IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 26TH NOVEMBER, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO..:-FCT/HC/CR/298/18

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:.....COMPLAINANT

AND

1. JENIFFER CHICHI
2. ELIJENN GLOBAL RESOURCES LIMITED :...DEFENDANTS

Fadahunsi Ayo for the Prosecution.
ChibuikeEmezuba for the Defendants.

JUDGMENT.

The Defendants were on the 15th day of November, 2018 arraigned before this Court on a one count charge as follows:

> ***"That you Jeniffer Chichi and Elijenn Global Resources Limited, on (or) about 12th of October, 2016 in Abuja, within the jurisdiction of this Honourable Court, with the knowledge that there was insufficient funds in the account (of) Elijenn Global Resources Limited, issued to one Emmanuel M. Ossi, a First Bank PLC cheque No. 00174375 dated 21st October, 2016 for the sum of N8,117,320 (Eight Million, One Hundred and Seventeen Thousand, Three Hundred and Twenty Naira) only, which said cheque, when presented for payment within three (3) months of issuance, was dishonoured due to insufficient funds***

standing to the credit account to cover the face value of the cheque and thereby committed an offence contrary to Section 1(1)(a) of the Dishonoured Cheque (Offences) Act, Cap 102, Laws of the Federation of Nigeria, and Punishable under Section 1(1)(b)(i)(ii) of the same Act, 2007."

Upon arraignment, the Defendants pleaded not guilty to the charge and the case proceeded to trial.

The Prosecution opened its case on the 8th day of May, 2019, with the evidence of the nominal complainant MaduabuchiOssi who testified as PW1. In his evidence in chief, the PW1 told the Court that having successfully transacted a business of supply of Petroleum products together in 2014, the 1st Defendant called him sometimes in 2015 and told him that she has a supply with a Chinese Company. He stated that after processing the LPO they went for confirmation order and met one Mr. Rein who is the Director of the Chinese Company in Africa and that he confirmed the LPO to be genuine.

The PW1 further stated that it was the mutual agreement between him and the 1st Defendant that after each supply, the 1st Defendant would pay him at the expiration of one month. That sometime in June, 2016, the 1st Defendant called him to send products worth N8,117,320 to site and that she later delayed the payment. That after 4 months of non-payment he approached the 1st Defendant at her house in Life Camp to know what was responsible for the non-payment and that she told him that the company failed to pay her because she had an issue with the Company and they withheld her money. He stated that he did his own finding by contacting Mr. Rein at the Company's headquarters, who told him that the Company had paid for the product long time ago.

That he proceeded to site at Bua Cement where he was also told the same thing, while the 1st Defendant told him to give her some time to sort herself out with the Company.

The PW1 testified further that he later met the 1st Defendant in her office and she admitted that the Company had paid, but stated that she used the money for other business and that the money would be available in the next one month. That she then gave him post-datedchequeworth the amount she was owing him, which he was meant to cash on21st October 2016.

He stated that he lodged the cheque on 7th November, 2016 and after three days, the bankcalled him toinform him that the cheque bounced. That he tried to reach out to the 1st Defendant but she stopped picking his calls, and whenever she picks, she would say that she travelled to look for his money. That he went to check her at her houses in Life Camp and Gwarinpa and discovered that she has vacated the houses. That he also wentand the place was locked up, and her neighbours informed him that she only comes to the office once in a while. That he consequently petitioned the Economic and Financial Crimes Commission (EFCC).

The PW1 tendered his Statement to the EFCC and same was admitted evidence as Exhibit PW1A.

Under cross examination, the PW1 admitted that he may have transacted businesses worth upto N200m with the 1st Defendant before the transactionthat resulted in this case. He also admitted that although the 1st Defendant has always delayed payments, but she usually pays at the end of the day. He denied being informed by the 1st Defendant or having knowledge that the account was not funded when the 1st Defendant issued him the cheque. He also stated that he did not call the 1st Defendant before presenting the cheque, as

such, that the 1st Defendant did not ask him not to present the cheque.

One Abdulrahman Mohammed Arebo, an operative of the Economic and Financial Crimes Commission, gave evidence for the prosecution as PW2. He told the Court in his evidence in chief that on the 30th day of June, 2017, the commission received a petition written and signed by one B.T.Maigaskia, Esq.,on behalf of the PW1,complaining against the 1st Defendant and her company, the 2nd Defendant regarding their failure to pay for Petroleum products delivered and the issuance of cheque which was dishonoured upon presentation for payment.

He stated that upon receipt of the petition, theyinvited the PW1 who volunteered his statement wherein he corroborated the petition and also submitted the original cheque to them. That he also wrote to First Bank PLC requesting for the account statements and account opening packages of the Defendant, as well as requesting the bank to avail them with reasons why the cheque was returned unpaid.

He stated that in their response, the bank clearly stated that the cheque was returned unpaid due to insufficient fund in the account of the 2ndDefendant. He further stated that upon analysis of the statement of account of the 2nd Defendant, it was discovered that on or about 12th July, 2016, the Defendants were paid by Senoria Company Ltd about N8.3m.

The PW2 stated that they invited the 1st Defendant and she reported to their office and volunteered her statement under caution.That she admitted having a business transaction with PW1 and issuing Exhibit PW2A (the cheque); but claimed that she asked the PW1 not to present the cheque. He stated that the 1st Defendant promised to pay the PW1 his money and that

she was later released on administrative bail. That she later issued a bank draft for the sum of N300,000 and subsequently, another bank draft for the sum of N500,000, all in the name of PW1.

That she later jumped bail and failed to report back to the commission, and that all efforts to get her failed as she packed out of her known addresses.That they later got information that she was at UtakoPolice Division and they went there and re-arrested her and took her to their office.

The PW2 tendered the following documents in evidence:

1. First Bank Cheque of N18,117,320 dated 21-10-2016 – Exhibit PW2A.
2. First Bank Letter of 14th Feb. 2018 – Exhibit PW2B.
3. First Bank Forwarding letter of 9 August, 2017 –Exhibit PW2C.
4. Petition Against Jenifer Chichi Ethean - Exh PW2D.
5. EFCC Letter – Investigation Activities dated 2nd August, 2017 – Exh PW2E.
6. EFCC Letter - Investigation Activities dated 9th August, 2017 – Exh PW2F.
7. Statement of 1st Defendant to the EFCC – Exh PW2G-G3.

The PW2 was duly cross examined by the defence counsel during which he admitted that the 1st Defendant told them that she instructed the PW1 not to present the cheque. He however, stated that he does not know whether or not it was on the day the PW1 wanted to present the cheque.

On the 20th day of November, 2019, one TemisaAnubi, a staff of First Bank of Nigeria PLC, gave evidence for the prosecution as PW3.He tendered a bundle of documents comprising the statement of account and account opening packages of the

2nd Defendant with First Bank which were collectively admitted in evidence as Exhibit PW3A, and Certificate of Authentication, admitted as Exhibit PW3B. He told the Court that from the statement of account, Exhibit PW3A, there wasa deposit of N7,550,400 by Cinoria Co. Ltd on 1/7/16 and on 12/7/16, another deposit of N8,320,200 by the same company.

He further stated that on 7/11/16, a cheque of N8,117,000 was drawn on the account but was returned because of insufficient funds to pay and honour the cheque.

The cross examination of the PW3 by the defence counsel was centred on whether or not it was the PW3 who signed the various documents from the bank that were admitted in evidence. The PW3 admitted that he did not sign the documents and stated that he came to tender Exhibits PW3A and PW3B because he was subpoenaed to tender them.

The Defendants opened their defence to the charge on the 11th day of February, 2020 with the 1st Defendant testifying as the sole defence witness. Testifying as DW1, she told the Court that she got to know the PW1 in 2015 through one Mr. Prince who introduced the PW1 to her so they couldsupply diesel together. Shestated that they both successfully supplied dieselin that 2015 and they werepaid in full. That in that same year, she got another contract with a Chinese company called Cinoria, to supply them diesel lubricants and some of their spare parts for a period ofthree years; that is 2015-2017.

She told the Court that she called the PW1 and they sat down together and discussed the terms and conditions of the business; for the PW1 to be Supplying her diesel while she supply to the company since she was the one that signed contract with the company. She also stated that she introduced

the PW1 to the Chinese Company so that they will know that he was her direct supplier.

The DW1 stated that over the years, between 2015 and July, 2016, the PW1 took supplies of diesel to the company at Okpila, Edo State in which they transacted to the tune of N220m for that period.

She stated that the PW1 was not her only supplier. That she had other suppliers, and that she was doing turn over.That the company did not pay her immediately, but pays within two – three weeks, or maximum, a month. That when she receive supplies from PW1 and other suppliers, and payment is made; whoever supplied first, she paid accordingly.

She stated that on this particular supply, she used the money to pay another supplier, hoping that the contract was still running so she could use subsequent payments to be received to pay the PW1.That unfortunately, the contract was terminated and she travelled to the site to confirm what happened, and she was informed that they terminated the contract at exactly one year.

The DW1 told the Court that she invited the PW1 to her office and informed him of the development and the PW1 who came to her office with a man, started shouting at her. That she invited her husband who also came and pleaded with PW1, but he continued to shout; and she was therefore constrained to give him a cheque, post-dated for about a month. She stated that, two weeks later, she called him and told him not to present the cheque, that she would let him know when the account is funded so that he could present the cheque.

She stated further, that because she was heavily pregnant at the time and was having complications, she travelled to Kaduna

and PW1 kept calling her. That one month after she told him not to present the cheque, the PW1 called her and informed her that he was going to present the cheque. That she told him not to present it but he insisted and presented the cheque, and she got a negative debit alert. She told the Court that the PW1 thereafter reported her to EFCC who subsequently invited her and she told them that she instructed the PW1 not to present the cheque.

Under cross examination, the DW1 admitted that she is owing the PW1. She further admitted issuing a cheque to the PW1 and that same was returned unpaid because the account was not funded.

At the close of evidence, the parties filed and exchanged final written addresses.

The learned defence counsel, Abigail Sani, Esq, in his final written address, raised a sole issue for determination; to wit;

> ***"Whether from the circumstance of this case, the prosecution has proved its case beyond reasonable doubts?***

Proffering arguments on the issue so raised, learned counsel relied on **Bolanle v. The State, NCC Vol 2, 2007, pg 473 SC 271, 2005,** to posit to the effect that in order to prove the offence of issuing a dud cheque, the prosecution must show that:

a. The Defendant obtained credit by herself;
b. The cheque was presented within three months of the date thereon; and
c. That on presentation, the cheque was dishonoured on the ground that there was no sufficient funds standing to the

credit of the drawer of the cheque in the bank on which the cheque was drawn.

He further posited that in addition to the above, the prosecution must prove mensrea of the defendant in a case of issuing of dud cheques in order to obtain a conviction as it is trite that for a crime to be said to have been committed, the prosecution must prove that the defendant hadthe mensrea and actusreus. That the prosecution must prove that the defendant had intention to commit the offence and thereafter went ahead and committed the offence.

Learned counsel argued that the prosecution has not been able to show that the 1st Defendant had menserea as the cheque was issued in anticipation of the payment owed to the Defendants, and that when same was not forthcoming, the 1st Defendant called and informed the PW1 not to present the cheque. He contended that the PW1 maliciously presented the cheque knowing fully well that the account was not funded in order to use it as a weapon of prosecution against the Defendants.

He argued that it is clear from the statement and unrebutted oral testimony of the DW1 before the Court, that the mensrea of DW1 has not been established. He posited that from the evidence of the parties, it is clear that the 1st Defendant has no criminal intent to defraud the PW1 or to issue a cheque that would be dishonoured for insufficiency of funds.

Learned counsel further contended that the PW2, an investigator with the EFCC, admitted under cross examination that the DW1 informed them during investigation that she instructed the PW1 not to present the cheque, but rather than extend his investigation to the relevant service provider to ascertain the authenticity or otherwise of the DW1's claim, the

PW2 asked her to go and produce the evidence to prove her innocence. He argued that the failure by the prosecution to confirm from the service providers the testimony of DW1 regarding her telephone conversation with the PW1, is very fatal to its case and that this has clearly cast a doubt to the testimony of PW1 that the DW1 did not put such call across to him.

Placing further reliance on **State v. Esho (1976-1984) 3 N.B.L.R.P. 661,** he posited that an accused person would be acquitted of an offence of issuing dud cheque if he can show that even though hischeque had been dishonoured for lack of funds or for insufficient funds, nonetheless, at the time he issued the cheque, there were reasonable grounds for him to believe that it would be honoured when presented for payment by the payee within 3 months of the date on the cheque, and that in fact, he entertained that belief. He argued that the DW1, at the time she issued the cheque, believed that her account would be credited by one of her contractors who she had earlier reported to the EFCC, and he promised to credit her account. That when he failed to do so, the DW1 quickly called the PW1to inform him not to present the cheque, that she would find a way to pay him, but the PW1 maliciously presented the cheque knowing fully well that the account was not funded.

He argued in conclusion, that the prosecution has not been able to prove the intention which is a vital requirement in establishing the guilt of the DW1. That the prosecution has thus not proved its case beyond reasonable doubt. He urged the Court to discharge and acquit the Defendants.

In his oral reply on points of law to the prosecution's final written address, learned counsel for the Defendants contended that the Prosecution introduced a new dimension to the case by

bringing in dishonesty in their final written address. He urged the Court to discountenance same as it is not part of the charge.

In his own final written address, learned prosecution counsel, Ayodeji A. Fadahunsi,Esq. also raised a sole issue for determination, namely;

> ***"Whether the prosecution has proved the essential elements of the offences alleged against the Defendant herein beyond reasonable doubt to warrant his being found guilty and consequently convicted?"***

Learned counsel contended, relying on Section 1 of the Dishonoured Cheques (Offences) Act, that the prosecution has proved beyond reasonable doubt, the offence of issuance of dud cheque committed by the defendant.

He argued to the effect that the prosecution has adduced uncontroverted evidence showing that;

i. The 1st Defendant indeed made a transaction necessitating her payment of the PW1;
ii. The Defendants indeed issued a cheque to the PW1;
iii. The Defendants had indeed been paid by the third party company, Senoria Company Limited; and that;
iv. The cheque was indeed returned unpaid due to insufficient balance in the account of the Defendants.

He further contended that the prosecution has shown to this Court that the Defendants did in fact issue the dishonoured cheque knowing fully well that there is not enough cash standing to their credit in the account.

Learned counsel argued that the 1st Defendant had claimed that she had not been paid by the third party company, and that

the said claim was adishonest claim. Relying on Section 16 of the Penal Code Law, he contended that the 1st Defendant was dishonest in the sense that she caused a wrongful gain to herself by attempting to avoid paying the PW1 his due even several months after the completion of his part of the contract. He urged the Court to find the Defendants guilty on the sole count on the charge sheet on the grounds that the Defendants did in fact issue the cheque knowingly and with intent to ensure that the nominal complainant is not paid his due.

Arguing further,learned counsel contended that the prosecution has proved its case beyond reasonable doubtas required by Section 138 of the Evidence Act. He referred to **Miller v. Minister Of Pension (1974) 2 All ER 372 at 373** on what constitutes reasonable doubt in the context of our criminal jurisprudence.

He further referred to **Abeke v. State (2007) 151 WLRCN** on what the prosecution is required to prove in a charge of issuance of dud cheque. He argued that the prosecution, through the evidence of PW1, PW2 and PW3, has proved that the cheque was presented for payment within three months of issuance and that there was no sufficient money in the account of the Defendants to meet the face value of the cheque.

Learned counsel further posited that the offence of issuance of dud cheque is a strict liability offence. That once the prosecution proves that the drawer of the cheque had nonsufficient fund in his account as at the time he issued the cheque, with no plan to fund the said account, the offence of issuance of dud cheque is established.

He argued that it is immaterial that the 1st Defendant claims that she did not intend the PW1 to present the cheque. That the 1st Defendant under cross examination, admitted that had

knowledge of the fact that she had no sufficient fund in her account when she issued the cheque.He contended that the Defendants had no plans to fund the said account.

He further posited 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/she had sufficient funds in his/her account as at the time he/she issued the cheque. He argued that the 1st Defendant knew that she had no sufficient fund in her account when she issued the cheque, and that as such the defence cannot avail her.

He urged that the Defendants be found guilty on the charge as the prosecution has proved its case beyond reasonable doubt based on credible and uncontradicted evidence adduced before the Court.

He further urged that on finding the Defendants guilty, the Court should order the Defendants to restitute the nominal complainant with the sum of N8,177,320.00 pursuant to Section 319 of the Administration of Criminal Justice Act, 2015.

In the determination of this case, this Court will consider jointly the issues raised by both the defence and prosecuting counsel in their respective final written addresses thus; ***"Whether the prosecution has proved the charge against the Defendants beyond reasonable doubt?"***

The offence with which the Defendants are charged in this case is issuance of dud cheques contrary to Section 1 (1)(a) of the Dishonoured Cheques (Offences) Act. The relevant parts of the Act provides as follows:

> ***"(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 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 fine; and

(ii) In the case of a body corporate, be sentenced to a fine of not less than N5,000."

The Dishonoured Cheques (Offences) Act, is stated to be an ***"an offence for any person anywhere in Nigeria to induce the delivery of any property or to purport to settle a lawful obligation by means of a cheque which when presented within a reasonable time is dishonouredon the grounds that no funds or insufficient funds were standing to the credit of the drawerof the cheque.."***See the preamble of the Act. See also **Ikedigwe v. FRN (2010) LPELR-4295 (CA).**

In the decision of **Hannah Abraham v. FRN (2018) LPELR 44136 (CA)**Otisi JCA held in defining the meaning and purpose of issuing a cheque;

> ***"Cheques are not issued for the fun of it, more so when drawer hasexisting financial obligations to the drawee. The apex Court, per Oguntade, JSC in***

<u>Abekev. State (supra)</u> at P.13 of the E-Report described the inferences of the issuance of a cheque in these terms. A cheque issued by a drawer and accepted by the drawee serves two purposes. One is documenting the transaction. The other is that it is a medium of payment the issuance of which has a far reaching implication of law."

Also in **<u>BobadeOlutide&Ors Adams Hamzat&Ors (2016) LPELR 26047 (CA)</u>**Deton West, JCA held thus:

"May I quickly chip in that issuance of a dud cheque is a criminal offence under Section 1 of the Dishonoured Cheques (Offences) Act CAP 011 LFN 2004..."

The evidence of the Prosecutrixwas that the Defendant issued the cheque to him after several demands made to the Defendant for payment of the money for supply he made between June/July 2016. That the agreement was that payment be made within one month. In this case the Defendant did not pay but issued him with a post-dated cheque dated 21/10/2016.

That when he lodged the cheque in the bank on 7th November, 2016, he called the Defendant who confirmed that her bank called her and that she was sorting things out with the bank. See Exh PW1A statement of the Prosecutrix.Prosecutrix told the Court that while he was waiting for the Defendant to sought things out with her bank, the Defendantceased that opportunity to relocate from the address she knew her to an unknown place and she no longer picked his calls.

The Defendant in her statements to the Police said he told the Prosecutrix not to lodge the cheque in the bank. The Prosecutrixrefuted this evidence and further stated that the Defendant after discussing with him, vacated her place of

abode made herself unavailable and refused to pick his calls. That it was their mutual agreement that the Defendant should pay her at the expiration of one month after the supply of the products. It is my finding that the Defendant was playing the game of the artful dodger by keeping away from the PW1 and refusing to answer his calls. Defendant vacated from her contact address without informing the PW1. After lying to the PW1 that she was not paid by the company, PW1 on discovering that she had been paid, and confronted her,defendant said she used the PW1's money to start another business.

The circumstances surrounding this case portray the Defendant to be a dishonest person. Thus, the conduct of the Defendant amounted to a serious misconduct and fraud. All these pieces of evidence were not challenged. Thus meaning admission. I do not believe the Defendant told the PW1 not to present the cheque rather she was artfully dodging the PW1.The evidence of theprosecutions witness was consistent. In evaluating these pieces of evidence, I am strongly persuaded to agree with the prosecution and hold that the prosecution has proved his case beyond reasonable doubt.

I will pause to explain what a posted cheque is, Bairamian, JSC held in **Lawal v. The Queen (1963) LPELR 15474 (SC)**

> ***"When a person has an account at the bank on which he issues a post-dated cheque for more than he has in the account, his cheque does not mean that he has the money at the bank, but that it will be paid on the date on which it is presented."***

The date of presentation of the cheque in the instant case was 21/10/2016 but the PW1 lodged the cheque after 17 days, precisely on 7/11/2016 and the cheque was returned for lack of

money in the account. Relying on **Ikechigwe v. FRN (supra)** and**Lawal v. The Queen (supra),** the cheque was presented within a reasonable time because a post-dated cheque ought to be paid on the date it is presented.Evidently the Defendant issued the cheque on her own volition to ward off the PW1. She had no excuse to issue the PW1 with a dud cheque with the knowledge of owing the PW1, and also not having sufficient fund in her account.

From the totality of the evidence, I agree with the prosecution and hold that the prosecution has proved his case beyond reasonable doubt.

The Defendantsare found guilty in Count I contrary to Section 1(1a) of the Dishonoured cheque (offences)Act Cap 102 LFN 2007 and punishable under Section 1(1)(b)(i)(ii) of same Act.

With reference to Section 310 Administration of Criminal Justice Act, the Defendant counsel pleaded on behalf of the Defendant for mercy.

Defence counsel:

We pray the Court to tamper justice with mercy and sentence only the 2nd Defendant.

Prosecution:

We ask for restitution. Defendants were only able to pay N800,000.00 with a balance of N7,317,320.00.

Sentence:

The 1st Defendant is sentenced to two years (2 years) imprisonment without option of fine.

The 2nd Defendant being a company is sentenced to a fine of N5,000.00 (Five Thousand Naira).

Court orders for restitution of N7,317,320.00 being the balance of the amount owed to be paid to the Prosecutrix, Emmanuel Ossi.

HON. JUSTICE A. O. OTALUKA
26/11/2020.