1/9/2014, 1/1/2015 and 1/5/2015 respectively. These dates were compared to the statement of account.

The bank dishonoured the cheques due to insufficient funds in the account of the defendant.

The cheques were returned unpaid each time they were presented for payment. The witness concluded that the defendant issued the cheques intentionally with knowledge that he had no money in his account.

He was unable to recover any money from the defendant up till the time of giving evidence. At the conclusion of his investigation, he noticed that the defendant deliberately refused to hand over the money he got to P.W.1.

Under Cross – Examination, P.W.2 testified as follows:

He had been in the Police Force for ten years and he was still a corporal. He had been an investigating Police Officer for seven years. His investigation took him to the bank. He visited the property in question he could not recollect the number of properties that were there.

The defendant said he entered into a contract with P.W.1 and that there was an agreement between them. He identified the memorandum of understanding – Exhibit A. The witness was asked to read the schedule on Exhibit A.

The amount on each cheque was ₦2.8 million. He did not know that ₦2 Million had been paid to P.W.1.

P.W.3 was Bukola Olatibo, a staff of IBTC Bank. She testified as follows:

On 29/6/2015, an instruction was received from the Commissioner of Police requesting for the statement of account of zepro services which the defendant is a signatory to from 1st September, 2014 till the time of request. The bank was asked to provide the signature/mandate and details of the signatories. The bank was also instructed to freeze the account and exercise caution on the said account. He was at Ring Road Branch when the instructions were received and the instructions were forwarded to the head office of the bank for action.

The witness stated that she was an account officer at Ring Road, Branch before the cheques (Exhibits B1, B2 and B3) were presented. She got a call from the account holder stating that some cheques were issued by him to his partner with the instruction that the cheques be cancelled upon presentation. She told the account holder to put it in writing which he did. The defendant who was the account holder also informed her that the remaining booklet from where the cheque was removed was missing; and that the cheques contained, therein be cancelled.

When the Cheques were eventually presented, the bank could not honour them. The defendant came and explained to her. That he had another payment arrangement with the person he issued the cheques to and that he transferred some funds to the person. Evidence of transfer of some funds is in the statement of account.

Under Cross-Examination, P.W.3 testified as follows:-

The Bank carried out the instruction of the Commissioner of Police through the Legal Department of the bank. She is aware of the fact that the defendants statement of account passed through the Ring Road Branch of Stanbic IBTC. There existed Banker/Customer relationship between the defendant and the bank.

The witness tendered a copy of the letter of instruction from the defendant to the Bank. It was admitted in evidence and marked Exhibit G.

The second letter which was written by the defendant to the bank was tendered and admitted in evidence as Exhibit H.

According to the witness, she had worked in the bank for 9 years but she could not remember precisely when the defendant opened an account with the bank. This occasion was the only time the defendant had problem with his cheques.

If a cheque is presented and there is no money in the account at that time. It is a dud cheque. The defendant had given the bank the instruction not to honour the cheque and that was why the cheque was dishonoured and not because there was insufficient fund in the account. When instruction has been given not to pay a cheque, then it is a dishonoured cheque.

It was with this piece of evidence that the prosecution closed its case.

The defence opened with the testimony of the defendant, Olukayode Adebayo who testified as D.W.1. He stated as follows:-

He is a real Estate Surveyor and he knew why he was in the dock.

He said he did not issue dud cheques to P.W.1. He did not convert the sum of N2.8m to his own use. P.W.1 and himself entered into an agreement for him to manage the property of P.W.1 at Bodija. The agreement was documented. The

witness identified Exhibit A as the agreement. They went into a short let model which means that instead of an annual payment arrangement, they were to lease the property out on daily basis for payment. P.W.1 agreed to the arrangement as he saw it as more profitable than "annual paid model.

He said he relied on the terms and conditions of Exhibit A. It was a one year contract with three months moratorium which was to be spread over the remaining nine months.

Each quarter would then be four months. Payments were to be every 120 days instead of every 90 days. There were supposed to be three payments per year.

The mode of payment was to be by cheque. P.W.1 insisted that he wanted the cheques before 1st day of the business.

He issued three cheques as requested but he mistakenly wrote it for the end of three months instead of 4 months. The cheques covered three months period. He was unaware of the mistake.

At the end of the three months, he got a call from his bankers, Stanbic IBTC saying he did not have enough money to cover the cheque that was presented. He reached out to their lawyers to understand the time schedule and reference was made to the agreement and the cheque.

He thereafter reached out to P.W.1 informing him that based on the agreement, he was scheduled for payment after 120 days and not 90 days.

P.W.1 insisted that the cheque was to be for 90 days. He apologized to P.W.1 and drew his attention to the mistake as to the date on the cheque.

P.W.1 insisted on payment and at the end of 120 days, ₦2.5m was transferred to him. He requested the P.W.1 to return the other cheques for correction but he refused and they continued with their business.

Exactly like it happened before, P.W.1 presented the 2nd cheque after 90 days and the cheque bounced. When he was contacted, he promised to credit P.W.1 which he did at the end of 120 days with the sum of ₦2million.

After payment of ₦2million, the Solicitor to p.w.1 wrote to him and in the letter there was evidence of receipt of ₦2.5million and ₦2 million respectively. The said letter was tendered and admitted in evidence as Exhibit J.

His bankers informed him that there was evidence of transfer of fund on the second cheque that he issued.

Thereafter, he wrote to P.W.1 telling him that the sales may drop due to the elections that were three months away to as high as 70% and that the 30% that will come could only be used to handle salaries and maintenance. The letter was tendered and admitted in evidence as Exhibit K. Another letter was written to P.W.1 to make P.W.1 aware of and allow them to act on the arbitration clause that they had within the contract as contained in Clause 15 of Exhibit A. The said letter was tendered and admitted in evidence as Exhibit L.

P.W.1 refused to comply with the two letters written to him but caused the Police to arrest and take him to Iyaganku Police Station where he was locked up for 24 hours.

P.W.1 insisted on presenting the 3rd Cheque and thereafter terminated the contract.

The lawyer to p.w.1 and the D.S.S. threatened him and the Police eventually picked him up. P.W.1 thereafter sent agents to prospect the property for rent.

The witness tendered the threat letter written by the Solicitor to p.w.1. It was admitted in evidence and marked Exhibit M.

When p.w.1 presented the 3rd cheque for payment, the bank informed him that they had already been informed not to honour the cheque.

The keys to the property were handed over to p.w.1 who instructed him not to withdraw the security details that were installed in the property and that he would take over their payment. According to the defendant, P.W.1 reported him to the C.I.D, Nigeria Police and when he was invited he honoured the invitation. The officer in charge told him that it was not a criminal case. Afterwards, he was charged to the Magistrate Court where the Magistrate advised that this matter be settled. He finally heard that the charge was filed in the High Court.

He appeared three times before he was served with a letter that P.W.1 wanted arbitration but his lawyer advised him not to honour the letter for arbitration. The said letter was tendered and admitted in evidence as Exhibit N.

Under Cross-Examination, D.W.1 testified as follows:

He was 37 years of age. He has B.S.C. Estate Management, from O.A.U. He graduated from the University in 2002. He issued three cheques in the course of this transaction which were returned unpaid three months after presentation. Each cheque was for the payment of ₦2.8 million.

The date on the 1st Cheque is 1st day of September 2013 for the sum of ₦2.8 million. As at the time the cheque was presented, he was not having enough money in the account. He could not recollect whether or not he knew he had enough money in the account.

After 90 days, he could not tell whether he knew he had enough money in his account.

On the 1st day of May, 2014, another cheque for ₦2.8 million returned unpaid. On the 2nd day of May 2014, the bank called him and told him that he did not have enough money to give value to that cheque.

On the 1st day of January, 2015, another cheque of ₦2.8 million was returned unpaid. He could not recollect if he had enough money in his account when the cheque was presented.

He told the bank not to honour the cheque.

On the 7th day of January, 2015, his money in the bank was One Thousand Naira plus.

When the cheques and statement of accounts were given to the witness, he said that on the 1st day of September, 2014, he had the sum of ₦190,000 only in his account. He stated that each cheque for ₦2.8 million was returned unpaid.

The defendant told the Court that he believed that he executed the contract according to the terms of the contract.

He stated that his bankers called him to inform him that he was not having enough money in his account as at when each of the cheques were presented.

It was with this piece of evidence that the defendant closed his case.

Thereafter, counsel to both parties filed and exchanged their written addresses which they adopted in open Court.

The Learned Counsel to the Defendant, Bassey Okon Esq., in his written address dated and filed the 22nd September, 2017 formulated one issue for determination as follows:

" Whether from the evidence led and Exhibits tendered the prosecution has proved its case beyond reasonable doubt."

Counsel submitted that the prosecution has failed to prove the guilty intent of the defendant in this case. He stated that the law is that "an *actus reus* without *mens rea* can never amount to crime He referred the Court to the case of Omoboriowo & Anor Vs. Ajasin (1986) 3 SC 178 at 255.

Counsel stated that in all offences where knowledge of intent to defraud forms some element necessary to prove a charge, there is the requirement that not only must the *actus reus* be committed but the defendant must have *mens rea* before he can be convicted of the offence.

Counsel submitted that the failure of the prosecution to investigate the source of Exhibit A and the none cross-examination of the defendant on same amounts to the prosecution's acceptance of the evidence of the defendant as to the true position of things. Counsel referred the Court to the case of Patrick Oforiete Vs. The State (2000) 7 SCNJ 162 at 179 – 183.

In conclusion he urged the court to hold had the prosecution has failed to prove its case beyond reasonable doubt.

The learned Counsel to the Prosecution, M.O. Ojeh Esq., in his final written address dated and filed the 14th November, 2017 adopted the issue formulated by the Learned Counsel to the defendant which is:

whether from the evidence led and exhibits tendered, the Prosecution has proved its case beyond reasonable doubt.

Counsel argued that all the witnesses for the Prosecution as well as the defence maintained one piece of evidence which is that the defendant issued Exhibits B1, B2 and B3 which were dishonoured by IBTC bank. Counsel referred the Court to the case of Daggash Vs. Bulama (2004) 1 NWLR (part 892) page 144 and submitted that all the elements that constitute the offence of issuance of dishonoured cheques have been proved by the combined evidence of P.W.1, P.W.2, P.W.3 and D.W. 1.

On the last count of the charge counsel submitted that the defendant had the intention to defraud P.W.1 and retain the money from the beginning of the transaction, hence Exhibits B1, B2 and B3 are yet to be satisfied or paid.

He urged the court to convict the defendant.

The defence counsel filed a reply to the Prosecutor's Written address on the 6th day of December, 2017.

In the said reply, the Counsel submitted that the address of the prosecution is a misconception as the prosecution was unable to tie the facts of the case to the legal authorities cited by him.

Counsel submitted that the transaction leading to this trial was based on a simple contractual agreement between the defendant and P.W.1 and does not come within the preview of Section 1 of the Dishonoured Cheque (offences) Act of D11 Vol. 5 LFR 2004. Counsel submitted that the Prosecution did not prove what the defendant obtained or how the defendant intended to deprive P.W.1 permanently of anything capable of being stolen.

In conclusion, counsel urged the court to hold that the prosecution has failed to prove the essential ingredients of all the offences charged.

I have considered the evidence adduced and the written addresses of the learned counsel for the parties.

By virtue of Section 1 (1) (b) of the Dishonoured Cheques (offences) Act, Cap D11 Laws of the Federal of Nigeria, 2004: any person who obtains credit for himself or any other person by means of a cheque that, when presented for payment not later than three months after the date of the cheque is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn shall be guilty of an offence.

However by virtue of Section 1 (3) of the said law a person shall not be guilty of an offence under this Section if he proves to the satisfaction of the court that when he issued that cheque he had reasonable grounds for believing and did believe in fact that it would be honoured if presented for payment within the period specified in subsection (1) of this Section.

The defendant is not disputing the evidence of P.W.1 as to the nature of the transaction between them.

The defendant admitted that he issued the three cheques in contention to P.W.1. Each cheque which is in the sum of N2.8 million and on presentation after a period of 3 months were dishonoured.

The issue to determine is whether the defendant believed that each of these cheques would be honoured at the time of presentation.

In other words whether he believed that he had sufficient money in his account to cover the amount on each of the cheques each time they were presented for payment.

The defendant's evidence is very illuminating in this regard. He testified that he issued 3 cheques of ₦2.8 million each in the course of this transaction which were returned unpaid after three months on presentation.

That as at the time the cheques were presented he did not have enough money in his account. He further testified that he could not even recollect whether or not he knew he had enough money in his account at the time each was presented.

The above evidence of the defendant clearly shows that he knew that he had insufficient money in his account at the time each of the cheques was presented. In other words he did not have the belief that he had enough money to cover the amount in each of the cheques at the time they were presented.

In view of the provision of Section 1 (3) of the aforesaid law and without much ado the prosecution has therefore proved counts 1, 2 and 3 against the defendant, beyond reasonable doubt.

He is accordingly convicted in each of these counts.

In **Count 4** the defendant is charged with fraudulently converting the sum of ₦2.8 million to his personal use with intent permanently to deprive the owner.

By virtue of Section 383(2)(a) of the aforesaid law. A person who fraudulently converts to his own use anything capable of being stolen is said to steal that thing if he does so with intent permanently to deprive the owner of the thing of it.

The prosecution must prove the fraudulent conversion of the money.

In the case of Kenneth Clark & Anor. Vs. The State (1986) 4 NWLR (Pt 35) 381 the Section at held that a person who converts anything capable of being stolen is deemed to do so fraudulently if he does so in the case of money with

intent to use it at his will, although he may intend to repay the amount to the owner.

See also: Muhammed Vs. The State (2000) FWLR (Pt. 30) 2623 at 2626.

OYEBANJI VS. THE STATE (2015) 14 NWLR (Pt. 1479) 270.

The prosecution did not adduce any evidence of fraudulent intent. In other words the prosecution failed to show that the defendant had the intent to convert the money or use the money at his will.

All the prosecution was able to show and by the admission of the defendant is that the defendant, although he knew he had no money in his account issued three separate cheques which on presentation were dishonoured.

As a result the prosecution has failed to prove count 4 of the charge against the defendant. He is discharged and acquitted in Count 4.

However as stated earlier, he is found guilty as charged in counts 1, 2 and 3 respectively.

Allocutus: The defendant is a first offender.

He has substantially paid for the value of the cheque

The court should temper justice with mercy.

He should be cautioned and discharged or given option of fine.

Record of Previous Conviction – Nil.

SENTENCE: I have noted the passionate plea of the learned counsel for the defendant in Allocutus. I will therefore be lenient with him, in the hope that the defendant has realized that crime does not pay. The defendant is cautioned and discharged.


HON. JUSTICE E. ESAN
JUDGE
13/6/2018