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/37/16**
DATE:	:	**FRIDAY 15TH DECEMBER, 2017**

BETWEEN

COMMISSIONER OF POLICE ..... **COMPLAINANT**

AND

AMAECHI ADIMEGWU ..... **DEFENDANT**

Defendant in Court.

C.E.C Njokwu - for the Defendant

Prosecution not in court and not represented.

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

JUDGMENT

By a charge filed on 25th November, 2016, the Defendant was arraigned by the Complainant herein for the offence of issuance of dud cheque contrary to section 1(b) of the Dishonoured Cheques (Offences) Act, Cap D11, laws of the Federation of Nigeria, 2004.

The Defendant pleaded "not guilty" to the offence and trial ensued with the Prosecution opening its case on 8th February, 2017 by calling two witnesses (PW1 – Ferguson Ukanacho, the nominal complainant; and Pw2, Cpl. Adah Helen with Force No. 045482, the investigating Police Officer.

The Defendant opened his case on 3rd May, 2017 wherein he testified for himself as DW1; he tendered one document marked as Exhibit "D1" and thereafter closed his case.

The case proceeded into hearing. The case of the prosecution is as thus;

The evidence before the Honourable Court began with that of PW1 who testified under oath on 8th February, 2017 and gave his name as Ferguson Ukanacho, an estate manager of the Defendant's premises. He stated that the Defendant was in arrears of rent to the tune of Two Million, Eight Hundred Thousand Naira (N2,800,000.00) and that the Defendant appealed to him that he (the Defendant) has a cheque to give to offset the rent. That the Defendant gave him a guaranty Trust

Bank cheque of Two Million, Eight Hundred Thousand Naira (N2,800,000.00) dated 7th December, 2015 with an assurance that PW1 will have value on the said date. He also told the court that on the said 7th December, 2015, he was out of the country and therefore gave the said cheque to his staff to pay into his Zenith Bank account but the cheque was returned unpaid. He thereafter reached out to the Defendant and intimated the Defendant of the issue but the Defendant told him to be patient with him that he is expecting some funds from jobs he did.

PW1 further stated that the Defendant got money and bought a Mercedes C350, and for this reason, PW1 then reported the incident of dud cheque at the Maitama Police Station where the Defendant made an undertaking to offset the debt by 30th April, 2016, which he failed to do. It was after this that the police decided to charge the Defendant to court. The GTBank cheque dated 7th December, 2015 and PW1's statement at the police were tendered in court through PW1 as Exhibits "A" and "B" respectively.

PW1 was accordingly cross – examined as thus;

Qst.. When did you present the cheque for payment.

Ans.. My staff present the cheque on the 8th December, 2015.

Qst.. On the 7th December, 2015 Defendant asked you not to cash the cheque?

Ans.. I am not aware of that.

Qst.. Defendant told you he was expecting funds into his account.

Ans.. Yes that was in October, 2015 and that was why he gave me that posted dated cheques.

Qst.. It is true that Defendant has paid you N1Million out of the N2.8Million.

Ans.. He paid N1Million in June, 2016.

Qst.. From Exhibit "B" it took you three month to report the matter to the police.

Ans.. Yes.. it was because his undertaking to pay, he pleaded with me in tears that he does not want to be taking to the court.

The second prosecution witness – PW2 who testified under oath and gave her name as Cpl. Adah Helen with Force No. 045482, attached to Force Command, FCT, Abuja. She is the Investigating Police Officer (IPO) who investigated the matter. Her testimony, she stated that PW1 reported a case of cheating and issuance of dud cheque on 18th June, 2016 at Maitama Police Station. The Defendant was first invited and statements were obtained from both Pw1 and the Defendant under word of caution. She further testified that PW1 stated that a post dated cheque of 7th December, 2015 was issued by the Defendant who after his statement was released to a surety. That the Defendant put on an undertaking to pay PW1 but could not pay the money in line with undertaken hence, the case was charged to

court. Pw2 tendered Defendant's statement which was admitted and marked as Exhibit "C".

The 2nd Prosecution witness was accordingly gross – examined as thus;

Qst.. Did you investigated the facts stated therein in the statement just admitted as Exhibit "C"

Ans.. "Yes"

Qst.. Did you investigate the fact that Defendant asked nominal complainant not to present the said cheque.

Ans.. Defendant said at the police station that he issued the cheque and the fact that he told the nominal complainant not to present the cheque but that he had already presented it..

Qst.. Are you aware that Defendant has paid N1Million out of the said N2.8Million.

Ans.. Yes, there is a balance of N1.8Million.

Qst.. Defendant made an undertaking to pay the value of the cheque at the police station.

Ans.. Yes.

Qst.. You brought her to court because he did not meet up his obligation of paying back the money.

Ans.. Yes.

At the close of the Prosecution case, the Defendant opened his case on 3rd May, 2017 and testified on oath for himself. He stated that he was in arrears of rent. That upon request, he issued a cheque in favour of PW1 to the sum of Two Million, Five Hundred Thousand Naira (N2, 500,000.00) but told Pw1 not to present same for payment until he has received the amount in his account from his debtors. He further stated that immediately his account was funded, he electronically transferred the said Two Million Five Hundred Thousand Naira (N2,500,000.00) to Pw1's account who promptly acknowledged same.

Subsequently, Pw1 requested for financial assistance from the Defendant to enable him pay custom duties on some cars he imported. The Defendant rallied round and raised the sum of Two Hundred Thousand Naira (N200,000.00) which he gave Pw1 in cash and later, another cash of Two Hundred Thousand Naira (200,000.00) making it N400,000.00 (Four Hundred Thousand Naira). Thereafter, the parties met and reconciled the rent account which stood at Two Million, Eight Hundred Thousand Naira (N2,800,000.00) and the Defendant promised to pay as soon as he gets paid by Waterdrill Ltd., a company that he did some jobs for. The Defendant tendered the letter written by Waterdrill Ltd dated 22nd October, 2015 which the Defendant showed to PW1 during their meeting and same was admitted as Exhibit "D1". The Defendant further stated that after seeing the letter, Pw1 showed understanding but however requested the Defendant to issue a post –

dated cheque to enable him (PW1) demonstrate the Defendant's intention to pay to the Landlord. The Defendant then issued the cheque under the condition that PW1 will not present it for payment without recourse to him.

Before the due date being 7th December, 2015, the Defendant called Pw1 to remind him not to present the cheque and PW1 informed him that he travelled. On the 7th December, 2015, the Defendant called PW1 repeatedly but did not get any response and as a result, sent him an SMS asking PW1 not to present the cheque. Surprisingly, despite this instruction, PW1 presented the cheque which was returned with an inscription "DAR" (Drawers Attention Required). Thereafter, PW1 reported the Defendant to the Police, who invited him sometime in March, detained him and released him on bail after they compelled him to write an undertaking to pay the money by end of April, 2016. The Defendant was able to pay One Million Naira (N1,000,000.00), leaving an outstanding of One Million, Eight Hundred Thousand Naira (N1,800,000.00).

The Defendant further stated that while he was running around trying to raise the balance, PW1 kept going to the Defendant's house to harass his wife and children. The Police also came back to his house and left a message for him to report to the station where the Police later informed him that PW1 was furious because the Defendant bought a car while still owing outstanding rent which the police told him was unfair. The Defendant patiently explained to the Police that

the car was given to him by a friend whom he gave USD35,000.00 in 2009 to buy a new car for him from the USA which his friend failed to buy. That after several failed promises, the Mercedes car was given to him after a settlement was brokered in their village in December, 2015.

DW1 was cross – examined as follows:-

Qst.. You will agree with me that you issued cheque in the sum of N2.8 Million.

Ans.. "Yes".

Qst.. The Cheque was for presentation for payment.

Ans.. "Yes".

Qst.. How much did you have in the account at the time and date you issued the cheque.

Ans.. I am expecting money into the account.

Qst.. How much did you have in your account.

Ans.. I have to cheque my records.

At the close of parties case, parties filed and adopted their respective written addresses.

The Defendant formulated a lone issue for determination to wit; given the evidence before the Honourable Court, whether the Prosecution

has proved its case against the Defendant beyond reasonable doubt to secure a conviction for the offence of issuance of dud cheque.

Arguing on the above, learned counsel urge the court to discharge and acquitted the Defendant for want of evidence to nail him.

On it part, the Prosecution equally formulated a sole issue for determination to wit;

Whether the prosecution from the totality of the evidence adduced before this Honourable Court, has proved its case beyond reasonable doubt.

While argue on the above, court was urge to hold that the Prosecution has discharged the burden placed on it by law and therefore convict the accused person as charged.

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 on the other hand.

The crux of Prosecution's grouse with respect to the one count 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 his part, Defendant maintained that he never intended to cheat the nominal complainant whom he issued a cheque in the amount of N2.8 Million representing the rent he is owing.

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 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 issuance of the cheque of N2.8 Million to the Nominal Complainant.

This to my mind has narrowed down the argument to whether Defendant has committed and 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.

Where a Defendant is charged for an offence, it is the duty of the prosecution to prove the offence beyond reasonable doubt. On the offence of dishonoured cheque by virtue of section 1(1)(b) of the Act, the prosecution must prove the following:

a. That the Defendant issued the cheque;

b. That the Defendant obtained credit for himself or any other person by means of a cheque;

c. That the cheque was presented within three months of the date thereon; and

d. That on presentation, the cheque was dishonoured on 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.

Additionally, by virtue of section 1(2)(b) of the Act, the prosecution must also prove the following:

e. That the cheque was issued in settlement or purported settlement of an obligation under an enforceable contract entered into between the drawer of the cheque and the person to whom the cheque was issued.

The Prosecution must not only prove the Actus Reus of the crime against the Defendant, but also that the Defendant acted with the requisite Mens Rea. Thus, to secure a conviction, the prosecution must prove that the Defendant had Mens Rea and Actus Reus, that is, a guilty mind and a guilty act. Failure or absence of proof of mens rea in this kind of offence is fatal to the prosecution's case. See ***ABEKE VS STATE (2007) 9 NWLR (Pt. 1040) 411 at 429.***

To prove mens rea, the prosecution must prove that the accused issued the cheque knowing that there is no sufficient balance in the

account. This element cannot be determined in vacuo but in relation to factual situation of the case at the material time. The prosecution must show that the Defendant intended the act manifesting the offence.

The Prosecution tendered pieces of evidence before this Honourable Court that the Defendant issued Exhibit "A" and when presented it was returned unpaid.

The Defendant on his part, tendered Exhibit "D1" which is a letter dated 22nd October, 2015 address to the Defendant by Waterdrill Ltd, a company he did some jobs for under a contract awarded by NDDC. Not only did Exhibit "D1" acknowledge owing the Defendant the sum of N8.2 Million, part of the said Exhibit are documents from NDDC showing the debt owed Waterdrill by NDDC.

From the above, could it be said that at the time he issued the cheque, said we have the intent of committing this offence?

The law reckons with the state of mind of a Defendant in an offence of this nature cannot be overemphasised. To buttress this position, section 1(3) of the Act provides that: ***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 has 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.***

Permit me to observe here and now that not even the devil, the 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 Exhibit "A" is a cheque issued by the Defendant.

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".***

On the ingredients of the offence highlighted above, could it be said that the totality of the evidence adduced by prosecution have proving the offence? It is not in doubt that the Defendant issued the cheque; for payment of outstanding rent; which was presented within three months. However, during oral evidence in court the prosecution witnesses admitted that the accused person had paid N1,000,000.00 (One Million Naira)only to the nominal complainant out of the N2.8Million Naira as captured in Exhibit "A".

The question that follows Naturally is, whether the prosecution can validly maintained an action of issuing of dud cheque on the Defendant after accepting part payment of the money as contained in Exhibit "A"?

Of course, the answer must be in negative.

apart from lack of mens rea, did prosecution proved that, on presentation, the cheque was dishonoured on ground that there was no sufficient funds standing to the credit of his credit in the bank on which the cheque was drawn?

It is instructive to observed that there is nothing before the court to show that there was no sufficient credit standing to the credit of the Defendant in the bank at the time the cheque was presented. This omission is fatal to the case of the Prosecution at the Honoruable court is not expected to speculate on that vital point. The Prosecution under cross – examination tried to elicit the evidence of the amount standing to the Defendant's credit at the time in the following:

Q – Did you have money in your account at the time?

A – Yes, I had money in my account.

Q – How much did you have in your account?

A – There was money in the account but I cannot remember exactly how much. I have to go through the record to know exactly how

much. Moreover, I was expecting inflow into the account as well.

There is nothing in this evidence to assist the court in coming to the finding that there was no sufficient amount standing to the Defendant's credit. Rather, it further casts doubt on the case of the prosecution. What is more, the Defendant testified that he had money in the account and also, had earlier given his account's officer instruction not to honour the cheque as well as sending an SMS to PW1 not to present the cheque. From these pieces of evidence, it is not clear what reason the cheque was returned. Inscribing 'DAR' on a cheque is not sufficient proof that there is no money in the account.

The duty on the prosecution, in clear words, is an unshifting burden, to prove all, and not merely some of the ingredients of the offence charged, beyond reasonable doubt. The standard of proof is such that if there is any element of doubt in relation to any of the ingredients, the doubt is to resolve in favour of the Defendant. see ***ONWE VS QUEEN (1961) 2 SCNLR. 354; OMOGODO VS STATE (1981) 5 SC. 5; HASSAN VS STATE (2001) 6 NWLR (Pt. 709); NWEKE VS STATE (2001) 4 NWLR (Pt. 704) 588.***

It is not oblivious that the sole intention of bringing this charge against the Defendant demonstrates sheer malice and outright prejudice against the Defendant. the reason for this is not farfetched. On the part of complainant, PW2 affirmed under cross –examination that the reason for preferring this charge against the Defendant was

because the Defendant failed to honour the terms of the undertaking he made at the Police Station to fully repay PW1 before end of April, 2016. This evidence clearly derogates from the charge before the court and from the function of the Police.

On the otherhand, the nominal complainant – PW1, in a rather unsavoury statement testified in open court and under oath that: "***it was because the Defendant got money and went and bought a Mercedes C350. For this, I (he) now went to Maitama Police Station and reported the matter.***"

The standard of proof required of the prosecution to be discharged is fixed as "proof beyond reasonable doubt." This means that every ingredient of the offence must be established to that standard of proof so as to leave no reasonable doubt regarding the guilty of the accused. See ***ANEKW VS STATE (1976) 9 – 10 SC. 225; AIGUOREGUN VS STATE (2004) 3 NWLR (Pt. 860) 367.***

Proof beyond reasonable doubt actually has its origin in the Common Law though now enacted in section 138 (1) of the Evidence Act, Cap. E14, L.F.N., 2011 which provides that whenever the commission of a crime by a person is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. The superior courts in Nigeria have over the years interpreted the real purport of the provision, and it is now settled that, what the expression, "proof beyond all shadows of doubt" entails. The evidence of the Prosecution against the Defendant must be strong, bearing in mind that a remote

possibility that the Defendant may not have committed the offence after all may be resolved in favour of the Defendant. see ***EGBE VS KING (1950) 13 WACA 105; MBENU VS STATE (1988) 3 NWLR (Pt. 84) 615; ADETOLA VS STATE (1992) 4 NWLR (Pt. 235) 267.*** It is to be noted that the character or quality of evidence to be adduced by the prosecution must be cogent and credible to enable the court come safely to a just decision. See ***ALONGE VS STATE (1975) 9 – 11 S.C 11; ADETOLA VS STATE (Supra); and HASSAN VS STATE (Supra) and EFFIONG VS STATE (1998) 8 NWLR (Pt. 562).*** In the instant case, the prosecution failed to establish a prima facie case against the accused, but presented evidence that left so much doubt, which the Honourable court is urged to resolve in favour of the Defendant.

Suffice to state that there are material contradictions in the evidence of the prosecution. Whereas PW1 denied any knowledge of the SMS from the Defendant asking him not to present Exhibit "A", PW2 testified that PW1 informed her that he actually received the SMS but it was after he had presented the cheque. Also, while PW2 stated that the case was first reported on 18th June, 2016 at Maitama Police Station, PW1 stated that the matter was first reported in March, 2015. Apparently, the prosecution is not forthcoming with the truth of his case.

In ***SANI VS STATE (2014) 1 NWLR (Pt. 1387) Page 1 at 24,*** the Court of Appeal noted, that: "Discrepancy is said to occur when there

is difference between two or more things that should be the same, while contradiction is described as a lack of agreement between facts, opinions, actions, etc. two pieces of evidence contradict one another when they are by themselves inconsistent.." see also ***ODUNLAMI VS NIGERIA NAVY (2013) 12 NWLR (Pt. 1367) page 20 at 53 – 54.*** It is not difficult for the Honourable court to decide on whose side lies the truth of this matter. The contradiction in the prosecution's evidence is very material.

I shall for the above reason dismiss this case.

Accordingly, charge No. CR/37/16 been an agglomeration of contradiction is hereby dismissed.

Accused person is accordingly discharge and acquitted.

Justice Y. Halilu
Hon. Judge
15th December, 2017