

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 22 WUSE ZONE 2ABUJA  
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU  
THIS 6TH DAY OF MARCH, 2020  
SUIT NO: CR/27/2014  
BETWEEN:**

**THE FEDERAL REPUBLIC OF NIGERIA -----complainant  
AND**

- 1. MRS. OLUREMI OLAJUMOKE MORENIKE**
- 2. PHONECHOICE SERVICES LIMITED -----ACCUSED PERSONS**

*S. D. AKINSANYA for the prosecution.*

*JAMES ONOJA for the defendants.*

*Defendants in Court and Speaks English Language.*

**JUDGEMENT**

On the 12<sup>th</sup> of February 2015, the defendants were charged with the following offences:

Count 1

That you **Mrs. Oluremi Olajumoke Morenike** being the Managing Director of Phonechoice Services Limited and **Phonechoice Services Limited** (sic) sometimes in August, 2012, in Abuja within the Jurisdiction of this Honourable court with intent to defrauded (sic) obtained the sum of **N8,040,000.00 (Eight Million Forty Thousand Naira)** from **Chukwuma Nwafor** with the false pretence that a shop No: **Suit E B15**, located at **Sheriff Plaza, Plot 739 Aminu Kano Crescent, Wuse2, Abuja** has been Sub-leased to him from 31<sup>st</sup> day of January, 2013 to 31<sup>st</sup> day of January, 2016 and thereby committed an offence contrary to Section 1 (1), (b) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1 (3) of the same Act, 2006

## Count 2

That you **Mrs. Oluremi Olajumoke Morenike** being the Managing Director of Phonechoice Services Limited and **Phonechoice Services Limited** on or about the 25<sup>th</sup> of January, 2013, in Abuja within the Jurisdiction of this Honourable court issued to **C and H Collection Limited** a Skye Bank Cheque **No:10000166** for the sum of **N4,040,000.00 (Four Million Forty Thousand Naira)** which when presented for payment, within three months of issuance, was dishonoured due to insufficient funds in your account and thereby committed an contrary to Section 1 (1), (b) of the Dishonoured cheques offences Act Cap 102 Laws of the Federation of Nigeria and Punishable under Section 1 (1) (b) (i) and (ii) of the same Act.

## Count 3

That you **Mrs. Oluremi Olajumoke Morenike** being the Managing Director of Phonechoice Services Limited and **Phonechoice Services Limited** on or about the 15<sup>th</sup> of February, 2013, in Abuja within the Jurisdiction of this Honourable court issued to **C and H Collection Limited** a Skye Bank Cheque **No:10000167** for the sum of **N4,000,000.00 (Four Million Naira)** which when presented for payment, within three months of issuance, was dishonoured due to insufficient funds in your account and thereby committed an contrary to Section 1 (1), (b) of the Dishonoured cheques offences Act Cap 102 Laws of the Federation of Nigeria and Punishable under Section 1 (1) (b) (i) and (ii) of the same Act.

## Count 4

That you **Mrs. Oluremi Olajumoke Morenike** being the Managing Director of Phonechoice Services Limited and **Phonechoice Services Limited** on or about the 6<sup>th</sup> of February, 2013, in Abuja within the Jurisdiction of this Honourable court issued to C. and H Collection Limited a Skye Bank Cheque **No:10000169** for the sum of **N3,000,000.00 (Three Million Naira)** which when presented for payment, within three months of issuance, was dishonoured due to insufficient funds in your account and thereby committed an contrary to Section 1 (1), (b) of the Dishonoured cheques offences Act Cap 102 Laws of the Federation of Nigeria and Punishable under Section 1 (1) (b) (i) and (ii) of the same Act.

Count 5

That you **Mrs. Oluremi Olajumoke Morenike** being the Managing Director of Phonechoice Services Limited and **Phonechoice Services Limited** on or about the 19<sup>th</sup> of April, 2013, in Abuja within the Jurisdiction of this Honourable court issued to **Nwafor Chukwuma** a Skye Bank Cheque **No:10000143** for the sum of **N2,540,000.00 (Two Million Five Hundred and Forty Thousand Naira)** which when presented for payment, within three months of issuance, was dishonoured due to insufficient funds in your account and thereby committed an offence contrary to Section 1 (1), (b) of the Dishonoured cheques offences Act Cap 102 Laws of the Federation of Nigeria and Punishable under Section 1 (1) (b) (i) and (ii) of the same Act.

Count 6

That you **Mrs. Oluremi Olajumoke Morenike** being the Managing Director of Phonechoice Services Limited and **Phonechoice Services Limited** on or about the 15<sup>th</sup> of March, 2013, in Abuja within the Jurisdiction of this Honourable court issued to **Nwafor Chukwuma** a Skye Bank Cheque **No:10000140** for the sum of **N2,000,000.00 (Two Million Naira)** which when presented for payment, within three months of issuance, was dishonoured due to insufficient funds in your account and thereby committed an offence contrary to Section 1 (1), (b) of the Dishonoured cheques offences Act Cap 102 Laws of the Federation of Nigeria and Punishable under Section 1 (1) (b) (i) and (ii) of the same Act.

They pleaded not guilty to the charge. Trial commenced on the 19<sup>th</sup> May, 2015. In proof of the prosecution's case three witnesses testified as follows:

PW1 is the Nominal Complainant. He informed the court of the following facts;

That he paid the sum of **₦7,800,000 (Seven Million Eight Hundred Thousand Naira)** to the defendant for a sub-lease of the shop occupied by the defendant at Plot 739, Suite B15, Sheriff Plaza, Wuse II. He was introduced to the defendant by some agents. He paid the agents **₦200,000 (Two Hundred Thousand Naira)** as

agency fee. The defendant promised that he would give-up possession of the shop to him on or before 31<sup>st</sup> December, 2013 for a bigger place. When he later went to the shop, he met the defendant renovating the shop. She informed him that she had problem where she was supposed to pack and asked him to wait for another six (6) months.

He asked one of the agents that introduced him to the defendant and he was advised to take his money back. They both agreed that the defendant was going to refund all the money including the C. O. T. totaling about **₦8,040,000 (Eight Million and Forty Thousand Naira)**. The money was to be paid in two installments of **₦4,040,000 (Four Million and Forty Thousand Naira)** and on the 25/1/13 in favour of his company C & H Collectables and the balance of **₦4,000,000 (Four Million Naira)** on 15/2/13.

He lodged the first cheque, it was returned two days later. He asked the defendant who informed him that the money she was expecting did not come into the account that he should wait as she was going to lodge money into the account. That as for the second cheque the account officer also called him that the cheque of **₦3,000,000 (Three Million Naira)** was returned on the 6<sup>th</sup> of February, 2013. The defendant did not pay him until her husband went and deposited the sum of **₦3,500,000 (Three Million Five Hundred Thousand Naira)** into his account.

After waiting for the defendant and she refused to pay, he went and reported to the Police. At the Police station the parties entered into an agreement. The defendant later paid **₦500,000 (Five Hundred Thousand Naira)**. After going to the

Police station for a long time, he became tired and wrote the EFCC through his lawyer. At the EFCC their statement were taken.

The PW1 identified the sub-lease agreement and the cheque issued by the defendant in favour of his company. The cheques were admitted as Exhibit A1-A5, the sub-lease agreement as Exhibit A6, the complaint from his lawyer Exhibit A7 and A8 respectively. And the statement of the parties Exhibit A9 and A10 respectively.

Under cross-examination the witness testified that the agents met him that they have a shop to let they did not tell him that they are agents to the accused person. He paid the rent through transfer and by cash. He did not give the defendant time to sort herself out because he had his own agreement and he met her renovating the shop. To a question he answered that he was not a prophet to have known that if he had given her time, he would have occupied the shop. When he reported to the Police the defendant was invited and she wrote an undertaking on how she was going to make the refunds. The Police later called him that she came with **₦500,000 (Five Hundred Thousand Naira)**.

To another question he denied that the defendants was compelled to issue the cheques at the Police station at his instance. That the cheques were issued before they went to the Police station. He also stated that he went to the residence of the defendant with his loan agreement from his bank and she also came with her husband to his shop. He denied going to the house of the defendant and blocked her from going out. He confirmed paying the agents **₦200,000 (Two Hundred Thousand Naira)**. He admitted that the whole essence of writing petition to the EFCC was because, the Police were unable to recover his money and the dude

cheques he took to the EFCC. The witness closed his cross-examination on this note. There was no re-examination.

PW2 is Peter Danlup, an operative of the EFCC. His team investigated the petition written on behalf of the Nominal Complainant by the Firm of **Bisi Olashola & Co.** the defendant was formally invited on the 20<sup>th</sup> of July 2013. She reported on the 14<sup>th</sup> of August, 2013 to respond to the allegations contained in the petition. Her statement was taken in the presence of the team members. She was released on bail same day. He wrote a letter to the Corporate Affairs Commission about the status of the defendant and the Nominal Complainant in their companies. They were both confirmed directors in their respective companies. The true copies of the cheques issued to the Nominal Complainant by the defendant were retrieved by the investigators. Three of the cheques were issued in the Nominal Complainant's company account, while the other two were issued in his personal name. The statement of account of the defendant was admitted as Exhibit A11, Statements of the accused person dated 14<sup>th</sup> and 15<sup>th</sup> of April 2013 were admitted as Exhibit A12, A13 and A14 respectively. Statements of the Investigating Police Officer admitted as Exhibit 15, Report of Investigation Activities dated 2/8/2013 admitted as Exhibit 16.

Under cross-examination, the witness testified that he duplicated the case file and forwarded it to his legal department. That the complainant told them that the case had earlier been investigated by the Police. To a question, he said he was not aware that the Nominal Complainant attempted to assault the accused person. He confirmed that he gave her purported cheque to her exhibit keeper. He however did not know whether they were tendered through the Exhibit keeper.

He admitted that all documents that were obtained during investigation were kept with the team but the cheque being an instrument was kept with the exhibit keeper. The cross-examination ended with this note. He was not re-examined.

PW3 is Ayilara Abari. He is a staff of Skye Bank Plc and the Regional Compliance Manager for Abuja. He has been with the bank for almost 11 years. He testified that sometimes in 2013, the EFCC wrote seeking information on some transactions in the two accounts of the defendants. It is in respect of cheques issued on the account which were returned unpaid. This is because as at the time the cheques were presented, the accounts were not funded. They responded by printing out the customer's statement of account. He also issued a Certificate of Identification on the statement of account. He recognized the statement of account and the Identification letters which were admitted as Exhibits A17, A18 and A19 respectively. The witness was not cross-examined. And with the evidence of PW3, the prosecution closed its case.

## **DEFENCE**

The defendant opened her case on the 5<sup>th</sup> of March, 2018. She told the court she is the only director on the board of the 2<sup>nd</sup> defendant. That the Nominal Complainant was introduced to her by one of her neighbors at the Sheriff Plaza as someone who needed a shop space at the plaza. She told him of her intention to sub-let her shop space. The rent for the shop space was **₦7,500,000 (Seven Million Five Hundred Thousand Naira)** and was paid in three installments into her account. After the payments they agreed on when the Nominal Complainant would take possession. However she later discovered that where she was to move to was not completed. As a result she went to the office of the Nominal

Complainant at Garki to complain to him that she needed more time to give-up the shop. After about two weeks the Nominal Complainant called to ask if the shop would be ready as agreed, she said yes that it would be ready before that time. The Nominal Complainant came back to tell her that he was no longer interested in the shop and needed the money back. She pleaded with him and asked that she demarcate the shop for him to manage pending the time the shop she paid for would be ready. She demarcated the shop but the Nominal Complainant still insisted in collecting his money back. As a result of the instance of the Nominal Complainant she had to look for another person to come and rent the space so she can give him his money. That she could not find anybody to pay up to the amount the Nominal Complainant paid as rent.

She further stated that the Nominal Complainant called her on phone that he wanted to see her in his shop and that when coming she should come with her cheque book. She got to the Nominal Complainant's office around 8:00pm, she met a man there with the Nominal Complainant. The man introduced himself as a SARS officer. She was asked by this man if she came with her cheque book and she said yes. He said he was going to write cheque but she said even if she writes the cheque, there was no money in her account. The man told her he was not interested on whether she had money or not. That what made her wrote the cheque was because the man threaten that he had a silent pistol and if he finish her nobody would know. She wrote three cheques that night. The cheques were for Skye Bank. She also went along with **₦200,000 (Two Hundred Thousand Naira)** with which she begged them but he refused. That it's the cheques they needed. When she got home she called the Nominal Complainant but his phone was switched off. And in the morning of the date on the cheque she also called



the Nominal Complainant not to present the cheque because there is no money in the account. The Nominal Complainant told her that he was already at the gate of the bank that if he presents the cheque and it bounce he knows where her daughter is sewing, he would go there.

After about two weeks, she got a call from the Police headquarter in Area 11. There she explained what happened between her and the Nominal Complainant and was asked when she was going to pay; she did not promise anything because she was not doing anything. She kept on reporting until she was able to raise **₦500,000 (Five Hundred Thousand Naira)** from a microfinance. She deposited it at the Force Headquarter and was given another date to come back.

After about two months she heard a horn at her gate and as she was about to see who was at the gate, the Nominal Complainant rushed in with his vehicle and knocked her down. Her sister took her to a pharmacist in the estate and was advised to go and treat herself. She was also asked to go to Apo Police station to report the case. She went to Garki hospital where she was treated with her hand and leg badly injured. She later reported the incident at Apo Police station where the Nominal Complainant was invited. The case was charged to court but she was not fit to appear in court. She also went back to Area 11 Police station with the bandage and was asked to go until she was fit. Along the line she had to relocate to Ibadan however before she relocated, she got a call from the EFCC that there was a case against her. She also went there and narrated what happened. She was always reporting and subsequently she informed them that she was relocating to Ibadan. She furnished them with her address in Ibadan. She was also reporting to EFCC until one night she was called upon to report very early the

following morning. She told them she was sick but they insisted that she must come. She entered night bus and got to their office around 9:00am. They saw that she was very sick and was treated. After the treatment, she was informed that she would not be able to go back to Ibadan because they are charging her to court the following day and was kept in custody. She testified that apart from the **₦500,000 (Five Hundred Thousand Naira)** paid to the Police, she made an additional payment of **₦3,000,000 (Three Million Naira)** to the Nominal Complainant.

Under cross-examination she admitted collecting the sum of **₦7,000,000 (Seven Million Naira)** from the Nominal Complainant but did not give him the shop. She informed the Nominal Complainant on phone not to present the cheque. To a question she said the cheque was issued as a result of her indebtedness and duly signed by her. She is the only signatory to the account. She used the **₦7,000,000 (Seven Million Naira)** to get another space for her business. To another question, she said she did not refuse to sublet the shop to the Nominal Complainant. She called him to take some space before where she paid for was ready but he refused saying that he needed his money back. She further stated that the space she offered to the Nominal Complainant was inside the shop, though the agreement was to give him the shop. The cross-examination ended on this note. There was no re-examination. The Defence closed his case and parties were ordered to file and exchange written addresses.

The prosecution in its written address dated 14<sup>th</sup> July, 2018 formulated on issue for determination to wit; whether the prosecution has proved its case beyond all reasonable doubt against the accused as required by Section 138 of the Evidence

Act. The prosecution relied on the provision of Section 1 (i) (a) (b) of the Advance Fee Fraud and other Fraud Related Offences Act which provides as follows:

*“Notwithstanding anything contained in any other enactment or law, any person who by any false pretence and with intent to defraud;*

*(a) Obtain from any other person in Nigeria or in any other country for himself or any other person or*

*(b) Induces any person in Nigeria or any other country, to deliver to any person or property whether or not the property is obtained or its delivery is induced through the medium of a contract induced by false pretence commits an offence under this Act.”*

The prosecution highlighted the ingredients of the offence as:

1. That there was false pretence made by the defendant.
2. That the defendant obtained property as a result of the false pretence from the Nominal Complainant.
3. That the defendant did same with intent to defraud.

The prosecution submitted that the testimony of the PW1 that the defendant who occupied Suit B15 in her extra judicial statement assured him that she would be parking out of the Shop on or before 31<sup>st</sup> of December, 2013 was not contradicted by the Defence. Also not impeached is the evidence of PW1 that the defendant informed him two days after payment that where she was supposed to pack to was not ready and would be needing more time till April 2014. That also not contradicted was the testimony of PW1 that he demanded for the refund of his money when he discovered that the deponent was renovating the shop rather

than parking out. The prosecution also alluded to the fact that the defendants issued dud cheques to PW1 an act which he submitted as great liability offence. That the prosecution has proved beyond reasonable doubt of the offence of issuance of dud cheques and relied on the provision of Section A of the Acts which provides that any person who;

- a. Obtains or induces the delivery of anything capable of being stolen either to himself or to any other persons.
- b. Obtain 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 dishonored on the ground that no sufficient funds were standing to the credit of the drawer of the cheque in the bank in which the cheque was draw shall be guilty of an offence and In conviction shall;
  - (i) In the case of an individual be sentenced to imprisonment for two (2) years.
  - (ii) In the case of body corporate be sentenced to a fine of not less than **₦5,000.**

He further stated that the ingredients of the offence of issuance of dud cheque as:

1. That the defendant obtained credit for himself.
2. That the cheque was presented within three (3) months of issuance.
3. That the presentation of the cheque was dishonored on the ground that there was no sufficient fund standing in the credit of the drawer of the cheque in the account on which the cheque was drawn.

The prosecution relied on the evidence of PW1, PW2 and PW3 as proving that the cheques were presented for payment within three (3) months of issuance and that there was no sufficient money in the account of the defendant to meet the face value of the cheque. The defendant he submitted admitted under cross-examination that she had knowledge of the fact that she had no sufficient fund in her account when she issued the cheques and she had no plan to fund the said account.

The prosecution relied on the case of **ABEKE V STATE (2007) 151 LRCN**. The prosecution submitted that it is immaterial that the defendant claimed that the cheques were issued as collaterals. That the only Defence to a charge of issuance of dud cheque is a reasonable belief on the part of the drawer of the cheque that he had sufficient fund in his account as at the time she issued the cheque. That the Defence that the cheques were issued as collateral cannot avail the defendant.

Finally he concluded that the ingredients of the offences charged have been proved beyond reasonable doubt and urged the court to convict the defendant accordingly.

The defendant's Counsel before arguing the sole issue formulated for determination by the prosecution contended that the court cannot rely on the undated and unsigned charge of the complainant filed at the Registry of this court on the 3<sup>rd</sup> of November 2014. He submitted that a charge sheet must be signed so as to show the capacity of the person filing same. He relied on the opinion of J. A. Agaba in his book titled; Practical Approach to Criminal Litigation in Nigeria (Third Edition) at page 478 paragraph 7 where he stated thus;

***“It is mandatory that a charge sheet is signed. This is because the capacity in which a person is filing a charge is important.”***

He further relied on the case of **OKAFOR V STATE (1965) NWLR 20, 1976 1 AWLR PAT 1 @ PG 385, SUNDAY V STATE (2016) AFWLR PT. 849 @ PG 739 PAR C-D PER WAMBAI JCA, BELLO V SANDA (2012) 1 NWLR PT. 1281 @ PG 229**. The learned Defence Counsel argued that the effect of the undated and unsigned charge filed by the complainant against the accused person is akin to commencing an action with an invalid Writ of Summons and urged the court to hold that the charge preferred against the defendant by the complainant is the originating process in this suit. That the compilation of the foregoing is clearly and succinctly elucidated by the Court of Appeal in the case of **OYEWEPO V ARASIOLA (2014) AFWLR PT. 719 PER SANUSI JCA** where he elucidated as follows:

***“It is trite law that the failure to commence an action with a valid writ of summons goes to the root of the case and any Order emanating from such process is liable to be set aside as incompetent and a nullity.”***

He urged the court to strike out the charge filed by the complainant on 3<sup>rd</sup> November, 2014 as incompetent, null and void and consequently acquit and discharge the accused person.

To the main issue in determination, the Defence Counsel contended that the PW1 was not consistent in his testimony to the court. That Exhibit A9, the Nominal Complainant’s statement at the EFCC, he stated that he paid the defendant the sum of **₦8,040,000 (Eight Million and Forty Thousand Naira)** while in Exhibit A10, he claimed that he paid **₦7,500,000 (Seven Million Five Hundred Thousand Naira)** and that the accused person paid him a cumulative sum of **₦4,000,000**

**(Four Million Naira)** leaving a balance of ~~₦3,500,000~~ **(Three Million Five Hundred Thousand Naira)**. That the same Nominal Complainant in Exhibit A9 and A10 respectively sated that he paid the accused person's agent the sum of ~~₦500,000~~ **(Five Hundred Thousand Naira)** as agency fee but however in his Evidence in Chief he stated that he paid the agents ~~₦200,000~~ **(Two Hundred Thousand Naira)**. That the testimony of the PW1 id contradictory and cannot be relied on. He relied on the case of **M. S. C. EZENBA V S. O. IBENEME (2004) 14 NWLR PT. 894 PG 617 @ 684 PARA (2017) AFWLR PT. 904 PG 1173 PARA C-D.**

The Counsel to the defendant in further submitted that the complainant has not proved that the accused person had under false pretence with the intent to defraud, defrauded the Nominal Complainant of the alleged sum of ~~₦8,040,000~~ **(Eight Million and Forty Thousand Naira)**. That the accused persons were consistent in Exhibit A12 that when the shop was not ready, the 1<sup>st</sup> accused person offered to demarcate her shop and give a part of same to the Nominal Complainant to use pending when she would move to another shop. Then she further asked for more time to move out, a request which was refused by the Nominal Complainant. The learned Counsel also draw the attention of the court to Exhibit A12 where the 1<sup>st</sup> accused person stated that she called the Nominal Complainant to come and take over the shop but he refused and insisted on taking his money back. That this piece of evidence was not challenged by the complainant during cross-examination. The Counsel relied on the case of **EZEANYA V OKEKE (1995) 4 NWLR PT. 388 PG 168 PER IGUAH JSC** where the court held:

***“It is trite that where evidence given by a party to a proceeding was not challenged by the opponent party, who had the opportunity to do so, it is always open to the court seized of the matter to act on such unchallenged evidence before it.”***

Other authorities cited by the Counsel are **IKUONULA V ONIWAYA (1990) 4 NWLR (PT. 146) PG 624 PAR D-E PER KANU JSC, ODEBUNMI V ABDULLALU (1997) 2 NWLR PT. 489 PG 540 PAR A-B, GEORGE V FRN (2014) AFWLR PT 718 PG 898 PAR B-C PER MERITAKA**. He urged the court to hold that the prosecution have failed to prove the ingredient of the offence charged and discharge the defendants on count1.

On whether the defendants are guilty of the offence stated in Section 1 (i) (b) of the Dishonored Cheques Offences Act and submitted that the cardinal point upon which criminal justice is predicated is the actus reus and mens rea (intention coupled with physical action). That both must be established. The learned Counsel posed that can it be said that the 1<sup>st</sup> defendant had the intention to issue the Nominal Complainant Exhibit A1-A5 i.e. five (5) number Skye Bank Plc cheques cumulative totaling N8,040,000 (Eight Million and Forty Thousand Naira) when she knew she had no funds to cover the said amount? He submitted that she did not have the mens rea to do so and urged the court to so hold. The Defence Counsel argued that in Exhibit A12, the 1<sup>st</sup> defendant stated that she was threatened by the Nominal Complainant and his brother Aneyo who alleged that he works with the Police Special Anti Robbery Squad (SARS). That the 1<sup>st</sup> defendant also stated that on the same date that the Nominal Complainant presented one of the cheques (Exhibit A1-A5) she paid the sum of N3,500,000



(Three Million Five Hundred Thousand Naira) into her account which amount the Nominal Complainant confirmed recovering. That the 1<sup>st</sup> defendant also in her Evidence in Chief stated that after she was coerced into signing Exhibits A1-A5 in favour of the Nominal Complainant, when the date was drawing near for him to present the cheques, she called him not to present the cheques as she had no funds to cover the amount stated therein but the Nominal Complainant refused to accede to her request and proceeded to present the cheque with the intention of instigating prosecution against the 1<sup>st</sup> and 2<sup>nd</sup> defendant. He urged the court to note that none of these evidence was challenged by the complainant in cross-examination. That based on the foregoing it is clear that the defendants never had the intention to fraudulently issue the Nominal Complainant with Exhibit A1-A5 and urged the court to so hold and discharge and acquit the accused persons on count 2. And in the same light he urged the court to discharge the defendants of the offences in Count 3 – 6 of the undated and unsigned charge preferred against them.

I have carefully considered the testimonies and the documentary evidence of the witnesses to the parties. I will start by considering the effect of the unsigned and undated charge on the case of the prosecution. In my view the omission of the prosecution to sign and date the charge is a mere irregularity unless and until the defendant is able to show that the absence of the date and signature on the charge occasioned a miscarriage of justice to her. The charge has been read to her, in respect of offences known to law and she pleaded not guilty to the offences. She has also prepared her Defence to the charge and was not misled about the nature of the offences against her. In absence of any proof that the error, mistake misled the defendants, they cannot be heard or seen to complain

about the defect or omission in the charge. See the case of John V State (2019) LPELR 469 36 SC where the Supreme Court held:

“The important thing about the charge in a criminal case is that it must tell the accused person enough so that he may know the case alleged against him and prepare his Defence. See **OGBOMOR V STATE (1985) 1 NWLR PT. 2223** wherein Oputa JSC further explained that the fact that a charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charge was fulfilled in the particular case. The charge must not therefore have errors or defects which could mislead the accused. The emphasis is not on whether or not those defects, errors or omission could and did in fact mislead the Defence subject to let above a defect, error or omission which does not prejudice the Defence is no ground for questioning a conviction or charge for a known offence.” – Per Anjic JSC.

Flowing from the above, I hold that the objection of the Defence Counsel to the charge lacks merit and is discountenanced accordingly.

On whether there were inconsistencies or contradictions in the testimony of the PW1, particularly as it relates to the rent paid to the 1<sup>st</sup> defendant. In his examination in chief the PW1 testified that the rent was **₦2,600,000 (Two Million Six Hundred Thousand Naira)** per annum. He said and; ***‘I paid her ₦7,800,000 (Seven Million Eight Hundred Thousand Naira) for the rent. That she want to collect money for three years, then her agent I paid him ₦200,000 (Two Hundred Thousand Naira).’*** That after he discovered that the defendant was not going to give him the shop as agreed, he said; ***‘I asked if she was going to pay all the money including C. O. T totaling about ₦8,040,000 (Eight Million and Forty***

*Thousand Naira). We both agreed and she now for the cheques for me.'* This piece of evidence contradicts the assertion of the PW1 in his statement Exhibit A9 dated 29/07/2013 when he said; **'She then told me the amount she wanted that it was for three years, and a total sum of ₦8,040,000 (Eight Million and Forty Thousand Naira) which I paid her complete.'** The witness also contradicted himself in his statement dated 14/08/2013 Exhibit A10 wherein he said; 'I paid her the total amount of **₦7,500,000 (Seven Million Five Hundred Thousand Naira)** through bank transfer from my account No. 0015617414 C and H Collection Ltd. I paid **₦500,000 (Five Hundred Thousand Naira)** to her agent.'

In the lease agreement (Exhibit A6) the rent which was alleged to be paid by PW1, the Nominal Complainant and acknowledged by the 1<sup>st</sup> defendant was **₦7,800,000 (Seven Million Eight Hundred Thousand Naira)**. The PW1 who claimed that he paid the rent by transfer failed to supply any proof of the means of payment and how much was paid. His statement of account was not tendered in proof of the exact amount that was paid as rent. These contradictions were not explained by the prosecution witness. There are material contradictions in the evidence of the Nominal Complainant (PW1) as to how much was paid and how he arrived at the sum of **₦8,040,000 (Eight Million and Forty Thousand Naira)** as the amount he alleged he was defrauded of by the 1<sup>st</sup> defendant.

On what constitute contradiction in the evidence of a witness, the Court of Appeal held in the case of **IKUEPANKAN V STATE (2011) 1 NWLR (PT. 1229) PG 449 @ 490 PARA D** – Per **Augie JCA** that;

“A piece of evidence is contradictory to another when it asserts or affirm the opposite of what the other asserts, and not necessarily when there are some minor discrepancies in details between both piece of evidence.”

When a witness also contradicts himself on material facts that needs to be proved, such evidence cannot be relied on by the court. The court is not expected to pick and choose which of the facts to believe. See **UDOH V STATE 2019 LPELR 47835 SC. SEE ALSO LALAPU V C. O. P (2019) LPELR 47814 SC** where the Supreme Court Per **Galumije JSC** held;

***“The law on the issue of contradiction in the evidence of a witness with his earlier extra judicial statement is clear and that is where a witness’s real statement in court contradicts or is in consonant with his previous extra judicial statement, the court should not only regard the sworn oral testimony as being unreliable but also the previous statement, whether sworn or unsworn is not constituting evidence upon which it can act. Consequently neither of the two versions of the story is worthy of any credit and therefore incapable of establishing the truth. See R V UKPONG (1961) ANLR 25, ASANYA V STATE (1991) 3 NWLR (PT. 180) 422, OLADEJO V STATE (1987) 3 NWLR (PT. 61) 419, UMANI V STATE (1985) 1 NWLR (PT. 70) 274, ESANGBEDOR V STATE (1989) 4 NWLR (PT. 133) 57. In the instant case, the trial court as well as the Court of Appeal were wrong when they relied on the evidence of PW2 when that evidence was clearly inconsistent with Exhibit C, the extra judicial statement of PW2.”***

In the case at hand, the evidence of PW1 on oath is inconsistent with his extra judicial statement on Exhibit A9 and A10 respectively; it is unreliable and cannot be acted upon by the court.

On whether there was false pretence with intent to defraud the Nominal Complainant (PW1) by the defendant. Both Counsel have stated the meaning of the offence of Obtaining Money by False Pretence as contained in the provision of Section 1 (i) (a) of the Advance Fee Fraud and other Fraud Related Offences Act 2006. Also false pretence is clearly defined in Section 20 of the Act as:

***“A representation whether deliberate or reckless made by word, in writing or by conduct of a matter of fact or law either past or present which representation is false in fact or law which the person making it known to be false or does not believe it to be true.”***

Furthermore the ingredients of the offence of obtaining by false pretence under the provision of Section 1 (i) (b) of the Advance Fee Fraud are:

- “ (1) That there was false pretence made by the defendant.*
- (2) That the defendant obtained property from the complainant.*
- (3) That the defendant did same with intent to defraud.”*

How has the prosecution been able to prove the above? Where does the false pretence lie in the instant case? From the case of the prosecution this facts came to the fore:

1. The defendant wanted to sublet her shop.
2. The Nominal Complainant was introduced by some agents and he paid the rent for three (3) years.
3. There was agreement that the defendant would pack out at a certain period but failed to deliver the shop as at the agreed time.

4. The Nominal Complainant met the defendant renovating the shop.
5. He was irked and wanted his money back.

In the statement of the defendant at the Economic and Financial Crimes Commission (Exhibit A13), the reason the defendant gave for not delivering possession as agreed was because where she wanted to move to was not ready. She also testified to that effect in her Evidence in Chief. Under cross-examination, the defendant was asked what happened to the **₦7,000,000 (Seven Million Naira)** deposited to her account, she said; *“I used it to get another space for business.”* To another question she said; *“I did not refuse to give him the space or sub-let. I asked him to come and take some space before where I am going is ready, but he said no, he wanted his money back.”* The question to ask is; did the Economic and Financial Crimes Commission Investigate the allegation of the defendant that she used the money to pay for another shop? Secondly, was there any shop that the defendant actually wanted to move to?

There is nothing on record showing that either the Police which the initial report was made by the Nominal Complainant or the Economic and Financial Crime Commission investigated this important aspect of the prosecution’s case. The prosecution must prove beyond reasonable doubt that there was false pretence with intent to defraud the Nominal Complainant by the defendant. See **DARLINGTON V FRN (2018) LPELR 43850 (SC)** where the Supreme Court held;

***“The offence charged cannot be said to have been proved beyond reasonable doubt when all the essential elements or ingredients of the offence have not been proved beyond reasonable doubt. To this extent, I am in agreement with the submission of the appellant’s Counsel on the authority of ABAH V THE STATE***

***(1993) 13 LRCN 977 @ 984. Every ingredient of the offence charged must be established by the prosecution in order to succeed. See IDU V STATE (2017) LPELR 42587 SC, SANI V KANO STATE (2017) LPELR 43329 CA.”***

The failure of the Prosecution to prove beyond reasonable doubt of the essential elements of the offence charged under Section 1 (i) (a) of the Advance Fee Fraud Acts is fatal to the case of the prosecution. The Count 1 charge fails; the defendants are hereby discharged and acquitted accordingly.

With respect to issuance of dud cheques as contained in charge 2 – 6 of the charge, the prosecution submitted that the offence of issuance of dud cheque is a strict liability offence and further stated that he proved beyond reasonable doubt the offence as provided under the provision of Section 1 (i) (b) of the Dishonored cheques Act Cap 102 of the Laws of Federation 1990. He relied on the testimonies of PW1, PW2 and PW3 and Exhibits A1-A5, the dishonored cheques.

The prosecution argued that the only Defence to a charge of issuance of dud cheques is a reasonable belief on the part of the drawer of the cheque that he had sufficient fund in his account as at the time she issued the cheque. The defendant knew she had no sufficient fund in her account when she issued the cheques. The learned Defence Counsel however argued to the contrary submitting that it cannot be said that the 1<sup>st</sup> defendant had the intention to issue the Nominal Complainant with Exhibit A1-A5 when she knew she had no funds to cover the said amount. He referred to Exhibit A12, the statement of the 1<sup>st</sup> defendant where she said she was threatened by the Nominal Complainant and his brother one Anayo who alleged that he works with the Police Special Anti

Robbery Squad (SARS), who also threatened her and asked her to issue Exhibits A1-A5 or else he would show her.

That the 1<sup>st</sup> defendant also called the Nominal Complainant not to present the cheque when the dates on them was drawing nearer because she had no money on the account, but he insisted on presenting cheque and also promised to go to her daughter's school if the cheque bounced. These pieces of evidence were not challenged by the prosecution while cross-examining the 1<sup>st</sup> defendant. I agree with the position of the Defence Counsel that the fact that the 1<sup>st</sup> defendant was threatened and coerced into issuing and signing the cheques (Exhibit A1-A5) was not unchallenged by the prosecution. I believe the evidence of the 1<sup>st</sup> defendant that she was coerced into issuing the cheque. The prosecution therefore has also failed to prove the offence of issuance of dud cheque against the 1<sup>st</sup> and 2<sup>nd</sup> defendants as charged.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants are hereby discharged and acquitted of the offences as contained in count 2-6 of the charge accordingly.

**SIGNED**

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**HON. JUDGE**

**6/3/2020**