

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

BEFORE HIS LORDSHIP : HON. JUSTICE .Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 32
CASE NUMBER : CHARGE NO: CR/59/13
DATE: : MONDAY 24TH APRIL, 2017

BETWEEN

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

1. ALHASSAN UMAR } ACCUSED
2. WAHDA GLOBALISED BUSINESS LTD } ACCUSED

Defendant in Court.

Aishatu Ibrahim for the Prosecution

O. K Rugbere with O.J Ojukwu for the Defendant.

Prosecutor's Counsel – the case is adjourned for Judgment
and we are ready to take same.

JUDGMENT

By an amended charge, filed by the complainant via charge No. CR/59/15 the Defendants were arraigned before this court on three count charge as follows:-

Count one

“That you Alhassan Umar (being the Chairman/CEO and sole signatory of Wahda Globalised Business Ltd) and sometimes in April, 2012 in Abuja, within the judicial division of the High Court of Federal Capital Territory, with Knowledge that you had insufficient funds in your account, issued to Lubonex Investment Ltd Guarantee Trust Bank cheque with cheque No. 00000280 dated 15th April, 2012 in the sum of N4,000,000.00 (Four Million Naira) which was dishonoured due to insufficient fund in your account and you thereby committed an offence contrary to section 1 (1)(b) of the dishonoured cheque (offences) Act Cap. 011 Laws of the Federal Republic of Nigeria, 2004 and punishable under section 1(1) (b)(i) of the same Act.”

Count two

That you Alhassan Umar (while being the MD of WAHDA Globalised Business Ltd on or about the 15th day of April, 2012 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory by deceiving one Udom Luke of Lubonex Investment Ltd intentionally dishonestly inducing him to deliver to you 370 bags of

rice worth N3,700,000.00 (Three Million, Seven Hundred Thousand Naira) and you thereby committed an offence punishable under section 328 of the Penal code.

Count three

That you Alhassan Umar (while being the MD of Wahda Globalised Business Ltd on or about the 23rd day of February, 2012 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory by dishonestly induced one Udom Luke to deliver the sum of (N300,000.00 (Three Hundred Thousand Naira) into account of one Hassan Baba Umar and thereby committed cheating an offence punishable under section 322 of the Penal Code.

The accused persons pleaded not guilty to all counts charge and the case proceeded into hearing, the Complainant called a numbers of three witnesses and closed it case.

Pw1 during examination in chief stated as thus;

That one Isaac Omorebe introduced the accused to him as his friend. He demanded for 400 bags of rice, 50kg. But that he only had 370 bags of rice at the time he wanted the rice which was supplied to him and cash of N300,000 paid into the account of Hassan Baba Umar to make it N4,000,000.00 (Four Million Naira), and that the accused then issued him a cheque of N4,000,000.00 (Four Million Naira) of GTbank with a date written on the cheque.

On the due date, the cheque was rejected and dishonoured upon presentation which the attention of the accused person was drawn and he undertook to pay and could not pay for almost a year. Eventually N700,000.00 was paid by accused person leaving a balance of N3.3 Million.

After much wait, nominal complainant then asked his solicitors (Festus Keyomo Chambers) to write to the accused person who still could not pay. Petition was then written on his instruction to EFCC and Inspector General of Police whom the accused boasted was his friend.

The said GTBank cheque in the amount of N4,000,000.00 (Four Million Naira) dated the 15th April, 2012 tendered was admitted as Exhibit "A".

PW1 was cross- examined as follows:-

Qus:-This case is all about accused person's indebtedness to you?

Ans:-Yes.

Qus:-Out of the N4,000,000.00 (Four Million Naira), the accused person paid N1,000,000.00 (One Million Naira)?

Ans:-No. N700,000.00 (Seven Hundred Thousand Naira).

Qus:-When you reported the matter to your lawyer, you expected him to get back the balance for you?

Ans:-Yes.

Qus:-Your lawyer had to petition EFCC because he could not succeed in recovering the money?

Ans:-Yes.

Qus:-The only option is for him to pay the money?

Ans:-Yes.

Qus:-You expect the court to give judgment that this money be paid to you?

Ans:- I have never been to court before.. anything the court says is very ok.

Qus:-Do you know there is an option of filing a case to recover your money with interest?

Ans:-I don't know.

Qus:-Did you expect the EFCC to detain the accused forever?

Ans:-It was not my intention.

Qus:-The cheque was not issued in your name?

Ans:-It was issued in the name of my company.

Qus:-Who is the accountant of your company?

Ans:-Its a new company all those office were not created.. I have other staff.. I am in charge.

Qus:-Was the cheque post dated?

Ans:-Yes, I kept it till due date.

Qus:-At the time the accused person gave you the cheque, you both understood there was no money in the account?

Ans:-I don't know about that.

Qus:-At the time the accused gave you the cheque (Exhibit "A") you both understood there would be money on the due date?

Ans:-Yes.

Qus:-After the cheque was presented and dishonoured, the accused person started paying you in instalment?

Ans:-Yes.

Qus:-You became impatient when he was paying in piece meal.. you wanted the money in bulk?

Ans:-No.. he refused to pay.

Qus:-He refused to pay because you harassed him with EFCC and police?

Ans:-He was avoiding me by not answering my calls.

Qus:-After EFCC arrested the accused, has there been any normalisation of payment?

Ans:-No.

PW2 (Abdulrahaman Hamma Girei) gave evidence to the effect that he is a police officer, an investigator seconded to Economic and Financial Crimes Commission (EFCC), in the Bank fraud unit.

He further stated that there was a petition written by one Udom Luke dated the 17th July, 2013 approved on the 18th July, 2013 and referred to his team to investigate. The team comprises of Mohammed U. Modibo, Chukwu Felix, Peter Dabut, Yusuf Dauda and himself.

He invited the complainant who then adopted same and he took him to their team leader, Mohammed Modibo who then asked them to do a letter to the suspect to come and answer the allegation against him... all invitation were not honoured. The team now liaised with Kano Zonal Office which apprehended the accused and brought him to Abuja.

He was then detailed by his team leader to record his statement. He showed the petition to him. He accepted all contained in the petition.. He then asked him to put it in writing. Accused opted that He should assist him and write the statement for him. He then wrote "authority" that he asked him to write his statement and he signed. He cautioned him in English which was read over to him and explained. He accepted and signed again after words of caution.. He now asked Accused to tell him what happened again of which he said and he

wrote all in English which he witness he read over to accused which he signed and he counter signed as witness.

He wrote a letter of investigation activities to Corporate Affair Commission to ascertain the registration status of the 2nd accused. Corporate Affair Commission confirmed that the 2nd accused was duly registered.. He now wrote another investigation activities letter to GTbank with the attached for them to give reasons why the cheque was not paid. GTbank responded that the account was not funded.

The said Petition dated July 17th, 2013 tendered was admitted in evidence as Exhibit “B”.

Letters dated 22nd July, 2013 and 22nd August, 2013 tendered were also admitted as Exhibits “C” and “D” respectively.

Statement of the accused person tendered was also admitted in evidence as Exhibit “E”.

PW2 was cross – examined by learned counsel for the Defendant as follows:-

Qus:-What you did was to comply with Exhibit “B”?

Ans:-Police investigation is different from lawyers duty..only court can prove his guilt.

Qus:-Did it ever occur to you to advise the nominal complainant to file a civil suit for the claim of his money?

Ans:-No.

Qus:-The charge before the court is that Gtbank cheque was issued to Mr. Udom Luke?

Ans:-Yes.

Qus:-In whose name was the cheque issued?

Ans:-Lubonex Investment Ltd.

Qus:-You were diligent to have found out from Corporate Affair Commission the registration status of the 2nd accused... why not the nominal complainant's company?

Ans:-The suspect confirmed that he issued the cheque.. we therefore did not find it necessary to write to Corporate Affair Commission. If he had denied it there was any lacunae, we would have written to Corporate Affair Commission.

Qus:-Can you say whether the company name on the cheque exists?

Ans:-Yes.

Qus:-How did you know?

Ans:-The nominal complainant once showed me the certificate of incorporation and memorandum and Articles of Association.

Qus:-When was that?

Ans:-During investigation.

Qus:-Why did you not collect the certificate of incorporation from nominal complainant?

Ans:-The suspect did not deny the allegation..the accused did not deny.

Qus:-Was the cheque post – dated?

Ans:-It was not. cheque can be cashed after 6 months.

Qus:-Would you be surprised to know that the nominal complainant said the cheque was post- dated?

Ans:-There is nothing on the cheque to show that it was post – dated.

Qus:-Are you aware that part of the money on the cheque has been paid?

Ans:-Yes, N700,000 was paid.

Qus:-Was it paid after or before your investigation?

Ans:-I know of the balance.

Qus:-Was the money paid to you or the complainant?

Ans:-The complainant.

Qus:-Who informed you that the sum of N700,000 has been paid?

Ans:-Suspect.

Qus:-EFCC is your employer?

Ans:-No Nigerian police.

Qus:-Would I be right to say that the Nigerian Police is a debt recovery institution?

Ans:-No.

Qus:-EFCC is also a debt recovery commission?

Ans:-No.. it is Economic and Financial Crimes Commission.

The next witness was Pw3 (Chukwuna Felix Nkpana).

He gave evidence that he knows the Defendant, Alh. Alhassan Umar. He gave evidence that sometime in 2013, July, a Petition was minuted to their team, bank fraud, team 2 written by one Mr. Luke Udom for investigation against the accused person. In investigating the issuance of Dud cheque alleged against the Defendant, a letter of investigation activities was sent by the team to Gtbank, Area 3 Garki, Abuja, requesting certified true copies of Accused person's account opening packages and the statement of account from the month of March, 2012 to the date of submission of the letter. The letter also requested for the reason for the dishonouring of the cheque No. 280 issued to the complainant by the accused person. Response was received by the team on the 26th July, 2013 after analysing the response from the bank, the facts were then added to the response.

Letter dated the 24th July, 2013 tendered is was tendered and admitted as Exhibit "F".

The Respondent letter from GTBank at this point was admitted in evidence and mark Exhibit "G".

It's also the evidence of PW3 that they went through the account statement and found out that on the 12th July, 2012 cheque No. 280 for N4Million was returned unpaid due to insufficient funds. And that the accused person's Company Account, Wada Globalised Business Ltd as at the date aforementioned, had N548,5k as its credit balance.

Pw3 was then cross –examined and the following ensued:-

Qus:-Are you aware that the accused person and the nominal complainant are business partners?

Ans:-I am aware by the petition minute to my team that the accused person and the nominal complainant were involved in a business transaction that led to the issuance of the cheque in question?

Qus:-The said cheque (Exhibit "A") was issued in the name of a company?

Ans:-Yes.

Qus:-Was the cheque a post dated cheque?

Ans:-I don't understand the cheque.

Qus:-Was the cheque post dated?

Ans:-I am not aware.

Qus:-You interrogated the accused person?

Ans:-No.. we interviewed the accused person in the present of other team member.

Qus:-Post dated cheque is a cheque given in anticipation of funds?

Ans:-No.. it is an instrument given in the cause of transaction once it fails, it is Duda regardless of whether it is pre or post dated.

Qus:-The bags of rice supplied to the accused were on credit basis?

Ans:-Yes.

Qus:-When the cheque was issued you were not there?

Ans:-Yes.

Qus:-You then may not know the other condition attached to the cheque?

Ans:-Yes.

Qus:-Are you aware that the accused was angry when he learnt the cheque was presented without his prior knowledge?

Ans:-We did not consider the emotional response of the accused person over the legal transaction during our investigation.

Qus:-Did you find out from the accused person whether he gave condition before the presentation of the cheque?

Ans:-We did as a team

Complainant closed its case to pave way for defence.

DW1 (Alhassan Umar) stated in his evidence that he is a business man who deal in rice and also buy rice on credit. It is in evidence that Mr. Udom said he wanted to sell rice to him but he said he did not have money and he opted to sell rice on credit for two months to him. He stated in evidence that they both agreed for the rice to be sold on credit and issued post dated cheque of N4,000,000.00 (Four Million Naira) for 370 bags of rice with understanding that when the rice is sold, money shall be paid into the account to enable Udom Luke cash same.

Defendant also gave evidence that they agreed on instalmental payment and he paid him N700,000. The rice was supposed to be 400 bags. Udom paid N300,000.00 into his friend's account to complete the rice to 400 bags.

DW1 was then cross – examined as follows:-

Qus:-Is your name Alhassan Umar?

Ans:-Yes.

Qus:-Are you the MD/CEO Wahda Globalised Business Ltd?

Ans:-Yes.

Qus:-Do you maintain account with Gtbank Plc?

Ans:-Yes.

Qus:-You are the sole signatory?

Ans:-Yes.

Qus:-You know Lubonese Investment Ltd?

Ans:-Yes.

Qus:-You purchased 370 bags of rice from your good friend Udom Luke?

Ans:-Yes. He sold on credit.

Qus:-Do you know Baba Hassan?

Ans:-Yes.

Qus:-You asked Udom Luke to pay N300,000 into his account?

Ans:-Yes. It was meant for the balance of 300 bags of rice.

Qus:-You signed the cheque you issued Udom Luke?

Ans:-Yes.

Qus:-You write the date on the cheque?

Ans:-Yes.

Qus:-You issued a cheque of N4,000,000.00?

Ans:-Yes.

Qus:-You did not have enough money to pay the cheque of N4,000,000.00.

Ans:-Yes.

Qus:-You collected and sold the rice?

Ans:-Yes.

Qus:-When you were arrested, you said you could not write and detective Hamman write your statement which was read to you and you signed the statement?

Ans:-Yes.

Qus:-Did you tell EFCC that you sold the rice, used the money to buy textiles materials which was confiscated at some boarder by custom?

Ans:-No.

Qus:-There was never an agreement between you and Mr. Udom Luke not to present the cheque at the date written on the cheque?

Ans:-I told EFCC.

Qus:-You accept that you said you will pay the money after two months?

Ans:-Yes.

Qus:-You are on oath to say the truth with fear of God?

Ans:-I fear God.

Qus:-I put it to you that you are not saying the truth?

Ans:-I'm telling the truth.

Qus:-Why did you give Udom Luke cheque of N4,000,000.00 when you said you gave N4,000,000.00 when the rice was delivered to you?

Ans:-We agreed.

Qus:-Where were you born?

Ans:-Kano, Kano Municipal. No 5 El-Konemi Road.

Qus:-When did you meet detective Hamman?

Ans:-When he went to Kano to arrest me.

Qus:-Detective Hamman would not have known your details if you did not tell him?

Ans:-I told him.

At the close of the respective parties case, matter was adjourned for final written address to be filed and adopted.

Learned counsel for the Defendant in its final written address which was adopted on the 2nd February, 2017 formulated two issues to wit;

1. Whether there were reasonable grounds for the Defendant to believe that Exhibit "A" would be honoured when duly presented for payment, and
2. Whether from the circumstances of this case, the prosecution has proved his case beyond reasonable doubt to ground conviction.

On issue 1 afore-formulated, learned counsel for the Defendant contended that Defendant and PW1 (nominal complainant) were business associated, and that both parties had an understanding that PW1 (nominal complainant) shall supply 400 bags of rice on credit to the Defendant who shall sell same and repay back within two months. It is the contention of learned counsel for the Defendant that PW1 (nominal complainant) only had 370 bags of rice which he supplied to Defendant and made up the balance of 30 bags of rice by paying N300,000 to the Defendant wherein Defendant thereupon raised Exhibit "A" (Gtbank post dated cheque) of N4 Million in anticipation that when he sells the rice, he would pay the money into the company's account to enable nominal complainant cash same on the due date in April, 2012.

It is the submission of Defendant's counsel that both Defendant and nominal complainant (Pw1) knew there was no funds in the account of Defendant when Exhibit "A" was issued, but that Defendant reasonably believed that he would have funds in the account after selling the bags of rice and that the same believe PW1 had made him

accept Exhibit "A" from Defendant. Counsel contended that due to circumstances beyond the control of the Defendant, sales of the bags did not turn out as expected and Defendant could not fund the said account and unknown to Defendant, PW1 had gone to present Exhibit "A" which was returned unpaid.

Defendant's counsel further stated that Defendant and Pw1 had agree on instalmental payment of the cheque value (N4 Million) and that Defendant had paid the sum of N700,000 to PW1 (nominal complainant) after the cheque was issued and before the matter was reported to the EFCC which was as a result of PW1 impatience.

Counsel also maintained in its address that from the evidence of the Prosecution, there isn't any cogent, credible evidence debunking the evidence of Defendant that he did not honestly and in good faith believe that at the time he issued the Exhibit "A" there was no reasonable ground for him to believe it would not be honoured upon presentation within the 3 months of the date on the cheque.. Counsel also contended that Defendant did not deny issuing a post dated cheque in Exhibit "A" and did not also deny receiving 370 bags of rice and N300,000 to make up for the 30 bags of rice and the allegation arose out of business transaction and that PW1 was only misled into resorting to Economic and Financial Crimes Commission (EFCC) to recover the sum in full or face criminal charges for issuing dud cheque.

Defendant's counsel submitted that criminal process is not a substitute to civil remedy and cannot be used to settle civil claim.

Counsel maintained in its written address that for conviction under section 1 (1)(b) of dishonoured cheques (offences) Act, the Defendant's Actors Reus and mens rea must proved to ground conviction. The authority of ***BOLANLE ABEKE VS STATE (2007) 2 NCC 451 at 465 Paragraphs G-A was cited.***

Defence counsel submitted that Defendant at the time Exhibit "A" was issued did not intend to defraud PW1 (nominal complainant) moreso that the transaction was on credit basis and that Exhibit "A" was a post dated, an area prosecution clearly ignored to consider in the course of their investigation.

Learned counsel submitted that Defendant reasonable believed at the time he issued the Exhibit "A" (cheque) that there would be money in his account after he might have sold the 370 bags of rice supplied him by PW1 (nominal complainant) and that Defendant had no intention to defraud PW1. Counsel further stated in its final written address that issuing of a post dated cheque is not a representation that there are sufficient funds to meet the cheque, but that it is a representation that when the cheque is presented on the due date shown on the cheque, there would be funds to meet it. Counsel cited the case of ***BOLONLE ABEKE VS STATE (2007) 2 NCC 451 at 466 Paragraph G-H.***

Counsel on the whole urged the court to discharge and acquit Defendant in relation to count 1.

On issue 2 i.e whether from the circumstances of this case, the prosecution has proved his case beyond reasonable doubt to ground conviction on counts 2 and 3, learned counsel for the Defendant submitted that for the offence accused is charged with under sections 322 and 325 of the penal code to be established, the ingredients of the offence must be proved.

Where the prosecution fails to prove the ingredients beyond reasonable doubt, the offence upon which the accused is charged cannot grant conviction. Learned counsel for the Defendant contended that from the evidence before the court, issue whether Defendant had a dishonest intention from the onset of the transaction was not established.

Counsel contended further that the transaction between Defendant and nominal complainant (PW1) was devoid of fraud, dishonestly or cheating and that Defendant had shown by credible evidence his intention to pay for the 400 bags of rice at a future date after he must have sold the rice and that PW1 (nominal complainant) consented when he accepted the post – date cheque. Counsel relied on the authority of *OMOTAGO VS STATE (2013) 2 NWLR (Pt. 1338) at 247 – 248 Paragraph H – B* to submit that from the evidence adduced before the court, the Prosecution has failed to prove its case beyond reasonable doubt and in consequence therefore, Defendant be

discharged and acquitted of the offence under counts 2 and 3 respectively.

On their part, learned counsel for the prosecution filed a 21 page final written address wherein a lone issue, whether the prosecution has proved the essential elements of the offences alleged against the Defendants beyond reasonable doubt warranting the Honourable Court to convict the Defendants was formulated for determination..

Learned counsel for the Prosecution cited the authorities of *IORTIM VS STATE (1997) 2 NWLR (Pt. 490) 711 at 732 G – H, KALU VS STATE (1998) 13 NWLR (Pt. 583) 531 and UDOVS STATE (2006) ALL FWLR (Pt. 337) 456 at 457* to submit that superior court have laid down the standard of proof in criminal cases as proof beyond reasonable doubt which does not mean proof beyond shadow of doubts. Counsel for the Prosecution contended that prosecution has proved beyond reasonable doubt the offence of issuance of Dud Cheque and that of cheating committed by the Defendants.

Counsel cited sections 1 and 2(b) of the dishonoured cheques offences Act and juxtapose same with the evidence of Pw1 (Udom Luke), PW2 (Abdurahaman Hanman Gurai) Pw3 (Chukwumma Felix) and the documents tendered and admitted to submit that 1st Defendant intentionally issued cheque to nominal complainant knowing fully well that there was no money in the said account and the extra judicial statement of the 1st Defendant and not the oral evidence adduced by the 1st Defendant which is fabricated and at variance with his initial

extra – judicial statement earlier admitted in evidence truly represents the true position of affairs. Counsel cited the authority of *EBERE VS STATE (2001) 2 NWLR (Pt. 728) 617 at 642 – 643*.

Prosecution counsel further contended that under dishonoured cheques (offence Act), the only defence for issuance of Dud cheque is a reasonable belief on the part of the drawer of the cheque that he had sufficient funds in his account as at the time he issued the cheque or that he was reasonable expecting money in the account at the maturity of the cheque. Prosecution counsel submitted that Defendant knew that the account was not sufficiently funded to cover the face value of the cheque.

On the whole, counsel for the Prosecution urged court to hold that prosecution has proved the offence of issuance of Dud cheque.

On counts 2 and 3 which bother on the offence of cheating, learned counsel enumerated the ingredients of the offence to wit:-

- a. That the person deceived delivered to someone or consented that some person shall retain certain property.
- b. That the person deceived was deceived by the accused to do as above.
- c. That the person acted upon the inducement in consequence of his having been deceived by the accused

- d. That the accused acted fraudulently or dishonestly when so inducing that person.

Learned prosecuting counsel then submitted that from the evidence of Pw1, Defendant clearly had clearly deceived him into delivering 370 bags of rice and issued him a cheque with the believe that the said cheque will be cleared.

Counsel further stated that Defendant deceived Pw1 by making him pay N300,000 into the account of one Hassan Baba Umar with the believe that the Defendant will honour his words by paying PW1 vide Exhibit "A" (cheque) on the due date.. learned counsel for the Prosecution maintained that from the Defendant's extra judicial statement (Exhibit "E") particularly at line 22, Defendant therein admitted selling the 370 bags of rice and converted the money for his personal use i.e buying some textile materials from Togo.

Counsel then submitted that from the available evidence before the court, Defendant cheated Pw1 and urged the court to convict him on counts 2 and 3 respectively.

On its reply to the issues raised by Defendant's counsel in its final written address, prosecution affirmatively endorsed the issues to the extent that Defendant knew that the said account cheque (Exhibit "A") was issued had no funds. Learned Aishatu Ibrahim of counsel also noted that final written address is not an avenue for parties to improve evidence that was never before the court and that parties are

bound by the records of the court. Ibrahim contended that there was no where evidence was led by the defence to show that the bounced cheque (Exhibit "A") was issued in anticipation of funds to be paid when the 370 bags of rice was sold and that the attempt by defence counsel to argue that in its final written address is an afterthought.

Counsel for the Prosecution also urge the court to discountenance defence counsel's argument in its final written address in part wherein counsel resisted that Pw1 knew there was no funds in the Defendant's account at the time of presentation of Exhibit "A".

On whether Prosecution debunked defence's evidence that Defendant did not honestly and in good faith believe that at the time he issued the cheque there was no reasonable ground for him to believe that it would not be honoured on presentation for payment, Prosecution counsel relied on Defendant extra judicial statement (Exhibit "E") wherein he admitted to have sold the bags of rice and converted the money to his own use.

On the fact that the transaction between PW1 and Defendant is civil in nature, Prosecution debunked the argument on the ground that issuing a dud cheque is a criminal offence and submitted that abinito, Defendant meant to defraud Pw1 knowing he wasn't expecting any funds into his account.

Counsel then cited the authority of *ABEHE VS STATE (Supra) and section 135 Evidence Act* to say that prosecution has proved its case as required by law.

On its part, defence counsel replied on points of law on the issue of whether the offence of cheating against the Defendant was made out by Prosecution by arguing that there was no direct confession or admission by Defendant to the offence. *OSIAGWU VS STATE (2013) 1-2 SC (Pt. 1) 37 at 70 and DOGO VS STATE* were cited.

Counsel on the whole urged the court to discountenance the arguments and submissions of Prosecution counsel.

On the part of court, I have considered extensively the oral and documentary evidence adduced and tendered by the Prosecution and the ensuing legal arguments contained in its final written address on the one hand, and the evidence and legal arguments canvassed by learned counsel for the Defendant in its final written address.

The crux of Prosecution's grouse with respect to the three court charge preferred against the Defendants is predicated upon the issuance of cheque which on production by the nominal complainant could not be paid and the fact that Defendant had from the outset meant to cheat the nominal complainant.

On their part, Defendants maintained that they never intended to cheat the nominal complainant whom they issued a cheque in the amount of N4Million representing the value of 370 bags of rice and also

N300,000 which 1st Defendant urged nominal complainant to pay into an account to bring the bags of rice to 400 bags at the agreed value of N4Million. It is the argument of Defendants that they had an understanding with the nominal complainant on a date to present the cheque for payment despite the fact that the cheque had a date on it.

The purpose of criminal trials cannot be overemphasized... it is meant to ensure that a person who has chosen to break any aspect of the criminal law is not left to go scot free and for this reason the Prosecution has to establish the guilt of an accused person beyond reasonable doubt in view of his constitutional protection to pave the way for his punishment.

The innocence of an accused person is guaranteed under section 36(5) of the 1999 constitution of FRN (as amended) to protect an accused against any judicial decision or other statements by state officials amounting to an assessment of his guilt without such an accused previously been proved guilty according to law. See *ALHASSAN VS STATE (2010) (CA) LPELR 867A*.

In the administration of criminal justice, it must always be borne in mind that, the two fold aim of criminal justice is that guilty shall not escape justice or innocence suffer. The policy of our court is that it would be better to discharge 10 criminals than to convict one innocent person by mistake or error of law.

I refer you to *US VS NIXON (US PRESIDENT) 418 U.S 683 SUPREME COURT, 3090.*

In criminal trials, the standard and burden of proof required to establish the guilt of the accused is beyond reasonable doubt. Even when there is an admission to the investigating agency on the commission of the crime in a statement, it does not relieve the prosecution of the burden.. such failure, will lead to the discharge of the accused.

On this, I rely on the court of Appeal authority of *CHRISTOPHER VS STATE (2015) LPELR – 2471 AND JUA VS STATE (2010) 4 NWLR (Pt. 1184).*

It is most instructive to note that from the evidence before the court both the nominal complainant and the Defendants are ad-idem on the supply and receipt of 370 bags of rice and the issuance of the N4 Million cheque.

This to my mind has narrowed down the argument to whether 1st Defendant has committed an offence under our criminal law.

In order to determine the charge before the court, the issue whether Defendant is guilty as charge has been formulated for determination.

In prove of count one which bothers on issuance of Guarantee Bank cheque No. 00000280 dated the 15th April, 2012 by 1st Defendant who is the Chairman/CEO and sole signatory of 2nd Defendant (Wahda Globalised Business Ltd account) to Lubonex Investment Ltd in the

amount of N4 Million which was returned unpaid due to insufficient funds thereby constituting an offence under section 1(1) of the dishonoured cheque (offences) Act, Cap. D11, Laws of the Federation of Nigeria 2004 and punishable under section 1(1) (b)(i) of the same Act, learned counsel for the Prosecution, Alshatu Ibrahim called three witnesses who gave evidence as PW1, PW2 and PW3 respectively.

The law is extant on what Prosecution must do to ground conviction under section 1(1)(b)(i) of the dishonoured cheques offences Act Cap D11, laws of the Federation of Nigeria 2004.

The following are the ingredients of the offence of Dud cheque which must be established, to wit:-

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

From the evidence of Pw1 (Udom Luke) which is not in doubt, 370 bags of rice was supplied on credit to the 1st Defendant and an additional N300,000 was paid into the account of Hassan Baba Umar, wherein a cheque of N4 Million representing the value of the rice and

N300,000 was issued in the name of the nominal complainant's company Lubonex Investment Ltd to be cashed on a due date.

The said cheque was tendered and admitted as Exhibit "A"...

It is also in evidence that the said Exhibit "A" on Presentation was dishonoured. Learned counsel for the Defendant, Okon Efut, SAN argued in his final written address that though Exhibit "A" i.e cheque was issued to the nominal complainant in his company name with a due date written on same, that both parties agreed for same to be presented after the due date written on the cheque.

The question that beg the mind of the court is as follows:-

"why then was the agreed date, if any, not written on the Exhibit "A"?"

Where is the evidence showing the agreement between the parties for the nominal complainant not to present the said Exhibit "A" on the date written on it now that it has become an issue before the court?

Shall the court speculate!

Ans..No.. it is a judicial sin to indulge in speculation. I rely on *GWARDU VS FRN (2014) LPELR 23992 (CA)*.

Learned SAN for the Defendant cited the authority of *ABEKE VS STATE (Supra)*, specifically the position of our *NIKI TOBI (of blessed memory)* on the need to establish conclusively the Actus Reus

and Mens Rea of an accused before conviction can be grounded under section 1(1)(b) of the dishonoured cheques (offences) Act.

Permit me to observe here and now that not even the devil, custodian of deceit and vanity knows the heart of man.

It therefore presupposes that the circumstances and evidence before the court shall be the only tool to congestive the intention to commit a crime or not.

Learned SAN Efut in its effort to punture the evidence of prosecution, argued that Exhibit "A" (cheque) was post dated meant to cover the value of 400 bags of rice supplied on credit for Defendant to sell and make returns in two months time i.e from February, 2012 when the rice was supplied to April, 2012 when same was expected to have been sold and account credited for PW1 to present Exhibit "A" for the value.

Qst.. what then is a cheque and what is the meaning of post – dated!

A cheque is a written order to a bank to pay a certain sum of money from one's bank account to oneself or to another person.. it is for all intents and purposes and instrument for payment.. it metamorphoses into physical cash on due presentation at the bank and that makes it legal tender. *Tobi JSC in ABEKE VS STATE (Supra)*.

The new Lexicon Webster's Dictionary of the English Language define post – date in the following way:-

“To assign later than actual date to e.g cheque, event etc to be later in time than a certain date, event etc”.

Qst.. if the date on Exhibit “A” (cheque) i.e 15th April, 2012 was not a post dated cheque, how come the value of the rice was not paid on the same day the rice was supplied!

Indeed, he who passively accepts evil in as much involved in it as he who helps to perpetrate it.

The other argument of learned SAN for the Defendant is that the Prosecution is duty bound to prove that the Defendant had the intention to defraud and have no expectation of money in his account as at the time he issued the post dated cheque.

As I stated in the preceding part of this judgment, not even the Devil knows the heart of a man.

A careful consideration of 1st Defendant’s extra judicial statement which was tendered and admitted as Exhibit “E” will reveal that he admitted selling the said 370 bags of rice but that he went to Togo and brought textiles materials which was impounded by customs at the seme border.

Qst.. was that the understanding 1st Defendant had with the nominal complainant?

Qst.. Why issue nominal complainant with Exhibit “A” (cheque)?

I have seen Exhibit “G” i.e the reply to Exhibit “F” from the Branch Manager of GTbank Plc, Kaura Namoda close, Area 3, Garki, Abuja to the Executive Chairman EFCC dated 26th July, 2013 wherein it was stated that Exhibit “A” (cheque) was not paid by the bank because the account balance on the day the cheque was presented was not sufficient to accommodate the value of the cheque.

As I stated earlier, the duty on the Prosecution to prove its case beyond reasonable doubt is attained when all the essential components or ingredients in a given case or charge are established otherwise the burden is not discharged.

However, proof beyond reasonable doubt does not mean proof beyond shadow of doubt.. the law will fail to protect the community if it admitted forceful possibilities to defect the cause of justice.. if the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed in this sentence “of course”, it is possible, but not in the least probable, the case is beyond reasonable doubt, but nothing short of it will suffice.

Above were the words of Lord Denning M.R in the case of ***MILLER VS MINISTER OF PENSIONS (1974) 2 ALL ER 372 AT 373.***

We all must beware that in the first place issuance of Dud cheques is a criminal offence under section 1 of the Dishonoured (cheques) Act Cap D11 Laws of the Federation of Nigeria 2004 and for which the Respondents were entitled to make report to the police.

Above was the golden voice of Tabai (JSC) as he then was, in the case of *FAJEMIROKUN VS COMMERCIAL BANK NIGERIA LTD AND ANOR.. 2009 – 2-3 SC (Pt. 1135) 588 SC.*

Once an offence is criminal in nature, once it is reported, it must be treated as such. I am most convinced per adjective base on the naked exhibits before me that the prosecution has done well in effort to establish the offence of issuance of Dud cheque beyond reasonable doubt.

Morality cannot be legislated, but behaviour can be regulated. The law may not change the heart but it can regulate the heartless... so said, Martin Luther King Jnr.

Defendant is hereby found guilty as charged under count 1.

Counts 2 and 3 bother on deceiving the nominal complainant (Udom Luke) of Lubonex Investment Ltd intentionally and dishonestly inducing him to deliver 370 bags of rice valued at N3.7 Million and dishonestly inducing the said Udom Luke to deliver N300,000 into the account of one Hassan Baba Umar thereby committing cheating. The both counts are punishable under sections 325 and 322 of the penal code.

As is the law, the Prosecution is under obligation, always, regardless of the embarrassing evidence against an accused person to prove the guilt of such an accused, if conviction must be obtained.

The prove needed to ground conviction under sections 322 and 325 are the same.. In order to ground conviction, Prosecution is duty bound to prove the following:-

- a. That the person deceived delivered to someone or consented that some person shall retain certain property.
- b. That the person deceived was induced by the accused to do as above.

In prove of counts 2 and 3 afore, prosecution tendered Exhibits "A", "E" and "G" respectively..

Exhibit "A" was the cheque Defendant issued Mr. Udom Luke (nominal complainant) of Lubonex Investment Ltd in the amount of N4 Million being value of the 370 bags of rice he supplied Defendant and another N300,000 he paid into the account of one Hassan Baba Umar.

It is in evidence that the said cheque (Exhibit "A") upon presentation was not paid on account of insufficient funds. This is contained in Exhibit "G" (letter from Defendant Bank, GTbank).

It is also in evidence that Defendant admitted using the proceeds of the rice he collected on credit from Udom Luke (nominal complainant) of Lubonex Investment Ltd to buy textiles material which he said was impounded at same border by the customs.

This is contained in Exhibit "E" (extra judicial statement) and also his evidence before the court under cross examination.

The question that is paramount to be asked is, "was there any intention by the Defendant to pay back his indebtedness to the nominal complainant.?"!

Qst.. Why issue Exhibit "A" and make nominal complainant believe it was honestly issued when Defendant hadn't the intention of paying back as it when due?

I am constrained to ask above question because after the said bags of rice was sold, nominal complainant (Udom Luke) was not paid. After much pressure on the Defendant, N700,000 was paid by the Defendant leaving a balance of N3.3Million.

Qst.. Is it not very crystal clear that Defendant knew what he was doing when he approached the nominal complainant (Udom Luke) to collect rice on credit and also cajoled him to pay the sum of N300,000 into yet another account only to issue him with an instrument that he knew between God and man was not likely to be honoured same having been issued by a dishonourable person?

Qst.. How better is the Prosecution expected to establish the guilt of the Defendant for heaven sake!

I have read with complete consternation and dismay how defence counsel kept making effort by speaking grammar spiced with law

geared towards confusing himself, but certainly not this court in order to set the Defendant free.

The argument of learned defence counsel is overloaded with technicalities which has no place in the present drive of courts to do justice based on substance.

Indeed technicalities are a blot upon the administration of the law and courts have moved a long way from allowing them to make an ass of it and dent the image of justice. Defence counsel ought to know the distinction between civil and criminal trial.

Once prosecution is able to lead evidence in prove of its case, the onus then shifts for defence to lead evidence in rebuttal.

An accused person who has no good defence to the charge and evidence adduced in prove of same shall not be allowed to use the final written address to demonstrate its skills of deceit employed toward dribbling and cheating the Prosecution out of judgment it is legitimately entitled to. From the evidence adduced by the prosecution, the two ingredients aforementioned to ground conviction under counts 2 and 3 have been established.

Accordingly, Defendant is found guilty and convicted as charged.

Allocutos.

Rugbere:- The Defendant is a first time offender and a family man. He was detained for nine (9) months by Economic and

Financial Crime Commissions (EFCC) we urge the court to temper justice with mercy.

Aisha:- May I ask the court to sentence the accused as charged and also order him to pay the total sum of N3.3Million to the family of the Complainant who is now deceased due to the pain inflicted on him by the said contract. The Defendant was ordered to be remanded in EFCC custody by the court and not that EFCC kept him. Defendant on its own.

Court:- This case is adjourned to the 25th April, 2017 for sentencing.

Signed
Hon. Judge
24th April, 2017

Date:- 25th April, 2017

Aishatu Ibrahim for the Prosecution.

O.K Rugbere for the Defendant

Court:-

SENTENCING

I have carefully considered the Allocutos of Defendants made by learned counsel Rugbere on the need for this court to consider the fact that the convict is a first time offender and a family man, the fact that

convict spent 9 months in detention and on the whole tamper justice with mercy.

I have as well listened to the submission of learned counsel for the Prosecution on the need to sentence the convict as charged and order payment of compensation to the family of the said Luke Udom (now deceased) by ordering convict to pay N3.3 Million who died as a result of the pain inflicted by the convict.

In considering the Allocutos, may I with respect note that the sine of the offences committed by the convict carries a sentence of two years without option of fine i.e issuance of Dud cheque punishable under section 1 (i)(b) of the dishonoured cheque (offences) Act, Cap D11 Laws of the Federation without option for fine.

Cheating punishable under section 325 of the penal code has three (3) years or with fine or with both, whereas fraudulent or dishonest inducement affects up to seven (7) years and shall also be liable to fine.

From the foregoing therefore, the convict with relation to count 1 is hereby sentenced to 2 years imprisonment. The convict in relation to count 2 is hereby sentenced to 3 years and fine of N100,000.

On count 3, I hereby sentence the convict to two years imprisonment with an option of paying N100,000 as fine in court.

By the extant provision of section 319 of the Administration of criminal justice Act 2015, I hereby order the convict to pay the sum of

N3,300,000.00 (Three Million Three Hundred Thousand Naira) only being remaining unpaid value of the rice and N300,000 collected from Udom Luke (now deceased) to the Registrar of this Court for onward transmission to the deceased family. The term is to run concurrently less seven months spent.

Indeed, of the death, nothing but good.. this is akin to saying that, we speak no evil about the dead if we cannot speak good. The death deservedly expect to be fairly treated.

I hope the spirit of the deceased Udom rest in Peace with the decision of this court.

All humans and other living things are moving corpses.. there is a time to be born and a time to die in-between it, we all have the privilege to live and must indeed live to the glory of Allah.

May the soul of Udom Luke and those of the departed faithfuls, rest in peace.

Thank you.

Justice Y. Halilu
Hon. Judge
25th April, 2017