

CT2 @ 11:52 AM

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**IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA**  
**IN THE WARRI JUDICIAL DIVISION**  
**HOLDEN AT WARRI**  
**BEFORE HIS LORDSHIP HON. JUSTICE ANTHONY OLOTU AKPOVI**  
**(JUDGE)**  
**ON MONDAY THE 5TH DAY OF DECEMBER, 2022.**

**BETWEEN:** **SUIT NO: W/15C/2021**  
**FEDERAL REPUBLIC OF NIGERIA ... COMPLAINANT**  
**AND**  
**1.PASCAL OKIRIKA ... ..**  
**2:OKIPAS LIMITED ... .. DEFENDANTS**

**COUNSEL:**  
**F. O. DIBANG ESQ. (EFCC) for the Prosecution.**  
**P. K. EDERI ESQ. for the Defendants.**

**JUDGEMENT**

The Defendant was charged on 7/5/2021 on a two-count information.

**COUNT I**

That you Pascal Okirika on or about 30th October, 2017, being the Managing Director of OKIPAS LIMITED, in Delta State, within the jurisdiction of this Honourable Court, induced First Bank Plc to offer to you a credit facility of ₦10,000,000.00 (Ten Million Naira) to dredge and stockpile 30,000 cubic meter of sharp sand to be supplied to Setraco Nigeria Limited, for 90 days, by issuing a Diamond Bank Plc cheque No: 0062144798, in the sum of ₦3,000,000.00 (Three Million Naira) drawn on account 0062144798 with account name OKIPAS LIMITED, domiciled in Diamond Bank Plc, in favour of (CAM RECOVERY ACCOUNT) of First Bank Plc as part payment, which cheque when presented for payment was dishonoured on the ground that no sufficient funds were standing to your credit and thereby committed an offence contrary to Section 1(1)(a) and (b) of the Dishonoured Cheques (Offences) Act and punishable under Section 1(1)(b) of the same Act.

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**HENRY E. OKOTIE**  
**ASST DIRECTOR OF COURTS**  
**DATE 04/12/23**



**COUNT II**

That you Pascal Okirika on or about 15<sup>th</sup> November, 2017, being the Managing Director of OKIPAS LIMITED in Delta State within the jurisdiction of this Honourable Court, induced First Bank Plc to offer to you a credit facility of N10,000,000.00 (Ten Million Naira) to dredge and stockpile 30,000 cubic meters of sharp sand to be supplied to Setraco Nigeria Limited, for 90 days, by issuing a Diamond Bank Plc cheque No: 0062144798, in the sum of N3,000,000.00 (Three Million Naira) drawn on account 0062144798 with account name OKIPAS LIMITED, domiciled in Diamond Bank Plc, in favour of (CAM RECOVERY ACCOUNT) of First Bank, as the part payment, which cheque when presented for payment was dishonoured on the ground that no sufficient funds were standing to your credit and thereby committed an offence contrary to Section 1(1)(a) and (b) of the Dishonoured Cheques (Offences) Act and punishable under Section 1(1)(b) of the same Act.

The Defendant took his plea in English Language and pleaded not guilty to the two counts.

The prosecution opened their case on 15/12/21.

The following under listed Exhibits were tendered in this case, namely:

Exhibit "A" petition against Okipas Nigeria Limited.

Exhibit "B" Withdrawal of complainant against the Defendant in suit No. W/115/2021.

Exhibit "C1 and C2" EFCC investigation activities dated 9<sup>th</sup> April, 2018 and CTC of cheques.

Exhibit "D1-49" Certification of identification and statement of account and other bank document.

Exhibit "E" EFCC investigation activities dated 7<sup>th</sup> May, 2021.

Exhibit "F" First Bank Investigation activities dated 21<sup>st</sup> May, 2021.

Exhibit "G" statement of the Defendant at EFCC dated 15<sup>th</sup> August, 2018.

Exhibit "H1 - 15" EFCC bond to produce exhibit and application to collect bank draft.

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**PW1 Patrick Umerah**, a Christian affirms and states in English Language. That he works with First Bank of Nigeria Ltd Warri, Airport Road Branch, as the head of team, Lead Recovery Unit. He stated that a petition was written by Bob C.J. the Bank's Lawyer. That petition was tendered and marked Exhibit "A".

He stated that he made a statement that led to this case. That First Bank wrote a letter to the court dated 11/11/21 headed Withdrawal of Complaint Against the Defendant in this case W/15C/21. He pleaded that the case be discontinued.

PW1 stated that,

*"all forms of prosecution concerning Defendant in this case concerning his banking matter with you and issue of dud cheques be withdrawn in its entirety."*

Under cross-examination PW1 stated that the letter of 11/11/21 from his bank is that they don't want a case anymore. The document signed by PW1 as a staff of First Bank on 16/11/21, was tendered and marked Exhibit "B".

**PW2 Uwafili Harrison**, a Christian affirms and states in English Language. That he is an investigator of EFCC attached to Bank Fraud Section of the Benin Zonal Command. He stated that on 15<sup>th</sup> March, 2018 his office received a petition from First Bank Plc against the Defendant and his Company OKIPAS LIMITED bothering on issuance of dud cheque. That letters of investigation activities were written and the responses from First Bank and Access Bank were received and analyzed. That the cheques were returned due to insufficient fund in Defendant's account and he was arrested by the EFCC. He made a statement and was later granted bail.

The EFCC letter dated 9<sup>th</sup> April, 2018 and 2 attached cheques were tendered and marked as Exhibits "C1" and "C2", Diamond Bank letter of April 10<sup>th</sup>, 2018 was tendered and marked as Exhibits "D1-49", The witness identified the 1<sup>st</sup> and 2<sup>nd</sup> pages of Exhibits C3, namely C3(i) and C3(ii) and Exhibits "D1, D2 and D11 respectively as relevant pages indicating response from Diamond Bank that prove the issuance of dud cheques and that cheques were unpaid for lack of funds in Defendant's account and reason the bank gave for returning the cheque. Certified True Copy of EFCC letter of 7<sup>th</sup> May 2021 and First Bank's reply of May 21<sup>st</sup>, 2021 were tendered and marked as Exhibits "E" and "F" respectively.

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Defendant's extra judicial statement of 15/08/18 written on the EFCC statement sheet was tendered and marked as Exhibit "G". Exhibit bonds and First Bank acknowledgement of monies refunded were tendered and marked as Exhibits "H1-15" respectively.

Under cross-examination, PW2 stated that he personally investigated the matter. That he did not record Exhibit "G" but was present when it was recorded but agreed that there is nothing to show that he was there when Exhibit "G" was recorded. PW2 stated that the Defendant was given about fifty-five Million Naira in 2009. That he was not aware PW1 came to this court to inform court that the Bank was doing well with Defendant.

PW2 finally stated that he is just seeing Exhibit "B" for the first time and that he has read Exhibit "B" and he agrees and that *"it is obvious the nominal complainant no longer wishes to litigate this matter with Defendant"*.

The prosecution closed their case on 14/3/2022 and the defence opened their case on 17/3/2022.

**DW1 Pascal Okirika**, a Christian affirms and states in English Language. He lives at Plot 175, 31st Street DDPA, Ugborikoko Effurun. He stated that he knows the complainant in this case which is First Bank Plc. He stated that he did not induce First Bank to offer him credit facility and that he did not issue First bank any cheque at the time he was offered the facility DW1 stated that he was granted the facility in 2009 not 30<sup>th</sup> October, 2017 as stated in the charge. He stated that he has since paid for over the value of the two cheques of Three Million and Two Million and that before the dud cheque, he has been making payment for the loan.

DW1 stated that he had an agreement with First Bank to reduce interest on the loan that was why he offered the bank cheques. 3 went through, 2 bounced as business was weak as at when they presented the cheques. He stated that even since after the cheque bounced, he has paid back the loan above Five Million. That he has a robust account with the bank and he has no issue with the bank.

Under cross-examination, DW1 stated that Exhibit "C1" and "C2" are his cheques that they were issued to offset part of the financial obligation he had with First Bank. He stated that when 15/11/2017 and 30/10/2017 cheques were issued he did not know the balance in his account then. He stated that he had an arrangement with First Bank to communicate with him before presenting the cheques. He stated that it was a verbal arrangement and that

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*of 1/1/2023*



the arrangement to have written cheques to settle the loan was not documented.

DW1 finally stated, "all the cheques were not dated so the bank needs to call me to put a date. After the dud cheques I paid monies into this account or another as I was allowed to pay monies into any of the accounts. That is a payment of N5 Million on 16<sup>th</sup> February, 2018 after the dud cheques reflected in exhibit "D12" (C3 11)"

The Defendant closed his case on 17/3/22.

Counsel to the Defendant P.K. Ederi Esq. filed a written address dated 6/4/2022 and filed 7/4/2022. Counsel raised a sole issue for determination.

**"Whether the Prosecution has proved its case against the Defendants beyond reasonable doubt in the light of the evidence of PW1 and exhibit "A" tendered before court"**

Counsel submitted that the prosecution failed woefully to prove its case beyond reasonable doubt. He cited Section 135(1) of the Evidence Act 2011. That in practical terms, the law imposes an obligation on the prosecution to prove beyond reasonable doubt that the accused person committed the offence. Once the ingredients are ascertainable, the prosecution must prove beyond reasonable doubt that the Accused person or persons envisaged by the law creating the offences and their acts are within the ambience of the ingredients of the offence. For this he relied on **OLADELE V. NIGERIAN ARMY (2004) 6NWLR (PT. 868)166; KAZEEM V. STATE (REP 2009) 29 WRN 43; ABRIFON V. STATE (REP 2009) WRN 37 R. 8 PG 45.**

Counsel submitted that the prosecution is said to have proved its case beyond all reasonable doubt when it has proved all the ingredients of the particular offence that the Defendant is charged with. He cited the case of **JAMANI V. STATE (2005) WRN 191 @ 212.**

Counsel submitted that Section (1)(1)(3) of the dishonoured cheques offences Act 2004, Laws of Federation of Nigeria provides as follows:

*"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 has reasonable grounds for believing and did believe in fact that it would be honoured if presented for payment within the period specified."*

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The Defendant in his evidence, said that he gave the Complainant's, First Bank, 5 cheques to meet his obligation with them. That there was an understanding that the Complainant would communicate with him before presenting each of the said cheques. He said they communicated with him before presenting 3 of the 5 cheques that sailed through but that the said Complainant failed to communicate with him before presenting the 2 cheques that went dud on presentation.

The above evidence by the Defendant was not controverted by the prosecution or any of its witnesses. He cited the case of **IYERE V. BENDEL FEED AND FLOUR MILLS LIMITED (2009) 3 WRN 139 SC; ACCORD PARTY V. SARAKI (2009) 16 WRN 131 CA.**

Counsel further submitted that PW2 in his evidence under cross-examination had exposed himself as not having conducted any investigation in this matter when he failed to tell the court the total amount so far paid by the Defendant to defray the value of the cheque that went dud on presentation and there was no evidence from actual Complainant, First Bank to confirm or corroborate the evidence of PW2. This has undoubtedly created further doubt in the case of the prosecution which must be resolved in favour of the Defendant.

Counsel submitted that the evidence of the PW1 when he tendered Exhibit "A" further created doubts in the case of the prosecution. The PW1 in his evidence told the court, that the 1<sup>st</sup> Defendant is complying with the terms and conditions of the facility he obtained from them. He said in Exhibit "A" to wit:

*"the customer in the last year has been co-operative in repaying back the facility even though we have enjoined them to increase the payment sums. His usual payment have been in range of hundreds of thousands of Naira every other month. On the basis of the promise made, we are withdrawing our complaint and do not want this case to continue."*

He submitted that Exhibit "A" and the evidence of PW1, a staff of the actual Complainant has further cast serious doubt on the case of the prosecution because it was based on Exhibit "B", a petition written to EFCC by the agent of the Complainant (First Bank) that prompted the whole matter against the Defendants.

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Counsel finally submitted that despite the evidence of PW1, a staff of First Bank, the nominal Complainant to the effect that they want the matter against the Defendants to be withdrawn that the Prosecution has portrayed themselves more as a persecutor than prosecutor.

Prosecution counsel **F. O. Dibang Esq.** filed a written address dated and filed on 25/04/2011. Counsel raised a sole issue for determination:

**"Whether the Prosecution has proved its case beyond reasonable doubt by the quantum of evidence adduced."**

Counsel submitted that Section 1(i) of the Dishonoured Cheques Offences Act, Cap D11, Laws of the Federation of Nigeria, 2004, provides as follows:

1(i) any person who-

- a. Obtains or induces the delivery of anything capable of being stolen either to himself or to any other person OR
- b. Obtain credit for himself or any other person, by means of a cheque that when presented for payment not later than three months from the date the cheque is dishonoured on the ground that no funds or insufficient funds were standing in the credit of the drawer of the cheque in the bank on which the cheque was drawn, shall be guilty of an offence on conviction
  - i. In the case of an individual be sentenced to imprisonment for two years without the option of a fine and
  - ii. In the case of a corporate body be sentenced to a fine of not less than ₦5,000,000.00

That to establish the offence of issuance of dud cheque, the prosecution must prove the following ingredients,

- a) That the accused person obtained credit by himself
- b) That the cheque was presented within three months of the date thereon
- c) That on presentation, the cheque was dishonoured on the ground that there were no sufficient funds to the credit of the drawer of the cheque in the bank on which the cheque was drawn. He cited the case of **ABEKE V. STATE (2007) 2 NWLR (PT. 1040) 413 at 436.**

Counsel submitted that Exhibit "C1-C2" which forms part of document DW1 issued to the nominal Complainant were attached to Exhibit "A", the petition.

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That from the evidence of PW2, that letters were sent to Diamond Bank issued to (CAM Recovery Account) of First Bank in the name of the 2<sup>nd</sup> Defendant to confirm or ascertain if the cheques were presented within three months and the reason the cheques were returned unpaid. He stated that these pieces of evidence were never challenged or contradicted by the defence and are deemed to be admitted. He cited the case of **BABALOLA V. STATE (1989) NWLR (pt. 115) 264 at 281.**

Counsel submitted that PW2 also pointed out the pages where the cheque No. 06694603 dated 15/11/2017 with the sum of Three Million Naira and the second cheque with No. 06694601 dated 30/10/2017 showing the sum of Two Million Naira, issued by the 1<sup>st</sup> Defendant in the name of the 2<sup>nd</sup> Defendant in favour of CAM Recovery Account, First Bank Plc were presented and were returned unpaid and which was within three months as required by law. He cited the case of **UBA V. CHIMEAZE (2014) 9 NWLR (PT. 1411) 166 at 193.**

Counsel to the EFCC submitted that the cheques were tendered on 16<sup>th</sup> November, 2017 and the balance in the said account was ₦34,800.94. In the 2<sup>nd</sup> Defendant's account at the time the 1<sup>st</sup> Defendant issued the cheque, the sum of Three Hundred and Twenty-Five kobo was in the account.

Counsel further submitted that upon a careful perusal of the 2<sup>nd</sup> Defendant's statement of account recovered from Diamond Bank Plc, there is nowhere in the Exhibits "D1-D49" that showed any money equivalent to the sum of Five Million Naira or any amount to the value of the cheques that entered the account within three months, or thereafter, as falsely presented by the 1<sup>st</sup> Defendant in this case, or assuming the Defendant was expecting any money under reasonable ground that the cheques issued would be honoured.

Counsel submitted that there was no money at the very material time when the 2 cheques were presented in the purported account of the 2<sup>nd</sup> Defendant. He submitted that Exhibits "H1-15", showing the letters from First Bank and bonds releasing the recovered money from the Defendants, were obtained in the course of investigation.

Counsel submitted that upon a careful perusal of the 2<sup>nd</sup> Defendant's statement of account recovered from Diamond Bank Plc, there is nowhere in the Exhibits "D1-D49" that showed any money equivalent to the sum of Five Million Naira or any amount to the value of the cheques that entered the account within three months, or thereafter, as falsely presented by the 1<sup>st</sup> Defendant in this case, or assuming the Defendant was expecting any money under reasonable ground that the cheques issued would be honoured.

Counsel submitted that the evidence confirms that the 2<sup>nd</sup> Defendant is an incorporated company limited by shares and the 1<sup>st</sup> Defendant (DW2) is the Managing Director of the 2<sup>nd</sup> Defendant. He cited Section 65 of the Companies and Allied Matters Act, as amended, 2020. Also the cases of **UBA V. CHIMEAZE (2014) 9 NWLR (PT. 1411) 166 at 193.**

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He submitted that upon a careful perusal of the 2<sup>nd</sup> Defendant's statement of account recovered from Diamond Bank Plc, there is nowhere in the Exhibits "D1-D49" that showed any money equivalent to the sum of Five Million Naira or any amount to the value of the cheques that entered the account within three months, or thereafter, as falsely presented by the 1<sup>st</sup> Defendant in this case, or assuming the Defendant was expecting any money under reasonable ground that the cheques issued would be honoured.



ADENIYI V. STATE (1991) 4 NWLR (pt. 234) pg. 246.; OYEBANJI V. STATE (2015) 14 NWLR (PT.1479) at 292.

Counsel submitted that on counts 1 and 2, that the prosecution has proved the charge against the Defendant beyond reasonable doubt.

On reply on points of law, counsel to the Defendant cited Section 89(h) and Section 90(c) of the Evidence Act as applicable and finally submitted that the court has the power before judgment to expunge documents to wit: Exhibits "D1-49" (Certification of identification and statement of account and other bank document), even though they were unchallenged and uncontradicted by the defence as they failed to comply with Section 84 (1) & (2), Section 89(4) and 90(e) i-iv of the Evidence Act as amended. He cited the case of JAMB V. NKIRUKA REP (2008) 4 WRN PAGE 93 at 96 Ratio 6.

### CONCLUSION

Having gone through the evidence, written addresses of both counsel, reply on points of law and exhibits, a sole issue begs for determination:

**"Whether the prosecution has proved its case against the Defendants beyond reasonable doubt"**

The Defendant was charged on a 2-count charge under Sections 1(a) and (b) of the Dishonoured Cheque Offences Act and it is the duty of the prosecution to prove its case beyond reasonable doubt. The burden of proof of guilt of the Defendant lies entirely on the prosecution and does not shift and failure to discharge the burden entitles the Defendant to a discharge and acquittal. See the cases of AGBO V. STATE (2006) NWLR (PT. 977) 545; IKEMSON V. STATE (1989) NWLR (PT. 110) 453.

The ingredient of issuance of dishonoured cheque is:  
i. Presentation for payment not later than three months after the date on the cheque and dishonoured on the ground of no funds or insufficient funds.

See Section 1(i)(b) of Dishonoured Cheques (Offences) Act 2004. See also STATE V. OSASONA (2019) LPELR - 48492 (CA).

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DATE

*Handwritten signature and date: 04/07/23*



On the ingredient of presentation for payment not later than three months after the date of the cheque and dishonoured on the grounds of no funds or insufficient fund, a clear look at Exhibit "C2" (CTC of cheques) Diamond Bank Plc cheques dated 30/10/17 and 15/11/17 shows that the cheques were presented on the above date but PW1 a representative of First Bank of Nigeria Plc, the nominal Complainant never stated in evidence whether the above cheques were presented for payment within three months from the dates of the cheques to be able to establish or meet the ingredients of proof of what amounts to a DISHONoured CHEQUE in the eyes of the law and this lacuna or gap inures in favour of the Defendant's case..

The Defendant stated under cross-examination that he had a verbal arrangement with the bank to communicate with him (DW1) before presenting the cheques. Also in Exhibit "G", statement of the Defendant, he stated *"then I gave first two cheques that went through and cleared, the last two cheques I gave was postdated with a letter to First Bank. When it got the cheque to be cleared, I told First Bank to hold on to the cheque and not to present it, but the bank went on to present the cheque, so the cheque could not get cleared by my bank."*

PW1 who is the nominal Complainant did say that though the petition to EFCC was from the Bank's lawyer but that was not the mind of the bank, the nominal complainant. The petition Exhibit "A" reads,

*...that he had a verbal arrangement with the bank to communicate with him (DW1) before presenting the cheques. Also in Exhibit "G", statement of the Defendant, he stated "then I gave first two cheques that went through and cleared, the last two cheques I gave was postdated with a letter to First Bank. When it got the cheque to be cleared, I told First Bank to hold on to the cheque and not to present it, but the bank went on to present the cheque, so the cheque could not get cleared by my bank."*

PW1 who is the nominal Complainant did say that though the petition to EFCC was from the Bank's lawyer but that was not the mind of the bank, the nominal complainant.

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DATE: *24/11/23*



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ATTORNEYS AT LAW & ARBITRATORS  
NOTARY PUBLIC

7<sup>th</sup> March 2018

Head of Operations  
Economic and Financial Crimes Commission  
Benin Zonal Office  
Benin City  
Edo

*H/BF*  
*Investigate*  
*State*  
*republic*  
*12/3/18*

*Team B*  
*File PLS of 4/4/18*

ECONOMIC & FINANCIAL CRIMES COMMISSION  
BENIN ZONAL OFFICE  
**RECEIVED**  
DATE: 15/3/18 SIGN: [Signature]

Dear Sir,

RE: PETITION AGAINST OKIPAS NIGERIA LIMITED, PACHIKATA GLOBAL NIGERIA LTD, MR PASCHAL OKIRIKA FOR ISSUING DUD CHEQUES IN THE SUMS OF N3,000,000 (THREE MILLION NAIRA) AND N2,000,000 (TWO MILLION NAIRA) TO FIRST BANK OF NIGERIA LIMITED.

We are solicitors to First Bank of Nigeria Ltd (herein called "Our Client") on whose instructions we write you.

Our client granted banking facilities to Okipas Nigeria Limited and Pachikata Global Nigeria Ltd (the debtors) to augment their working capital. After protracted delays in repayments to accumulated sums on the loan facility, our client and the debtors finally agreed that waivers be given to the debtors to enable them liquidate the debts. In view of same our client granted concession to the debtors to pay the sums of N55,000,000 (fifty five million naira) as full and final payments of their indebtedness. The debtors were required to issue post-dated cheques to our client but failed to do so. Our client then instructed us to recover the debts from the debtors. In pursuance of our mandate we wrote demand notices to the debtors via our letter dated the 27<sup>th</sup> day of July 2017 and had meetings with Mr. Paschal Okirika, the Managing Director of the two debtor companies.

We demanded immediate repayment of the debts which had become due after which Mr. Paschal Okirika paid N300,000.00 (three hundred thousand naira). Mr. Paschal Okirika also through letter dated the 27<sup>th</sup> day of July 2017 forwarded two post-dated cheques to W.I. Diamond Bank. The cheque number 006214798 dated the 10<sup>th</sup> day of October 2017 in the sum of N2,000,000 (two million naira) and cheque number 006214802 dated the 10<sup>th</sup> day of November 2017 in the sum of N3,000,000 (three million naira). On presentation of the cheques the BDC cheques bounced and returned unpaid. (Copies of the letter dated 27<sup>th</sup> July 2017 and dud cheques are attached for ease of reference). We have since met with Mr. Paschal Okirika to have him remedy his wrongs without success.

We have tried calling Mr. Paschal Okirika on his telephone number 08037741527 but he would not give us favourable response since this year (2018), he has stopped answering our calls and has become evasive. The acts of Okipas Nigeria Ltd and Pachikata Global Nigeria Ltd its Managing Director Mr. Paschal Okirika amounting to economic crime and fraud. Our client is exposed to grave financial danger as the loan remains unpaid till date. We therefore apply to your office to intervene in this matter by apprehending the management of Okipas Nigeria Ltd, Pachikata Global Nigeria Ltd and Mr. Paschal Okirika with the intent of securing their and their assets.

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DATE: [Signature]



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stolen money. We implore you to use the resources of your office to bring these perpetrators of economic and financial crime to justice.

We look forward to your prompt and decisive action on our petition.

Thank you.

Yours faithfully,

  
BOB C.O. IJOMA  
BOB CJ & CO.



While PW2 was giving his evidence-in-chief he stated that Exhibit "D", "D2" and "D11" respectively are relevant pages indicating response from Diamond Bank that prove the issuance of dud cheques. That cheques were unpaid for lack of funds in Defendant's account. In response to the above, DW1 stated that he gave a postdated cheque. The meaning and nature of postdated cheque was given in the case of **LAWAL V. QUEEN (1963) LPELR - 1547 (SC)** where the court held that,

*"when, however a person has an account at the bank on which he issues a postdated cheque for more than he has in his account, his cheque does not mean that he has the money at the bank but*

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... he stated that Exhibit "D", "D2" and "D11" respectively are relevant pages indicating response from Diamond Bank that prove the issuance of dud cheques. That cheques were unpaid for lack of funds in Defendant's account. In response to the above, DW1 stated that he gave a postdated cheque. The meaning and nature of postdated cheque was given in the case of **LAWAL V. QUEEN (1963) LPELR - 1547 (SC)** where the court held that,



**that it will be paid on the date on which it is presented" per  
BAIRAMAIN JSC.**

Under cross-examination, DW1 stated that he had an arrangement with First Bank to communicate with him (DW1) before presenting his cheques. To corroborate the above, PW1, a staff of first Bank who is the nominal Complainant, stated that they are not in support of this case, that the Defendant is a customer that has been cooperating with his bank and that he is pleading that the matter be discontinued.

I am also a bit perplexed that Exhibits "D1-14" and particularly Exhibit "C3(ii)" shows N5m paid to settle the N3m and N2m purported dud cheques Exhibit "C1" & "C2" of N3m and N2m which by their dates counting from the N5m redeemable payment covered 3 months and 2 days and 3 months and 17 days and paid 16/2/18 and this case was filed 3/8/2021 which makes me wonder if it is really the matter of the dud cheques that EFCC was after or another agenda amounting to persecution not prosecution. The bank has not denied that the cheques were postdated, so it is obvious that a date unilaterally chosen by the bank forcefully to redeem 2 cheques which obviously become dud cannot be a legal date to start counting a 3-month redeemable timeline and therefore this case is an exception to the case in LAWAL V QUEEN SUPRA by Bairamain jsc and the Defendant would not be liable.

Yet with all that persecution, the Defendant still paid and redeemed the purported dud cheques within 3 months and few days. Why then was EFCC after the dud cheque issue passionately? Is it really efficiency and the diligence and commitment by EFCC or failure of the Defendant from compromising any further as it appears but I want to think otherwise that some officers were benefitting from commission for their roles as recovery agent, for the nominal Complainant directly or through their representative lawyer/debt recovery agent. Even when this court hinted via ADR COURT INTERVENTION that being a matter between the bank and her client and to allow for future business relationship, ADR should be explored, EFCC declined the hint but the nominal Complainant and the defence succeeded in reconciling their financial misunderstanding and even the evidence of PW1, a staff of 1<sup>st</sup> bank confirms their business relationship has been restored. Although the 1<sup>st</sup> Defendant is the alter ego to the 2<sup>nd</sup> Defendant, a limited liability company, no evidence was led against the 2<sup>nd</sup> Defendant directly but only through 1<sup>st</sup> Defendant and EFCC counsel did not sufficiently

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address court on it but I would rely on the failed evidence led against the 1<sup>st</sup> Defendant to exonerate the 2<sup>nd</sup> Defendant accordingly.

In the light of the above, the sole issue raised is resolved in favour of the two Defendants. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are hereby found not guilty of Count 1 and Count 2 and they are accordingly discharged and acquitted.

  
ANTHONY OLOTU AKPOVI  
JUDGE  
05/12/2022

Certification A500-00  
  
4-7-2023

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4-7-2023

  
CERTIFIED TRUE COPY  
HENRY E. OKOTIE  
ASST DIRECTOR OF COURTS  
DATE 04/07/23