

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

13TH DAY OF JULY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

CHARGE NO. FCT/HC/CR/96/2017

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

INSPECTOR-GENERAL OF POLICE PROSECUTION

AND

EKE EMMANUEL DEFENDANT

JUDGMENT

The Charge against the Defendant, EKE EMMANUEL is a one-count Charge dated 2/02/2017 but filed on the 3/02/2027.

The Charge reads:

“That you, Eke Emmanuel ‘M’ of CBN Quarters, Garki II, Abuja on or about 30/09/2016 did issue two First Bank Cheques valued ₦4 Million (Four Million Naira) each total value, Eight Million

Naira to one Wale Agboola 'M' of 20A Policia Street, Karu, Abuja, which were to be presented on 7/10/2015 and 27/10/2015 respectively. Upon presentation of the two cheques, they were dishonoured and returned to the Complainant with endorsement, Drawer's Attention Required (DAR), you thereby committed an offence contrary to and punishable under Section 1 (1) (b) of the Dishonoured Cheque Act."

The Defendant was arraigned and he pleaded Not Guilty. In proof of its case, the Prosecution called three (3) witnesses. The 1st Prosecution Witness is Wale Agboola of Policia Street, Karu, Abuja.

He knew the Defendant through his friend. He approached him for funds to do the business of timber exportation. He obliged him ₦4 Million. In return, he gave him two cheques for ₦4 Million, each totalling ₦8 Million. The Defendant told him he was going to link him up with the Chinese so that he can transact the business with them directly.

That when it was time to redeem the cheque, he presented the first cheque. It was denied. He also presented the second cheque, it was also denied. The reason was that the account was not funded.

The cheque went through the clearing house. Efforts to reach out to the Defendant for amicable resolution failed. He reported to the Police. That till now, nothing has been paid. The cheques are Exhibits A & A1.

Under Cross-Examination, he answered that he works with the Federal Ministry of Finance, a Certified National Accountant. He answered that the first cheque bounced.

He went to the Defendant to complain bitterly, the Defendant apologised and issued the second cheque promising to resolve the issue with the Chinese.

To a question, he answered that the Defendant gave him interest of ₦400,000.00 once. That he is not a money lender. That he presented Exhibits A & A1 in Zenith Bank,

Garki. He said his name is on the cheque. That there is also DAR on the cheques. That the account was not funded. To a question he answered that DAR means Drawer's Attention is Required.

The Defendant issued him dud cheques. He had no agreement to notify Defendant before presenting the cheques. That when he defaulted severally, he gave him a title document. He found out that the said title had been revoked. He did not sign any agreement with him.

The 2nd Prosecution Witness is Inspector Jacob Joseph. He is a Policeman attached to Force CID. He knows the Defendant and Manek Integrated Services Ltd. The Defendant is an MD of the said company.

On 2/11/16, a case of obtaining money under false pretence and issuance of dud cheque was referred to him for investigation. He invited the Complainant and he volunteered a Statement. He attached two cheques of First Bank to the Petition.

He wrote to First Bank to verify the Defendant's Statement of Account. The Complainant also made a Statement. The Statement of PW1 is Exhibit B. The Defendant also volunteered a Statement. It is Exhibit C.

The First Bank replied stating there was no money in the account. The Defendant issued the said Exhibits A & A1 in the name of his company MANEK.

Under Cross-Examination, he said the letter he wrote to the bank is attached to the case file. He said it was the bank that wrote DAR but does not know who wrote same. He does not know the actual amount standing to the credit of MANEK and the date the cheques were presented.

He further answered that the Statement of Account given to him is attached to the case file. He answered that investigation did not take him to Corporate Affairs Commission.

Upon a question, he answered that he does not know where Nominal Complainant works or how he got the money.

The 3rd Prosecution Witness is Oluseyi Olugbenga Lawal, an Account Officer of the First Bank, Garki. That Defendant's company runs a corporate account with First Bank.

In November 2017, the Bank received a request from the Nigeria Police to provide Statement of Account from October 2015 - November 2017. It was printed. The Statement of Account and Certificate is Exhibits D & D1.

Under Cross-Examination, he said he does not know when the account was opened. He does not have the Account Opening Package and Mandate Form of Manek Integrated Services Ltd.

To a question, he answered that when a cheque is presented to his bank, it reflects in the Statement of

Account. If a customer issues a dud cheque, the bank charges the account about ₦5,000.

To a question, he further said based on the stamp on Exhibit A, it was presented on 16/12/2015. There is no stamp on Exhibit A1.

On being shown Exhibit D, he said there was no charge of ₦5,000 when Exhibit A was presented because there was no money in the account but there will be a lien. The customer's account will be in debit for that amount. As at 25/12/2015, the account had ₦515.84k. On 25/01/2016 the account had ₦304,833.34k.

To a further question, he answered that he will not be able to tell if the lien was removed. That on 3/08/2016, some charges were taken for return cheques. On 10/08/2016, some charges were also taken for return cheques. On 23/08/2016, another return cheque charges were taken. DAR may be written when there is no fund in the account. It can also be written if signature is irregular. The above is the case of the Prosecution.

The Defendant opened his case, gave evidence for himself and called a witness in defence.

The Defendant gave evidence and states that he is a businessman. He deals in woods. He states that the Nominal Complainant is his friend. He approached him to give him a loan of ₦2 Million to purchase woods for export to China.

He gave him ₦2 Million. He gave him a blank cheque. They sold the goods in Lagos. They sold, he presented the cheque and he collected his money.

They later entered into another transaction to give him ₦4 Million. He gave him the money and he gave him a blank cheque. He used the money to buy wood. Within the period, government policy changed. Most of the wood dried up. The seaport was closed for export. It affected the business because the Chinese rejected the wood.

He was paying PW1 ~~₦~~400,000 monthly. He paid him four (4) times. The business when bad. He did not know when the cheques were presented.

That it was in this Court that he saw his Statement of Account last. He did not receive any alert of bounced cheques. That his account officer did not call him. The cheque is a company cheque.

That PW1 collected a land title document from him as a security that if I pay back he will return same to me. That he has not collected it. The land is genuine. He has not received any Notice of Revocation. The property is valued at ~~₦~~10 Million.

Under Cross-Examination by the Prosecution, he answered that Manek Integrated Services Ltd belongs to him.

The 2nd Defendant's Witness is Hajia Binta Gbadamosi. She works for First Bank of Nigeria. She receives a subpoena to tender a document. She generated it from

their system. The Certificate of Authentication and Statement of Account is Exhibits E & E1.

She further said when a customer presents a cheque without fund, they return back the cheque to the presenter. If it is coming from clearing, it will hit the account. It will be returned back duly stamped.

On being shown Exhibits A & A1, she said they went through clearing. That on 3/08/2016, they have return cheque charges which means Exhibit A was not funded and customer was charged for it.

On 10/08/2016, there was a return cheque charge. She said that the account was not funded.

The Defendant's Written Address is dated 4/12/2022. Learned Defence Counsel adopted same as his oral argument. He posited a sole issue for determination which is: *Whether based on the charge and evidence before the Court, the Prosecution has been able to prove all the ingredients of the offence punishable under*

Section 1 (1) (b) of the Dishonoured Cheques Act beyond reasonable doubt.

He argues that the Prosecution has failed woefully to establish all the ingredients of the offence charged. That it was not the Defendant that obtained credit by himself. That from evidence, the credit was obtained by Manek Integrated Services Ltd.

That it is Manek that obtained credit and not Defendant. That Defendant cannot be punished under Section 1 (1) (b) of the Dishonoured Cheques Act. The first ingredient of the offence of obtaining credit by himself was not proved.

On the second issue, *whether cheques were presented within the time specified.* Exhibits A & A1 Learned Counsel contended are both dated 7/10/2015 and 27/10/2015 respectively.

That the Prosecution did not give evidence as to the dates the cheques were presented. Based on the stamp

on Exhibit A as alluded to by PW3, the said Exhibit A was presented on 16/12/2015 while Exhibit A1 has no stamp on it. It could not be said correctly that the cheques were presented on 7/10/2015 or 27/10/2015.

In the absence of any evidence as to when the cheques were presented, he urges the Court to hold that the second ingredient was not proved.

That Exhibit E1 tendered by DW2 which is similar to Exhibit D shows that Exhibits A & A1 were presented on 3/08/2016 and 10/08/2016. It shows that the cheques, Exhibits A & A1 were not presented within 3 months.

On the third ingredient, the letter and reply from the bank stating that there was no sufficient fund in the account of the Defendant were not tendered.

The Prosecution also relied upon its Final Written Address and submits that the Defendant did not deny that PW1 gave him credit. The money was not given to him on the basis of a board resolution. He only used company cheque.

He canvasses that the cheque was issued within three months. That cheque was issued on 30/09/2015 and presented on 7/10/2015 where it was marked DAR. That PW3 and DW3 said the cheques were dishonoured on the ground of insufficient fund.

Learned Prosecuting Counsel submits that the Prosecution has led credible evidence, which clearly established the ingredients of the offence charged. He urges the Court to so hold.

I have read the evidence and the Written Addresses of Counsel. The offence for which the Defendant is charged is Section 1 (1) (b) of the Dishonoured Cheques Act. It states:

“Any person who 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 said cheque was drawn shall be guilty of an offence.”

The ingredients of the offence charged are:

- (1) The Defendant obtained credit for himself or any other person by means of a cheque.
- (2) The cheque was presented within three months of the date thereon.
- (3) The cheque was dishonoured on the ground that no funds or insufficient fund was standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn.

The onus is on the Prosecution to prove its case beyond reasonable doubt. The first ingredient is that the Defendant obtained credit for himself or any other person by means of a cheque.

I have earlier summarised the evidence of the Prosecution. The Defendant approached the Nominal Complainant for a loan to boost his business in the sum of ~~N~~4 Million.

The Defendant gave him two cheques of ~~N~~4 Million each. Exhibits A & A1 are the cheques dated 7/10/2015 and 27/10/2015.

The PW2 is Jacob Joseph. He said Manek Integrated Services Ltd is the Defendant's company. That Defendant is the MD. Exhibit C is the Statement of the Defendant. He admitted issuing the cheques in the name of the Nominal Complainant for the purpose of buying wood at Ogere, Ogun State.

There is no doubt from the evidence before this court that the Defendant obtained credit for himself by means of a cheque. He collected ~~N~~400,000.00 in lieu of the cheque. It does not matter whether the cheque was issued by his company Manek Integrated Services. It was a transaction between the Defendant and the Nominal Complainant.

Even if the credit was obtained for Manek Integrated Services, the element of receiving interest for himself or another which is Manek in this instance would have been proved.

The Defendant in his defence admitted issuing the cheques. His defence is that the business went awry. In my view, the first element of the offence is proved and I so hold.

The second element is whether the cheque was presented within three (3) months. I shall examine the cheques, the accounts and other materials placed before the Court to determine the issue.

Exhibit A is a cheque dated 7/10/2015. It is stamped by Zenith Bank Plc. showing that it was presented but returned unpaid. It was issued by the Defendant in the name of Manek Integrated Services. Written by the stamp of Zenith Bank Plc. is DAR meaning Drawer's Attention Required but no date was inscribed.

Exhibit A1 is also a cheque of Manek Integrated Services Ltd issued by the Defendant to PW1. It is dated 27/10/2015. It was received by First Bank and passed on through clearing house to the Zenith Bank Plc. The stamp

of Zenith Bank Plc. is on it. Written below the stamp is DAR. Both cheques were returned unpaid. The date the cheque was presented is 16/12/2015 on Exhibit A.

PW3 under Cross-Examination said when a cheque is presented to their bank, it reflects in the Statement of Account. That if a customer issues a dud cheque, his bank charges about ₦5,000.

He said on 3/08/2016, some charges were taken for return cheques while on 10/08/2016 another return cheque charges were taken. That on 23/08/2016 another return cheque charges were taken.

That if there is no money when a cheque is presented, the customer's account will be in debit for that amount. The bank will not take the money until the complete money is in the account. That it will be a lien until the complete money is in the account. That there was no charge of ₦5,000 in the account when Exhibit A was presented because there was no money in the account.

From the face of Exhibit A and the date thereon that the cheque was presented on 16/12/2015 even if it is not too clear in respect of Exhibit A1.

In the circumstance, I hold that Exhibit A was presented within three (3) months on the date thereon which is 7/10/2015.

The last ingredient is whether the cheques were dishonoured. There is abundant evidence that the cheques were not honoured. Written on both Exhibits A & A1 is Drawer's Attention Required. PW1 said the cheques were not paid. PW3 said in evidence that the cheques were dishonoured for lack of or sufficient funds. PW3 said what DAR means.

I have perused Exhibits E & E1, which is the Statement of Account of the Defendant. From 7/10/2015 to the 31st day of December, 2016, the Defendant did not have a balance of ₦4 Million in his account to fund the cheques issued. The cheques, Exhibits A & A1 were dishonoured for insufficient funds.

In totality, the Prosecution has proved its case against the Defendant beyond reasonable doubt and I so hold. The Defendant is consequently found guilty and he is convicted.

ALLOCUTUS

DEFENDANT'S COUNSEL: I elect not to go into sentencing proceeding as required by the Administration of Criminal Justice Act (ACJA). I wish to make an oral *allocutus*.

DEFENDANT'S COUNSEL: The Defendant regrets the turn of events. He had wished to settle the debt but for the negative turn of fortune for him, which has rendered him homeless.

He is a family man and a breadwinner. If he is sentenced, it will affect innocent children. The Defendant begs around. We urge the Court to temper justice with mercy so that the Defendant can serve a short term and pay.

PROSECUTION: The Defendant has no criminal record. He has stressed the Nominal Complainant, the

Prosecution and the Court. We rely on the provision of the Court.

SENTENCE

I have listened carefully to the *allocutus* of Learned Defence Counsel. I have also considered the reply of Learned Prosecution Counsel.

I empathise with the Defendant. The law has not given me discretion to exercise, I would have happily done that.

Consequently, the Defendant is accordingly sentenced to two (2) years imprisonment without an option of fine.

The Defendant shall pay back to the Nominal Complainant the said sum of ₦4,000,000.00 (Four Million Naira) forthwith.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
13/07/2023

Defendant present.

P. A. Amadi, Esq. for the Prosecution.

Ademola Oyedokun, Esq. for the Defendant.

COURT: Judgment delivered.

(Signed)
HON. JUDGE
13/07/2023