IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ADO EKITI JUDICIAL DIVISION
HOLDEN AT ADO EKITI
ON FRIDAY THE 5TH DAY OF JUNE, 2020
BEFORE HIS LORDSHIP
HON JUSTICE U.N. AGOMOH (JUDGE)

SUIT NO: FHC/AD/36C/2017

BETWEEN

INSPECTOR GENERAL OF POLICE - COMPLAINANT

AND

BANGBOYE OLATUNJI - DEFENDANT

JUDGMENT

The defendant herein is standing trial on an amended charge of three counts dated and filed 5th of November, 2019 which reads thus:-

COUNT 1

That you Bangboye Olatunji between 2015 and 2017, in Ado Ekiti within Ado Ekiti Judicial Division under false pretence and with intent to defraud obtain goods (building materials) value about Three Million Seven Hundred thousand Naira (N3.7m) from Chinedu Opara, thereby committed an offence punishable under

CERTIFIED TRUE COPY
17/7/20
REGISTRAR
FEDERAL HIGH COURT ADO-EKITI

Scanned with CamScanner

Section 1 (1) (3) and 11 of the Advanced Fee Fraud and other Fraud Related Offences Act, 2006.

COUNT 2

That you Bangboye Olatunji on or about 22nd day of February 2017, in the same place in the aforesaid Judicial Division did unlawfully and intentionally issue Access Bank cheque to Chinedu Okpara when presented were dishonored due to lack of fund, thereby committed an offence punishable under Section 1 (a) (1) of Dishonored Cheque Act.

COUNT 3

That you Bangboye Olatunji on or about the 3rd of March 2017, in the same place in the aforementioned Judicial Division did unlawfully and intentionally issue FCMB Cheque to Chinedu Okpara and when presented were dishonored due to lack of fund, thereby committed an offence punishable under Section 1 (a) (i) of Dishonored Cheque Act

Trial in this case commenced on the 28th of February 2018 with the defendant taking his plea on the original charge with one count. Let me also put on record the fact that the prosecution fielded three witnesses

CERTIFIED TRUE COPY
17/7/18
REGISTRAR
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

whose evidence were all taken before this amendment was sought and granted. As required by law, after the order for amendment was made, prosecution was asked whether he intends to recall or call new witnesses. Osobu Esq. for the prosecution informed the court that he will not recall any of his witnesses or call any new witness. On his part the defence counsel Oluwole Esq. applied that he needed to cross examine the prosecution witnesses. I will at the appropriate time deal with the evidence elicited during cross examination as a result of the amendment.

As stated earlier the prosecution called three witnesses and tendered four Exhibits. The witnesses are as follows:-

PW1 is Chinedu Okpara

PW2 is Daniel Okpara

PW3 is Albert Adeniyi

On his part the defendant gave evidence in his defence as **DW1** and closed his case.

At the close of calling of witnesses both learned counsel filed their final written addresses as required by rules of court. It may be necessary to put on record the fact that when this matter was mentioned on the 12th of February 2020 for the adoption of final written addresses the

CERTIFIED. TRUE COPY
17/7/20
REGISTRAR.
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

prosecution informed the court that the time for so doing by the defence having expired without same being filed they had to file theirs and served same on the defence counsel. Suffice it to say that the final written address of the defence counsel was deemed properly filed and served on the 10th of March 2020 and that of the prosecution which was filed on the 28th of January 2020 was also deemed properly filed on the same 18th of February 2020.

In his final written address learned defence counsel B.T. Oluwole Esq. formulated a lone issue for determination thus:-

> **Whether the prosecution has proved its case beyond reasonable doubt against the defendant to warrant his conviction by this Honourable Court**

On his part S. O. Osobu Esq. for the prosecution articulated a lone issue to wit:-

> **Whether the prosecution has proved the case against the defendant**

It is the submission of Oluwole Esq. that in criminal trials the standard of proof is beyond reasonable doubt and the burden rests on the prosecution; which never shifts. **See Njoku v The State (2013) NWLR**

CERTIFIED TRUE COPY
17/3/20
REGISTRAR
FEDERAL HIGH COURT ABUJA
ORIMOLOYE DATO ANTHONY (HEO) GD

Scanned with CamScanner

(PT 1339) 548 Ratio 3 SC; Famakinwa v State (2013) 7 NWLR (PT 1354) 597; Mbang v State v State (2003) 7 NWLR (PT 1352) 48 SC.

It is argued that the prosecution is duty bound to prove all the elements constituting the offence charged beyond reasonable doubt before a verdict of guilt and subsequent conviction can be justified under the law.

He argued that the defendant in his evidence stated that he used the cheques he issued as collateral for the goods and that he instructed the complainant i.e. PW1 not to present the said cheques until he is asked to do so and that was why they were undated. Counsel contended that the unchallenged evidence before the court is that the defendant and PW1 were long business partners.

Court was urged to hold that the prosecution has failed to discharge the burden of proving the offence the defence is charged with beyond reasonable doubt consequent upon which he should be discharged and acquitted.

On his part Osobu Esq. submitted that the defendantdeceived PW1 the owner of the goods to release the goods under false pretence that he had money in his account after he attempted to transfer money from his account and did not succeed, but knowing that there was no money in his account issued dud cheques and then went in-communicado.

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ADO-EKITI

Scanned with CamScanner

It is argued that there was an intention to defraud which is one of the ingredients of the offence of obtaining by false pretence. **Amadi v FRN (2018) 18 NWLR (PT 119) 259 @ 265.**It is submitted that it is our law that false pretence by word, letter or conduct constitute a vital element of fraud. See **Odiawa v FRN (2008) ALL FWLR (PT 439)436.**

On counts 2 & 3 which deal with issuance of dishonored cheque, counsel argued that the dud cheques were issued as a form of settlement by the defendant of his debt for the goods supplied and that it is done with intention to commit the crimes which he actually committed. **Abeke v State (2007) ALL FWLR (PT 366) 644 SC**

It is contended that the defence that the nominal complainant PW1 and the defendant have been in business relationship cannot avail him as according to Osobu Esq., "the law of Advance Fee Fraud recognizes that an act of fraud could emanate from contractual relation or business relation, once fraud is introduced" it becomes an offence such as in the instant case. See Section 1(1) (c) Advanced Fee Fraud & Other Fraud Related Offences Act2006. Court was urged to hold that the prosecution has proved its case beyond reasonable doubt and therefore convict and sentence the defendant accordingly.

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

Counsel urged on the court in line with Section 11 of the Advanced Fee Fraud & Other fraud Related Offences Act and relevant Sections of ACJA 2015 to order for restitution.

The above represents my efforts to crystallize the arguments of counsel

I have given a careful consideration to the 3 Counts AmendedCharge for which the accused person is standing trial and the written submissions of counsels and I am of the considered view that the issue articulated by both counsel are the same it is only a question of expression and so I will adopt the issue as submitted by learned defence counsel thus:-

> **Whether the prosecution has proved its case beyond reasonable doubt against the defendant to warrant his conviction by this Honourable Court**

Let me also put on record thefact that **COUNT 1** of the amended charge deals withoffence under the Advanced Fee Fraud andOther Fraud Related Offences Act whereas **COUNTS 2 & 3** are under the Dishonored Cheque Act, this distinction is necessary because of the ingredients to be proved.

I will now deal with count 1. It is trite law that in criminal matters the burden of proof rests on the prosecution and the proof must be beyond

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ADD-FCT
ORIMOLOTE DAVID ANTHONY (LEGAL)

Scanned with CamScanner

reasonable doubt in order to secure a conviction. The prosecution will readily achieve this result by ensuring that all the necessary and vital ingredients of the charge are proved in evidence. See **WILLIAMS v. THE STATE (1992) 10 SCNJ 74; YONGO v. C.O.P. (1992) 4 SCNJ 113; OGUNDIYAN v. STATE (1991) 3 NWLR (Pt. 1818) 519; BAUGA v. THE STATE (1996) 7 NWLR (Pt. 460) 279.**

Now Section 1 (1) of the Advanced Fee Fraud and other Fraud Related Offences Act 1995 as amended, which is in parimateria with Section 1(1) of the 2006 Act provides that:-

Section 1(1) "Notwithstanding anything contained in any other enactment or law, any person who by any false pretence and with intent to defraud –

(a) Obtains from any other person, in Nigeria or in any other country, for himself or any other person;

(b) Induces any other person, in Nigeria or in any country to deliver to any person; or

(c) Obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by false pretence is guilty of an offence

CERTIFIED. TRUE. COPY
13/7/20
REGISTRAR.
FEDERAL HIGH COURT ABUJA

under this Act.Failure to discharge this burden renders the benefit of doubt in favour of the accused persons.

I believe and strongly too that the above provision is crystal clear and unambiguous as to the necessary ingredients of the offence of obtaining by false pretence with intent to defraud. The emphasis is obtaining or inducing any other person in Nigeria or any country to deliver, or obtain any property by the false pretence.

Having watched the demeanour of all the witnesses herein and given a careful consideration of the evidence adduced by both sides and the legal submissions of both counsels which I have greatly benefited from. It is settled law that what the prosecution should prove is the intent to defraud by taking into consideration the totality of the circumstances in respect of this particular case.

Let me commence the treatment of count 1 by saying that it is stated in Hornbook law that the ingredients or elements that are required to be proved to establish the charge of obtaining by false pretences are:

1. That there was pretence.

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

2. That the pretence emanated from the accused person

3. That the pretence was false.

4. That the accused person knew of the falsity of the pretence or did not believe in its truth.

5. That there was an intention to defraud.

6. That the property or thing is capable of being stolen.

7. That the accused person induced the owner to transfer his whole interest in the property. **See ALAKE vs. THE STATE (1991) 7 NWLR (PT 205) 567 at 591, ONWUDIWE vs. FRN (2006) LPELR (2715) 1 at 55 and ODIAWA vs. FRN (2008) ALL FWLR (PT.439) 436." Per OGAKWU, J.C.A. (Pp.21-22, paras. F-C)**

The fulcrum of this suit and the submissions of learned counsels on all sides is whether the prosecution has proved beyond reasonable doubt the offence of obtaining by false pretence with intent to defraud against the accused person. False pretence is defined in Section 20 of the Act as:

CERTIFIED. TRUE COPY
17/7/20
REGISTRAR.
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

"false pretence' means a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact of law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true."

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

Let me also say that where one obtains money/property from another by a representation which later facts reveal, that it was made to deprive someone of his money/property illegally then it means in my humble view that, right from the word go he had the intent to defraud.

CERTIFIED TRUE COPY
17/7/20
REGISTRAR
FEDERAL HIGH COURT ABUJA
ORIMOLOYE DAVID ANTHONY (LEGAL)

Scanned with CamScanner

Let me now x-ray the evidence adduced by the prosecution, to enable the court see whether the prosecution has been able to prove the ingredients of the offence of obtaining under false pretence with intent to defraud against the defendant. While it is clear from the evidence of PW1 that he knows the defendant and has been doing business with him since 2015, he also said that defendant has shown lack of capacity to pay as he has owed him since then.PW1 said that as regards this 2017 transaction which is the reason for this suit, that he told the defendant who listed all the goods he wanted to buy which was worth N3.7 Million Naira and said that he does not have the entire money to pay. That he PW1 this time around he will not sell to him again in other words he will not do business with him again.

I consider it necessary at this point to quote PW1's evidence of how the defendant responded to PW1's decision not to do business with him again;

"He now said that this market he is buying now is not for credit, and I said, ok. He said he will give me a post-dated cheque which will clear upper week. The amount on the post-dated cheque he gave me was not up to the value of the

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ADDRESS

Scanned with CamScanner

goods. I asked him what about the balance and he said I should not worry that he will transfer the remaining balance after the cheque has cleared. He was to transfer it to my account and I agreed because he has issued to me cheque..... So after a week I took the cheque to the bank but before I did I called him but he did not answer. At the Bank I was told that there was no money in his account, I called him right there in the bank but he did not pick my call, that was how I knew that he has duped me"

Under cross PW1 admitted the fact that before this transaction in issue the defendant buys goods from him and does not pay at once. That he only pays after he must have made several calls with serious persuasions before he will pay. PW1 said that from that 2017 when the defendant collected the goods from his shop and gave him the posted dated cheque. He called the defendant the upper week for two days running before presenting the cheque, that while he was in the bank, even the bank officer called the defendant but he did not respond. He admitted as correct the suggestion that after this he has not transacted any business again with the defendant.

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

PW2 also testified to the effect that the defendant pressurized his boss PW1 into releasing the goods to him when he knew that he will not be able to pay.

PW3 is the investigating Police officer whose evidence in the main is that he took both PW1 & DW1 to the two banks and there was confirmation that the defendant did not have money in his accounts to cover the exposure or amount on the cheques. PW3 admitted as correct the fact that PW1 and DW1 are said to be doing business together before this particular one.It is also his evidence under cross examination that the defendant stated in his extra judicial statement Exhibit 4 that he issued Exhibits 1 & 1A as guarantees for the goods he collected from PW1

As stated earlier, after the amendment of the charge learned counsel for the defendant exercised his right and applied for the witnesses for the prosecution to be recalled for further cross examination which was granted. I have also taking into consideration the evidence that emanated from the said further cross examination in the determination of this suit.

The evidence of the defendant DW1 corroborates that of PW1 in material particulars. It is the evidence of DW1 that he

CERTIFIED TRUE COPY
7/12/20
REGISTRAR
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

bought goods from PW1 and issued cheques Exhibits 1 & 1A. He admitted that there was no money in the accounts to cover the value on the cheques. He also admitted that PW1 called him and he did not pick as he was busy and only returned the call the next day only to be told that the cheques have been presented to the bank. He said that he gave the cheques as collateral in other for PW1 to supply the goods and the goods were all supplied.

In resolving the question of whether there was a false pretence emanating from the accused person, which induced the PW1 to part with his goods, I found that it is clear from the uncontroverted evidence of PW1 that he was pressurized by DW1 to part with his goods, listen to PW1 again; Said he;

'He now said that this market he is buying now is not for credit, and I said, ok. He said he will give me a post-dated cheque which will clear upper week. The amount on the post-dated cheque he gave me was not up to the value of the goods. I asked him what about the balance and he said I should not worry that he will transfer the remaining balance after the cheque has cleared. He was to transfer it

CERTIFIED. TRUE COPY
17/7/20
REGISTRAR
FEDERAL HIGH COURT ABUJA
ORIMOLOTE DATO ANTHONY (ESQ)

Scanned with CamScanner

to my account and I agreed because he has issued to me cheque'

The above evidence was not controverted either during cross examination of PW1 or even in the evidence in chief of DW1. The defendant also admitted that PW1 called him before the cheques were presented for payment but he was busy executing another contract and did not pick the call only to call the next day to be told that the cheques have been presented for payment.

It is not in dispute that contrary to the evidence of PW1 that he was promised that this contract was not on credit bases and that the balance of the money will be transferred to PW1's account which pretences turned out to be false, as the contract turned out to be on credit and the cheque was returned unpaid as there was no money in those bank accounts.

It is the submission of Oluwole Esq. that; and I quote him "It is also in evidence that the defendant and PW1 were long age business partners, same which remain unchallenged"; my understanding of the above submission is that the transaction between the parties herein is one of business

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT

Scanned with CamScanner

that turned awry as they have been long time business partners. On his part Osobu Esq. contended that even though PW1 and the defendant had been in business relation prior to this transaction in issue, it is submitted that act of fraud has emanated from the contractual relationship herein and when such is the case it becomes an offence. He referred to Section 1 (1) (c) of the Advanced Fee Fraud and Other Fraud Related Offences Act, and also **Abeke v State (2007) ALL FWLR (PT 366) PG 644 SC.**

I am not in any doubt that it is our law that where money is obtained under a contract and the contract is not performed the remedy of the victim lies in a civil action for money had and received and not in a criminal charge of obtaining by false pretences.**State v Osler (1991) 6 NWLR (199) 576 @ 587 CA.** But the question I ask myself and I must answer is whether that is the situation in this instant suit.

The contention of Osobu Esq. is that an act of fraud can emanate from contractual relation or business relation and when such is the case it becomes an offence. See Section 1 (1) (c) of the Advanced Fee Fraud and Other Fraud Related Offences Act.

CERTIFIED. TRUE. COPY
17/7/20
REGISTRAR.
FEDERAL HIGH COURT ABD-FCT
ORIMOLOTE DATO ANTHONY (EO) GD

Scanned with CamScanner

I have had a second hard look at the evidence adduced herein especially that of PW1 and found that there are series of representations by the defendant from where the intention of the defendant can be deduced, it is in evidence that the defendant said this transaction is not on credit bases as he will issue post-dated cheques and transfer the balance outstanding. It was on that bases that goods were supplied. It is in evidence that several calls were made to the defendant who never answered his calls and there is no evidence of any explanations made by him for not fulfilling his representations. In other words since the promise to pay in future was completely dependent upon the prior representation that he "at present" had the means to pay then it falls in my view under the offence of obtaining by false pretence..

I am of the view that the transaction herein was therefore not a contract that turned awry.

The conclusion I draw from the totality of the evidence before me on count 1therefore is that false representations were made by the accused person knowing fully well that there was no monies in the account and that was made in my

CERTIFIED. TRUE COPY
REGISTRAR.
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

view with the intention of defrauding PW1 and owing him in perpetuity.In view of my findings above, I hold that the prosecution has been able to prove count 1 against the defendant.

On counts 2 & 3 on the issuance of dud cheques. There appears not to be any dispute that Exhibits 1 & 1A emanated from the defendant. PW1 in his evidence in court on how the cheques were issued and given to him stated thus;

He said the defendant wanted to buy goods worth N3.7million Naira; and listed all the goods that he needed and said that he does not have the entire amount to give him. But PW1 said this time around he was not going to sell to him again. "**He now said that this market he is buying now is not for credit, and I said, ok. He said he will give me a post-dated cheque which will clear upper week. The amount on the post-dated cheque he gave me was not up to the value of the goods. I asked him what about the balance and he said I should not worry that he will transfer the remaining balance after the cheque has cleared. He was to transfer it to my account and I agreed because of the cheque that hegave to me. I then supplied the goods to**

CERTIFIED TRUE COPY
7/7/20
REGISTRAR
FEDERAL HIGH COURT ABUJA

him".

The contention of the defendant DW1 appears in my view to be that he issued the chequesas collateral. In DW1's viva voce evidence and also his extra judicial evidence which is Exhibit 4 he said;

Hear him;

"the reason why I wrote the dud cheque was that I used it as guarantor of the debt that I owe him".

It is the submission of Oluwole Esq. that the cheques were said by the defendant to stand as collateral for the goods and that the defendant instructed the complainant PW1 not to present same for payment until he is asked to do so; as they were not dated.

Let me quickly deal with the issue of the fact that Exhibits 1 & 1A were not dated. The said exhibits were tendered through PW1 whose evidence was that these are the postdated cheques given to him by the defendant and that he took them to the banks and the banks said there was no money in the accounts. It is his evidence that he did not also receive any transfer of money into his account from the defendant

CERTIFIED TRUE COPY
17/7/20
REGISTRAR
FEDERAL HIGH COURT ADO-EKITI
ORIMOLOYE DAYO ANTHONY (EO)C.O

Scanned with CamScanner

nor was any given to him by cash. Exhibits 1 & 1A were tendered without objection and were admitted in evidence and marked. I have also taken a second look at the cross examination of PW1 and did not see any question(s) as regards the issue of lack of dates on Exhibits 1 & 1A. I have taken precious judicial time to do all this to enable me see my way through the arguments and submissions before this court as regards the legal status of Exhibits 1 & 1A.

Let me say that our law is settled beyond peradventure that were the evidence of the prosecution witnesses are not challenged, impeached or contradicted by the accused person(s), the effect is that the case of the prosecution must be deemed to be established. See **Daggash v Bulama (2004) 14 NWLR (PT 889) 144 @ 240; Babalola v. State (1989) 4 NWLR (PT 115) 264 @ 281 PRAS D-E**.

It is also our law that a party that fails to cross examine a witness is precluded or not permitted to re-introduce the evidence in examination in chief. It is said to be the rule in **BROWN V DUNN (1893) QR 67 cited in Evidence Text and materials by Andre Choo at page 189;** it provides that **"As a general rule aparty which fails to cross examine a witness**

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ADD-FC

Scanned with CamScanner

on a particular issue cannot later invite the jury to reject the witness's evidence in chief on that issue" and our apex court captured the principle in the case of **OFORLETE V STATE (2000) 12 NWLR (PT 681) 45 @ 436 thus;**

> **"Plainly it is unsatisfactory if it is not suicidal, bad practice for counsel to neglect to cross examine a witness after his evidence in chief in order to contradict him or impeach his credit while being cross examined but attempt by doing so only by calling other witness or witnesses thereafter. That is demonstrably wrong and will not even feebly dent that unchallenged evidence by counsel leading evidence through other witnesses to controvert the unchallenged evidence"**

It is my finding that the prosecution has proved the fact that Exhibits 1 & 1A were dated before they were handed over to PW1.

The next question is the contention of the defence that Exhibits 1 & 1A were used as collateral for the goods and that the defendant instructed PW1 not to present the said chequesto the bank until he is asked to do so. Again the

CERTIFIED TRUE COPY
7/12/7/20
REGISTRAR
FEDERAL HIGH COURT
ORIMOLOYE DAYO ANTHONY (E.O.) GD

Scanned with CamScanner

question that must be answered is what are the purposes and functions of cheques, are they in law to be used as collaterals? Learned prosecuting counsel commended to thiscourt the case of **Bolanle Abeke v State (2007) LPELR-31(SC)**also reported in **(2007) ALL FWLR (PT 366) 644SC;** wherein the apex court handed down the position of the Banking Law on the function and purpose of a cheque per Niki Tobi JSC (RTD) of the blessed memory thus;

"Counsel also submitted that the intention of the parties as established in evidence was that the cheque should serve as documentation, receipt, acknowledgment, evidence, just to have a piece of documentary evidence of the transaction not an instrument for payment as a legal tender. This is quite a new one for me to learn. I do not think I am prepared to learn it. How can learned counsel say that a post-dated cheque serves as a document, receipt or acknowledgment? 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 an instrument for payment. It metamorphoses into physical cash on due presentation at the bank and that

CERTIFIED. TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ABUJA
ORIMOLOYE DAVID ANTHONY (OFFICER)

Scanned with CamScanner

makes it legal tender. It is interesting that learned counsel conceded at page 9 of the brief that "truly a cheque is always regarded as a legal tender or an instrument for payment once it is duly completed and signed with date. That is the correct position and the reverse position taken by counsel is not at all available to him".

I can only adopt the above thoughts as mine as cannot do better and consequently find and hold that Exhibits 1 & 1A the post-dated cheques for all intents and purposes are instruments for payment which metamorphoses into physical cash on due presentation at the bank and that makes it a legal tender.Being guided by the above it is my strong view that same cannot therefore be seen as collateral as Oluwole Esq. would want this court to believe.

As stated earlier the defendant herein did not deny issuing Exhibits 1 & 1A, all that he attempted to do is a feeble denial of the fact that he did not date same and this denial I must say was done during his evidence in chief in court. I have taken a decision as regards the date on the cheques Exhibits

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

1 & 1A only to add here that the said denial at the time it was done which was during the defendants evidence in chief is in my humble view an afterthought.

The law is trite that to convict the defendant herein for this offence the prosecution must prove that the defendant had mensrea and actusreus. See Abeke v State supra;

"Put in common simple parlance, *mensrea means a guilty mind. And actusreus means a guilty act. In cases of strict liability, mensrea comes before actusreus. In other words, the accused develops the guilty mind before guilty act. Put in another language, the guilty mind instigates the guilty act or flows into the guilty act.* The period of time between the two cannot be determined in *vacuo* but in relation to the factual situation in each case dictated by the state of criminality of the accused at the material time. There are instances where the mensrea is automatically followed by the actusreus. The above element of proximity apart, there could be instances of spontaneity too." per Niki Tobi JSC.

It is evident from the testimonies of the prosecution witnesses and also the defendant that the prosecution

CERTIFIED. TRUE COPY
13/7/20
REGISTRAR
FEDERAL HIGH COURT ABUJA
ORIMOLOYE OAIS ANTHONY (ESQ)

Scanned with CamScanner

proved the mensrea and the actusreus of the offence charged. It is my finding that the intention of the defendant in the presentation of the cheque to PW1 was that same will not be paid as it is submitted that PW1 is not to present same for payment until and whenever it pleases the defendant to ask him to present same. It is the evidence of the defendant that it is issued to PW1 as collateral. On the contrary evidence before the court is to the effect that PW1 believed that the defendant as he represented to him had the money and was going to pay for the goods supplied the upper week.

It must be put on record the fact that the provisions of Section (3) of the Dishonoured Cheques (Offences) Act, Cap. 102, Laws of the Federation, 1990 has made exemption for who may not come within the provision of Section 1(1) of the said law. By virtue of section 1(3) which provides; -

"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 the cheque he had reasonable grounds for believing, and did believe in fact, that it would be

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

honoured if presented for payment within the period, specified in subsection (1) of this section."

It is on recordthat the defendant issued Exhibit 1 & 1A when it is evident that his account was already in debit as the testimony of PW1, PW2 and PW3 revealed and this makes it impossible for the defendant to benefit from the exception that this section would have afforded him.

Having given a careful consideration to the totality of evidence of the respective parties, this court finds that the prosecution has proved its case against the defendant beyond reasonable doubt. As opined by my lord Niki Tobi JSC in Abeke v State supra; Reasonable doubt is doubt founded on reason which is rational; devoid of sentiment, speculation or parochialism. The doubt should be real and not imaginative. The evidential burden is satisfied if a reasonable man is of the view that from the totality of the evidence before the court, the accused person committed the offence. The proof is not beyond all shadow of doubt. There could be shadows of doubt here and there but when the pendulum tilts towards and in favour of the fact that the accused person committed the offence, a court of law is entitled to

CERTIFIED TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ABUJA

Scanned with CamScanner

convict even though there are shadows of doubt here and there.

Being properly guided, I have no hesitation in coming to the conclusion that the prosecution has discharged the burden placed on it by law and therefore I find and hold that the guilt of this accused person has been proved beyond reasonable doubt and I therefore convict him as charged.

U.N. AGOMOH

JUDGE

05/06/2020

APPEARANCE

Samson Ojo Osobu Esq. — For the Prosecution

B. T. Oluwole Esq. — For the Defendant

CERTIFIED. TRUE COPY
REGISTRAR
FEDERAL HIGH COURT ABUJA
ORIMOLOYE DAYO ANTHONY (ESQ)

Scanned with CamScanner