IN THE HIGH COURT OF JUSTICE: DELTA STATE OF NIGERIA
IN THE EFFURUN JUDICIAL DIVISION
HOLDEN AT EFFURUN
BEFORE HIS LORDSHIP HON. JUSTICE MICHAEL NDUKA OBI, (JUDGE)
ON THURSDAY, THE 11TH DAY OF JULY, 2024.

BETWEEN: **SUIT NO.: EHC/26C/2021**

THE STATE..COMPLAINANT

=AND=

AJAYI IZIOMA...DEFENDANT

JUDGMENT

Ajayi Izioma stands charged with the offence of Issuance of dishonoured cheque punishable under **Section 1(1)(b) of the Dishonoured Cheques (Offences) Act CAP D11, LFN 2004**. He is alleged to have issued a cheque in the name of his company, Ajas Max International Services Limited in favour of Christar Oil and Gas Services Limited in the sum of N3,125,000, (Three Million, One Hundred and Twenty Five Thousand Naira) which cheque was dishonoured on presentation due to insufficient fund standing to his credit.

He was arraigned on the 1st of February 2021 and pleaded not guilty to one count charge. In proof of the case against him, the Prosecution called five witnesses and closed their case. The Defendant testified, he called no witness and closed his case.

Counsel for the Defendant filed his Written Address dated 19th of February 2024, while Prosecuting Counsel filed an Address dated 18th of March 2024. The said Addresses were adopted on the 2nd of May 2024.

The starting point in the determination of this suit would invariably be a critical appraisal of the provisions of **Sections 1(1)(b)(i) and 2(a) & (b) of** the **Dishonoured Cheques (Offences) Act CAP D11, LFN 2004,** which state as follows:

1(1) 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) obtains credit for himself or any other person, by means of a cheque that, when presented for payment not later than three months after the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn, shall be guilty of an offence and on conviction shall- (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 body corporate, be sentenced to a fine of not less than N5,000. (2) For the purposes of subsection (1) of this section- (a) the reference to anything capable of being stolen shall be deemed to include a reference to money and every other description or property, things in action and other intangible property; (b) a person who draws a cheque which is dishonoured on the ground stated in the subsection and which was issued in settlement or purported settlement of any obligation under an enforceable contract entered into between the drawer of the cheque and the person to whom the cheque was issued, shall be deemed to have obtained credit for himself by means of the cheque.

It is glaring from the above that for the Prosecution to succeed in a charge under **Section 1 (1) (b)(i) of the Dishonoured Cheques (Offences) Act CAP D11, LFN 2004,** the following ingredients must be proved: (1). That the Defendant obtained credit for himself (2). That the Defendant issued a cheque to the complainant. (3). That upon presentation, the cheque was dishonoured on the ground that insufficient funds was standing to the credit of the Defendant. (4). That the cheque was presented not later than three months from the date of issuance.

I shall treat the above ingredients seriatim to find out if the Prosecution was able to prove the charge against the Defendant.

Did the Defendant obtain credit for himself or any other person?.

The case of the Prosecution particularly the evidence of PW1 (Kenneth Iyere), is that he was approached by PW2 (Chinedu Udoh), who was acting on behalf of the Defendant to purchase diesel. He supplied the Defendant with a truck load of diesel worth at N3,125,000 (Three Million, One Hundred and Twenty Five Thousand Naira). PW2 corroborated this evidence. On his part, Defendant admitted in paragraph 4 of his Written Statement on Oath that PW2 provided 25,000 (Twenty Five Thousand) liters of diesel which was supplied to one Jude Akhigbe. He also admitted in paragraph 5 of his written statement on oath that PW2 told him that the said diesel he supplied to Jude Akhigbe was from PW1. The Defendant was clear in his evidence that he had a contract to supply the certain Jude Akhigbe with diesel and he sourced from several sources to meet the demands of Jude Akhigbe. PW1 is entitled to payment for the diesel he supplied. PW1 received a cheque in the name of his company from the Defendant's company, in settlement of the obligation owed for the supply of diesel made at the behest of Defendant. The Defendant has obtained credit from the company of PW1 for himself. I am satisfied that the Prosecution has proved this ingredient.
Then the next ingredient and that is whether Defendant issued a cheque to the complainant.

The Defendant admits that he issued a cheque but the said cheque was obtained from him under duress. This was what he said in paragraph 7 of his Written Statement on Oath:

7. Six months later, Mr. George came to my house with some thugs at about 2 am to request a post-dated cheque for the 25,000 liters of diesel I supplied to Mr. Jude Akhigbe. At this time my wife was about 7 months pregnant and then my wife pleaded to me to issue them the cheque because she was afraid I was going to be hurt. That said Mr George promised that he would not present the cheque until I ask him to do so after payment has been made to me for the 25,000 liters.

As can be gleaned from his testimony, he issued the cheque under duress, while the evidence of PW1 and PW2 is that he issued the said cheque which was tendered as exhibit P1 willingly, and that Defendant pleaded for PW1 to accept the cheque. I have weighed the evidence of both sides and it is rather curious that the Defendant did not report the visit of armed men to his house at 2 am on a certain day to the Police. Nothing to show that the Defendant reported to his bank that he issued a cheque under duress and directed them to stop the cheque. What is more, it is the submission of Counsel for the Defendant that:

> *"It is our submission that the Defendant issued the cheque in anticipation that before the said date he would have been paid by the company OPI International Nigeria Limited"*

Counsel for the Defendant submitted further that:

> *"The Defendant tendered exhibits D1, D2, and D3 to prove that he was expecting money before he issued the cheque and he is still expecting money from the supply he did to OPI International Nigeria Limited"*

Nowhere was it argued that the cheque was issued at gunpoint. For the above reasons, I do not believe the Defendant's story that he issued the cheque at gunpoint, without an intention to issue the cheque. I believe the evidence of PW1 and PW2 that the cheque was issued willingly to settle the obligation for the supply of the diesel made by PW1's company. The position this Court has taken is fortified by the evidence of the Defendant that he was expecting payment for the supply of diesel he made to Jude Akhigbe. I am of the firm view that the Prosecution has proved beyond reasonable doubt that Defendant issued exhibit P1. The said exhibit P1 was issued for credit and in the settlement of a contractual obligation. The Cheque (exhibit P1) issued by the Defendant is an Ajas Max International Services Limited Cheque not a cheque in Defendant's name. It was on this premise that the Counsel for Defendant submitted that Defendant is a distinct person from the owner of the Diamond Bank Account number 0039780728, owned by Ajas Max International Services Limited. The pertinent question is whether the fact that the cheque in question belongs to a company exonerates the Defendant, whom this Court has found to have issued the cheque from any criminal liability.

Evidence of PW5 the banker, is that the Defendant is the alter ego/Managing Director of Ajas Max International Services Limited and the sole signatory to the account of Ajas Max International Services Limited domiciled now with Access Bank, where PW5 works. This evidence was not challenged. It was the testimony of PW5 that Defendant issued exhibit P1 to Christar Oil & Gas Services Limited. The fact already established is that Defendant issued exhibit P1, he is the sole signatory to the account and thus had control over the account. In **OYELERE V. FRN (2020) LPELR-52647(CA) (Pp. 17 paras. A)** the Court of Appeal held that *a Managing Director or Chief Executive Officer who signs and issues* *a dishonoured cheque on behalf of a company will be held liable for the offence of issuance of a dud cheque.* In **OYEBANJI V. STATE (2015) 14 NWLR (pt. 1496) 270** it was established that a court can unveil the corporate veil or remove the corporate mask to find if the Defendant is responsible for the issuance of the cheque. As stated earlier, evidence of PW5 which is not challenged leaves no one in doubt that the Defendant was behind the corporate mask of Ajas Max International Services Limited.

The Defendant on the strength of the above authorities and the findings of this Court cannot be exonerated from criminal liability having been established that he issued exhibit P1.

On presentation, was the cheque dishonoured on the ground that insufficient funds were standing to the credit of Defendant?.

PW5 was clear in his evidence when he testified that:

> *"The said cheque upon being processed by Guaranty Trust Bank whose account the sum contained in the cheque was to be paid into, it was discovered that there is no sufficient fund in the account of the drawer hence same was returned without the tag "Drawer Attention Required" but duly stamped by Guaranty Trust Bank to indicate the process of payment was initialized".*

Exhibit P5 was also clear that at the material time, there were no sufficient funds in the account. Evidence of PW5 and exhibit P5 leaves no one in doubt that at the time exhibit P1 was presented for clearing, there were insufficient funds in the account. Once the bank has presented the statement and it confirms the position of the account at the time of presentation, nothing more to the contrary can be alluded to.

I therefore find for the Prosecution that they have established this ingredient.

Now to the last ingredient as to whether the cheque was presented within three months from the date of issuance. I have looked at exhibit P1 and the date there is the 8th of June 2015. At the back of exhibit P1, it is evident that the teller at GT Bank Warri, received it on the 15th of June 2015 and GT Bank presented the cheque for clearing on the 16th of June 2015. The submission of Counsel to the Defendant that the prosecution was not also able to prove that the Cheque was presented within three months of issuance is without basis.

Counsel to the Defendant submitted that exhibit P2, the extra-judicial statement the Defendant made to the Police is not admissible in law as the procedure adopted in taking the statement did not comply with **Section 17 (1) (2) of the Delta State Administration of Criminal Justice Law 2017**. With due respect to Learned Counsel for the Defendant, exhibit P2 was made on the 27th of September 2015, while the said law came into force on the 15th of March 2017. What is more, there was no objection as to admissibility at the time the exhibit was tendered. There is nowhere in the evidence in chief of the Defendant where he denied making exhibit P2. Substantially, the contents of exhibit P2 are the same as his evidence in Court. The said submission lacks merit.

The facts before me are clear that Defendant had issued a cheque in settlement of an obligation arising under an enforceable contract, which said cheque was presented, within three months and was dishonoured when presented. I am of the firm conviction that the guilt of the Defendant has been established beyond reasonable doubt. I accordingly find the Defendant guilty of one count charge and he is hereby convicted for same.

SENTENCE:

The Defendant is hereby sentenced to imprisonment for one year. He shall pay Christar Oil and Gas Services Limited the sum of N3,125,000 within six months from the day he finish serving his term. These shall be the orders of the court.

HON. JUSTICE MICHAEL NDUKA OBI
(JUDGE)
11th July, 2024

REPRESENTATION:

- J.O. Elo (Mrs), Asst. Director for the State.
- E.C. Uduma Esq., for the Defendant.