

IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA
BEFORE HIS LORDSHIP HON. JUSTICE S.N. ODILI
DELIVERED ON MONDAY THE 13TH DAY OF JANUARY, 2020

SUIT NO: O/45^C/2018

BETWEEN:

THE STATE

AND

1. MUOBUIKE FRANCIS CHUKWUDI
2. F. C MUOBIKE NIG. LTD

JUDGMENT

By the Further Amended Charge filed on 1st April, 2019, the Defendants were charged with the offence of issuing dud cheque under **Section 1 (1)(b) of the Dishonoured Cheques Offences Act.**

The Prosecution called three witnesses, the PW1, PW2 and PW3, and tendered eight exhibits, namely, exhibit P1, P2, P3, P4, P5, P5a, P6, and P6a. Exhibit P1 is the Skye Bank Plc cheque dated 8th March, 2017, exhibits P2 and P3 are the PW1's Statement to the Police dated 12th May, 2017 and 21st June, 2017 respectively, exhibit P4 is the Police Investigation Report dated 24th Oct. 2018, exhibits P5 and P5a are the 1st Defendant's Statement to the Police dated 12th May, 2017 and 23rd April, 2018 respectively, while exhibits P6 and P6a are the Polarise Bank Ltd Letter to the Deputy Commissioner of Police dated 13th May, 2019 and the 2nd Defendant's Statement of account for the period 1st

January, 2017 to 21st June, 2019. The Prosecution also tendered the photocopy of the Certificate of Incorporation of M. O Umeh & Sons Ltd as ID1. It is trite law that a document tendered as an ID commands no probative value. See **Zenith Bank Plc v. Adejoh Jibrin Yusuf (2016) LPELR - 42915(CA)**. I attach no evidential value to the photocopy of the Certificate of Incorporation of M. O Umeh & Sons Ltd tendered as ID1.

Mr. Ikenna Umeh, the complainant, testified as the PW1, Insp. Ugwor Romanus, the IPO, testified as the PW2, while Mr. Christian Ado, a Polarize Bank staff testified as the PW3.

The Defendants called one witness and tendered no exhibit. The 1st Defendant testified as the sole witness for the Defendants.

The Prosecution's case is that the Defendants issued a Skye Bank cheque for the sum of N6, 895, 050. 00 (Six Million, Eight Hundred And Ninety Five Thousand, Fifty Naira) to the PW1 for goods supplied him, and upon presentation, the cheque was dishonoured because of insufficient fund in the Defendants' account. The Defendants case is that the cheque was issued as collateral, and not for payment of goods supplied.

Learned Counsel to parties adopted and relied on their respective Written Addresses, and orally addressed the Court. Learned Counsel to parties formulated three issues for determination.

The Defendants' issue Nos 1 and 2 and the Prosecution's issue No (a) are substantially the same, the Defendant's issue No. 3 and the Prosecution's issue Nos (b) and (c) are substantially the same. From the evidence led and the Written Submissions of Learned Counsel, the following two issues call for determination of this Suit, namely;


1. Whether the 2nd Defendant took plea on the Further Amended Charge
2. Whether the Prosecution has proved the Charge against the Defendants

RESOLUTION OF ISSUES

Issue No.1

Whether the 2nd Defendant took plea on the Further Amended Charge

Learned Counsel to the Defendants, S. C Akpudo Esq. relied on Section 478 of the Administration of the Criminal Justice Act, 2015 and contended that the 2nd Defendant did not take plea to the Further Amended Charge filed on 1st April, 2019. Counsel argued that the 2nd Defendant was not called upon on 19th February, 2019 to take plea, rather only the 1st Defendant took plea. Counsel urged the Court to hold that it lacks jurisdiction to entertain the Charge.




The 1st Defendant was arraigned alone on a one count Charge filed on 12th December, 2018. The said Charge was amended and substituted with the Amended Charge filed on 28th January, 2019. The 1st Defendant did not take plea on the earlier Charge of 12th December, 2018, but took plea on the Amended Charge of 28th January, 2019 on 19th February, 2019. As at the 19th February, 2019 when the 1st Defendant took plea to the Amended Charge, the 2nd Defendant was yet to be joined as party in the Charge. Hence, Learned Defendants' Counsel's argument that the 2nd Defendant's failure to take plea to the Amended Charge is fatal to the proceedings is misconceived, as the 2nd Defendant cannot take plea to a Charge it is not yet a party.

The Amended Charge was further amended on 1st April, 2019 wherein the 2nd Defendant was made a party. The Further Amended Charge was

read to the Defendants on 2nd April, 2019, and the 1st Defendant pleaded not guilty to the one count Charge. The 2nd Defendant's trial commenced with the Further Amended Charge as rightly submitted by the Prosecution Counsel.

The 1st Defendant is the Managing Director and the alter ego of the 2nd Defendant, and both of them are standing trial in respect of the 2nd Defendant's cheque issued to the complainant by the 1st Defendant. The 2nd Defendant was present at the trial through the 1st Defendant, and the plea of not guilty taken by the 1st Defendant on 2nd April, 2019 is for both Defendants. The requirement of a company appointing a representative in criminal trial in **Section 478 of the Administration of the Criminal Justice Act, 2015** does not apply where the company is present in Court through its alter ego and Managing Director.




By the provisions of **Section 477 (3) of the Administration of the Criminal Justice Act, 2015**, the persons authorized to sign a statement in writing appointing a representatives are the Managing Director and any person by whatever name called having or being one of the persons having the management of the affairs of the corporation. It will be preposterous for the Court having the Managing Director and the alter ego of a company himself standing before it, and still insist on a representative appointed by the Company. Even when there is no statement in writing appointing a Managing Director and alter ego to represent the company in a criminal trial, once he is before the Court, he is presumed to be representing the company and any step he takes in defence of the Suit is deemed taken by the company.

The Defendants agitation seems to stem from the fact that the record of Court on 2nd April, 2019 did not expressly show that the 2nd Defendant was called upon to take its plea. However, the record shows that the charge was read to the Defendants in English Language and they perfectly understood it and pleaded not guilty. Though the record did not show separately each Defendant's plea, it shows their plea of

not guilty, as the plea taken by the 1st Defendant is for himself and the 2nd Defendant. A trial is not vitiated simply because the record does not show the separate pleas of the Defendants in a joint criminal trial, provided that the Court is satisfied that they understood the Charge and took their pleas. See **Auwal Abdullah v. Federal Republic of Nigeria (2018)2 NWLR (Pt. 1604) 479**. Where the record of Court shows that the Charge was read and explained to the Defendant, and he takes his plea, it is presumed that all the requirements of valid arraignment have been satisfied. See **Lateef Adeniji v. State (2001) LPELR – 126 (SC), (2001) 13 NWLR (Pt. 730) 375**.

Furthermore, the Defendants who were represented by Counsel did not object to the mode of plea.

 In any event, even if the 2nd Defendant did not take its plea as posited by the Defendants' Learned Counsel, that alone will not rob the Court of jurisdiction to entertain the Suit against the Defendants or vitiate the entire proceedings, rather it will rob the Court of jurisdiction to entertain the Suit against the 2nd Defendant only. In that circumstances, only the 2nd Defendant's name will be struck and not the entire Suit.

I hold that the 2nd Defendant took its plea to the Further Amended Charge. Issue No. 1 is hereby resolved against the Defendants.


Issue No. 2

Whether the Prosecution has proved the Charge against the Defendants.

The Defendants were charged for issuance of dud cheque. For the Prosecution to succeed in a charge of issuance of dud cheque, it must prove the following, namely;

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


See *Abraham v. Federal Republic of Nigeria* (2018) LPELR - 44136(CA)



In the instant case, the PW1 supplied goods on credit to the 1st Defendant who was his customer. It was in the course of the business transaction between the PW1 and the 1st Defendant that he issued exhibit P1. The 1st Defendant admitted the PW1's evidence that he supplied him goods and that he owes him. The 1st Defendant also admitted the PW2 and PW3's piece of evidence which was corroborated by exhibit P6a, that he did not have sufficient funds to his credit when he issued exhibit P1. The 1st Defendant gave the PW1 a signed but undated cheque in January, 2017, which cheque was later dated 8th March, 2017 and was presented for payment on the 8th March, 2017. The said cheque was dishonoured by the Bank because there was no credit in the Defendants' account. The evidence adduced by the Prosecution establishes the ingredients of the offence of dishonoured cheque. The 1st Defendant manifested its intention to commit the crime, when he issued exhibit P1 when he knew that there was insufficient fund in the account.

The 1st Defendant's evidence that the cheque was issued as a collateral does not exonerate him from the offence of issuing a dud cheque. A cheque is a drawer's written instruction to the drawee to pay a certain amount of money from the drawer's account to a 3rd party on a specific

date. A post dated cheque issued as a collateral by a drawer who owes a 3rd party is simply an assurance or a promise that the debt will be paid before the date on the cheque, and that failure to pay before that day, the 3rd party shall present the cheque for payment. Therefore, a drawer who owes a 3rd party must ensure that his account is funded to the amount on the post dated cheque, as the 3rd party shall fall back on the cheque if he fails to pay on the date he fixed for payment. In that circumstance, it is immaterial that he issued the post dated cheque as a collateral. Issuing a cheque as a collateral when the drawer's account is not funded is not a defence to the offence of issuance of dud cheque. The Supreme Court per in **Bolanle Abeke v. State (2007) LPELR – 31 (SC)** rejected the Learned Applicant's Counsel's submission that a post dated cheque was issued to serve as documentation, receipt, acknowledgement, evidence of transaction, and not an instrument for payment as a legal tender.

 In the instant Suit, the 1st Defendant gave the PW1 two months within which to pay for the goods supplied to him, and issued exhibit P1 as an assurance or a promise that he will pay within the two months. Exhibit P1 was a collateral for the debt only for the two months period within which the 1st Defendant promised to pay. After the two months period, exhibit P1 became due for presentation for payment.

I do not agree with the submission of Learned Counsel to the Defendants that the 1st Defendant is not liable because he obtained credit for the 2nd Defendant and that the cheque does not belong to him rather to the 2nd Defendant who is a corporate entity.


Contrary to Learned Counsel's submission, the evidence of PW1 and the 1st Defendant together with exhibits P5 and P5a clearly show that the goods were supplied to the 1st Defendant, and not to the 2nd Defendant. Hence, the 1st Defendant obtained credit for himself and not for the 2nd Defendant as argued by Learned Counsel to the

Defendants. The 2nd Defendant's only involvement in the entire transaction is that its cheque (exhibit P1) was issued and dishonoured.

Exhibit P1 which belongs to F.C Muobike Nig. Ltd was issued and signed by the 1st Defendant who is its Managing Director and the alter ego. He issued it for his personal transactions with the PW1, which transaction culminated in the offence of issuance of dud cheque. The 1st Defendant committed the said offence using the 2nd Defendant's (a corporate entity) cheque. The doctrine of separate personality of company does not avail the 1st Defendant in the circumstances.

The law is settled that the corporate entity's property or name is used in committing crime by its officer or member, the veil of incorporation is lifted, and the officer or member who committed the crime faces the consequences. An officer or a member of a company who uses the company's property or name to commit an offence is not entitled to the coverage of the doctrine of separate personality. The Supreme Court in **Aminu Musa Oyebanji v. State (2015) LPELR - 24751(SC)** held that the Court will not allow a party to use his company as cover to dupe, cheat and or defraud an innocent citizen who entered into a lawful contract with the company only to be confronted with the defence of the company's legal entity as distinct from its directors. In **Chief Bola Adedipe v. Sameindir Frameinendur (2011) LPELR - 14271 (CA)**, the Court of Appeal held that veil of incorporation will be lifted where canopy of legal entity is used to justify wrong, perpetuate and protect fraud and crime. See also **FDB Financial Service Ltd. v. Adesola (2002) 8 NWLR (Pt. 668) 170, Alade v. Alic Nigeria Ltd & Ano (2010) 19 NWLR (Pt. 1226) 111**. In the instant case, the 1st Defendant's contention that he is not liable because he obtained credit for the 2nd defendant, and that the cheque belongs to the 2nd Defendant is an attempt to hide under the cloak of separate personality of F.C Muobike Nig. Ltd in order to evade trial for the offence of issuance of dud cheque.

The Defendants' contention that the PW1 filled his company name, the date and amount on the cheque does not aid his case. This is because the 1st Defendant who is the authorized signature in the 2nd Defendant's account signed the said cheque and gave it to the PW1 without filling those information. The author of a document is the person who signed the document. Having signed the cheque, the 1st Defendant has ratified any information filled in it by the PW1. Moreso, the 1st Defendant did not deny owing the PW1 the amount stated on the cheque. Where a debtor signs a blank cheque without filling other information, and hands same over to his creditor, who subsequently fills the information, the cheque is issued by the debtor who signed it. In **Abeke v. State(supra)**, the apex Court held that the Appellant issued a posted dated cheque which she signed and the PW2 her creditor filled the rest information therein.



It is not in dispute that the 2nd Defendant is a corporate body. It is also not in dispute that its cheque was used in committing the offence. The said cheque was issued by the 1st Defendant, its Managing Director and alter ego. It was the 1st Defendant that deployed the 2nd Defendant's property in committing the offence. There is no evidence showing the 2nd Defendant's involvement other than that its cheque was used in committing the crime. The Prosecution failed to prove the lone count Charge in this matter against the 2nd Defendant. The 2nd Defendant, F. C Muobike Nig. Ltd is hereby acquitted and discharged of the lone count Charge in this Suit.

I hold that the Prosecution proved the lone count of the Charge beyond reasonable doubt against the 1st Defendant, Muobike Francis Chukwudi. I find the 1st Defendant, Muobike Francis Chukwudi guilty of the lone count as contained in the Further Amended Charge of 1st April, 2019 and accordingly convict him.

Allocutus – The Defendants' counsel pleads for leniency on the 1st Defendant. Counsel says that the 1st Defendant has been in custody

since 2018. Says the 1st Defendant has no previous record of crime. Prays that the time spent in detention be reckoned with in sentencing the 1st Defendant.

Sentence – I have considered the plea of leniency by the Defendants' Counsel. **Section 1(1)(b) of the Dishonoured Cheque Offences Act** prescribes imprisonment for two years without option of fine for the offence of issuance of dud cheque.

I hereby sentence you, Muobike Francis Chukwudi to imprisonment for two years.

The 1st Defendant was arraigned at the Magistrate Court for remand proceedings on 26th Sept. 2018 and on the order of the Magistrate, he has been in custody from the said 26th September, 2018 till date. The period already spent in custody shall be deducted from the two years imprisonment.



S.N. Odili

Judge

13/1/2020

APPEARANCES:

Uchenna Ekwerekwu (Mrs) Esq. (Senior State Counsel, Anambra State Ministry of Justice) appears for the Prosecution.

S. C. Akpudo Esq. appears for the Defendants.