IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISON
HOLDEN AT HIGH COURT MAITAMA – ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 24**
CASE NUMBER:	**SUIT NO. FCT/HC/CR/133/19**
DATE:	**25/11/2021**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA………………………..COMPLAINANT

AND

1. JEREMIAH JULIUS OLADUKUN
2. FARM PLUS RESOURCES AND MARKETING SERVICE LIMITED

…..DEFENDANTS

APPEARANCES:
C.H. Mackay Esq for the Defendant
Defendant present in Court.
Prosecuting Counsel absent.

RULING

This ruling is predicated upon a no case submission filed by defence Counsel.

The Defendants (1st Defendant and his company the 2nd Defendant) were arraigned before this Honourable Court on the 6th day of March 2019 on a two Count Charge. Wherein the two Defendants were charged jointly for criminal breach of Trust punishable under Section 312 of the Penal Code Act, Cap. 532 Laws of the Federation of Nigeria (Abuja). While in addition 1st Defendant was charged with the offence of issuance of dishonoured

cheque 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) of the same Act.

The 1st Defendant pleaded not guilty to the two charges on the 8th day of March 2019. While, plea of not guilty in respect of the 2nd Defendant was made on the 12th day of March 2019. Trial of the Defendants commenced on 19th of March 2019. In a bid to prove its case beyond reasonable doubt, the Prosecution called five (5) witnesses and tendered several Exhibits.

At the close of the Prosecution's case, a no case submission was made by the learned Defence Counsel on behalf of the Defendants pursuant to Sections 301, 302 and 303 of the Administration of Criminal Justice Act (ACJA) 2015.

In the address of no case to answer, defence Counsel submitted while citing Sections 302 and 303 of ACJA 2015 that on the hallowed and trite principle of law 'Actus Reus non facit Reum Nisi mens sit Rea' – conviction of a crime requires proof of a criminal act and intent or an act does not make a Defendant guilty without a guilty mind or an act does not constitute guilt unless done with a guilty intension.

Submitted that at the close of Prosecution's case it has become emphatically glaring that a juxtaposition of all the information filed, evidence led, and revelation made under cross-examination supports that this case involves a yet to be concluded contract which breaches (if any), entirely lives in the realm of civil procedure as no crime was intended, none committed, nor proved and that the extorted cheque (the second Count Charge) is yet another unlawful and brazen use of law Enforcement Agencies to give life to a non-existent allegation of crime in their illegal debt collection drive.

Counsel referred the Court to the case of ***ONAGORUWA V STATE (1993) LPELR-43456 (CA) at Pages 67 – 68, F-B, per NIKI TOBI, J.C.A (as he then was).***

Reference was also made to the evidence of Pw4. Counsel submitted on this premise that even the Economic and Financial Crimes Commission knew from day one that this was a case of contract to supply birds without any criminal flair or breach of trust.

Counsel also cited the case of ***THEOPHILUS KURE V COMMISSIONER OF POLICE (2020) LPELR-49378 (SC) per Galunje JSC (PP. 22 – 25), Paras A – E.***

Reference was also made to the evidence-in-chief and cross-examination of Pw1 and Pw2.

Counsel submitted therefore that from their evidence it is unambiguously obvious that: -

> ***"(a). Neither a Trust nor Trustee was created***
> ***(b). Neither Settler nor Third party beneficiary exists herein***
> ***(c). There was no intension or manifestation of Trusteeship.***
> ***(d). The business was for mutual benefit of the buyer and supplier.***
> ***(e). The only intension of the parties was a contract to supply birds for poultry which remedy in terms of breaches (where any arises) lies in a civil procedure.***

Reliance was placed on the cases of ***HAIDO V USMAN (2004) 3 NWLR (Pt.859) Pg. 65 at 71, Ratio 8; THEOPHILUS KURE V C.O.P (supra).***

It is submitted therefore, that in this case, there is no criminal breach of trust. Counsel further cited the case of ***HON. YAKUBU IBRAHIM & ORS V COMMISSISONER OF POLICE (2010) LPELR-8984 (CA); ONUOHA V THE STATE (1988) 3 NWLR (Pt. 83) 460 (SC)*** on the elements of criminal breach of trust.

Reference was also made to Pw1's evidence under cross examination.

On the issue of cheque with knowledge of lack of sufficient money in the bank account, Counsel submitted that defence had objected to the admissibility of the cheque (now Exhibit A) premised on same having been issued under duress/extorted at the Police Station as a pre-condition for bail which was overruled. Counsel referred the Court to pages 36-38 certified true copy of record of proceedings of 4th April 2019 as well as the evidence of Pw1 regarding the issued cheque, as well as the evidence of Pw2 on same issue.

Counsel submitted that Exhibit E is stamped by the E.F.C.C as having been received on 31st May 2017 (roughly a month from the date on Exhibit A) as against the hearing date of 6th March 2019 and 4th April 2019 (roughly two years afterwards).

In paragraph 6:06 Counsel argued that the cheque was a bail condition.

On the inconsistent evidence of a witness, Counsel cited the case of ***EZEMBA V IBENEME (2004) 14 NWLR (Pt. 894) 617; AJOSE V FRN (2011) 6 NWLR (Pt. 1244) 465 at 468.***

Submitted moreso, that the denial of the cheque being a pre-condition for bail on the 18th of April 2017 lacks credibility in its entirety. That the evidence of Pw1 and Pw2 is a desperate attempt to cover up the Defendant's allegation of not willingly issuing the cheque. That it was issued under the threat of continuing detention and under duress. The Court is therefore urged to so hold.

Reference was made to the definition of "Duress" in the 9th Edition of Black's Law Dictionary, page 578; Principles of Law of Contract ***WILLIAM R. ANSON at 261 – 272;*** the case of ***CALABAR CENTRAL CO-OPERATIVE THRIFT AND CREDIT SOCIETY & ORS V EKPO (2001) LPELR-6984, per Ekpe JCA (PP. 28 - 29) Paras F – B.***

Submitted further that it is unlawful, wrong and blatantly illegal to use any law enforcement agency to collect debts. Reliance was placed on the cases of ***OKAFOR & ANOR V AIG, POLICE ZONE 2 ONIKAN & ORS (2019) LPELR-46505 (CA); OZUDE V INSPECTOR GENERAL OF POLICE (1965) 1 ALL NLR 102; NWANCHI V THE STATE (1976) LPELR – 2103 (SC); CDC (NIG) LTD V SCOA (NIG) LTD (2007) 6 NWLR (Pt. 1030) Page 300 @ 313 Ratio 12 (SC).***

Submitted moreso that if any weight is attached to a cheque extorted under the threat and fear of continued detention at the Police Station for debts accruing from a failed contract and any form of criminality is implied to the alleged debtor/issuer to come and defend; the unlawful, vindictive, and evil practice of using law enforcement agencies for debt collection will continue. Reliance was placed on the case of ***DRAGETANOS CONSTR. (NIG) LTD V F.M.V LTD (2011) 16 NWLR (Pt. 1273) 308 @ 325.***

Reference was also made to the evidence of Pw3 under cross examination.

But that assuming without conceding that there was no duress, the evidence of Pw4 under cross-examination, Exhibit D6, Exhibit A, testimony of Pw3 on 34th day of June 2019, clearly satisfy the extant statutory defence to the Count under Section 1(3) of the Dishonoured Cheques (Offences) Act.

Counsel therefore, submitted that the period specified in subsection 1 of the said section referred to is the three months and that the Defendant's account has been shown by the Prosecution to have been sufficiently funded to the tune of ₦6.5 Million within 7 days of the date on the post dated cheque and within 17 days from the day it was extorted under duress at the Police Station as a bail condition on the 18th of April 2017 within 4 days after the day Exhibit A was presented by the Nominal Complainant for payment without Consent/Confirmation of the 1st Defendant who had earlier asked him to delay the cheque on the day it was due. Bearing in mind that the Police gave consent for the 3rd of May presentation of the cheque as neither the issuer of the cheque nor the owner of the account.

Submitted on this premise, that the propriety or otherwise of not releasing the said money lies with a civil proceedings. That Pw1 and Pw2's evidence is consistent with the fact that it was Pw1 that terminated the contract whilst 1st Defendant requested for two extra weeks to complete the delivery.

In conclusion, learned Counsel submitted that a prima facie case has not been made out against the Defendant for him to be called upon to answer. Learned Counsel urged the Court to uphold the no case submission and to discharge and acquit the Defendants.

Meanwhile, on the Prosecution's part, a sole issue for determination was formulated by learned Prosecuting Counsel in their Written Address to wit:

> ***"Whether the Prosecution has made out a case as required by law to justify refusing the no case submission and calling upon the Defendant to put up his defence."***

In arguing the issue, learned Counsel first of all made reference to Section 301 and 302 of the Administration of Criminal Justice Act 2015, and submitted that this Honourable Court has the duty under the law of looking

into the evidence led by the Prosecution to determine whether or not a prima facie case has been made out against the Defendant so as to call upon him to open his defence.

Learned Counsel cited the case of ***DELE FAGORIOLA V FEDERAL REPUBLIC OF NIGERIA (2013) LPELR – 20896 (SC)*** on the factors to be considered in a submission of no case to answer.

Submitted moreso, that at this stage the trial Court is not called upon to express any opinion on the evidence before it. But to rule on whether or not there is any legally admissible evidence linking the Defendant with the commission of the offence with which he is charged.

Reliance was placed on the cases of ***AITUMA V STATE (2007) 5 NWLR (Pt. 1028) 466, IGABELE V STATE (2004) 15 NWLR (Pt. 896) 314, AJIBIYO V THE STATE (1998) ACLR, 555; FRN V ADAMU NUHU (2015) LPELR -26013 (CA).***

Submitted in that regard, that the evidence so far led by the Prosecution is sufficient to link the Defendants with the offences charged and urged the Court to so hold.

Learned Counsel made reference to the ingredients of the offence of issuing a dishonoured cheque by citing the case of ***ABEKE V STATE (2007) 9 NWLR (Pt. 1040) 411 at 437, C – E.***

Submitted on this premise that the evidence led by the Prosecution should prove that the 1st Defendant obtained credit by himself, the cheque was presented within three months of the date thereon, 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.

In support of this line of submissions, learned Counsel referred the Court to the evidence of Pw3 and Pw4.

Learned Counsel also raised some pertinent questions and important issues in need of resolution in paragraph 3:12 of the address.

In further submissions, learned Counsel stated that from the evidence led, the Prosecution has shown that the 1st Defendant received the cash deposits and collected the monies from the Nominal Complainant and subsequently issued to him a dishonoured cheque.

On the charge of criminal breach of trust, learned Counsel made reference to the definition of the offence of Criminal Breach of Trust under Section 311 of the Penal Code, Laws of the Federation of Nigeria (Abuja). And the case of ***ONUOHA V THE STATE (1988) LPELR – 2706 (SC)*** on the ingredients of Criminal Breach of Trust.

It is learned Counsel's submission, that Defendants contention in paragraph 4.0 of the address that the matter is civil in nature is a misconception of law and facts. Reference was made to the Confessional Statements of the 1st Defendant (Exhibit F1 and F2).

Counsel submitted moreso that the law is trite that a Confessional Statement once proved to be direct and positive is sufficient to ground a conviction.

Reliance was placed on Sections 28 and 29 of the Evidence Act, 2011 and the case of ***SAVIOUR EFFIONG V THE STATE (2010) LPELR -40124.***

Submitted in that regard that the Confessional Statements in this case were admitted into evidence without any form of objection on the part of the Defendant and his Counsel which leads to the conclusion that the Defendants committed the crimes alleged.

That the Exhibits alone without other credible evidence led has made out a prima facie case against the Defendants justifying the dismissal of this no case submission and calling upon the Defendants to open their defence and urged the Court to so hold.

Finally, learned Counsel urged the Court to hold that the evidence so far led has established a prima facie case against the Defendants such that if left uncontradicted would be sufficient to ground a conviction.

Now, I've carefully considered this no case submission, as well as the response of the Prosecution to same.

On the whole, I've considered the totality of evidence adduced by the Prosecution vis-à-vis the offences charged against the Defendants. In my humble view, the issue for determination is whether a prima facie case has been established against the Defendants to call upon them to open their defence?

First of all, it is well settled now that when a submission of no prima facie case is made on behalf of a Defendant, the trial Court is not thereby called upon at that stage to express any opinion on the evidence before it.

On this premise, I refer to the case of ***DABOH V STATE (1977) ALL NLR, 146*** *where* the Court per Udo, Udoma JSC articulated that: -

> ***"When a submission of no prima facie case is made on behalf of an accused person, the trial Court is not thereby called upon at that stage to express any opinion on the evidence before it. The Court is only called upon to take note and to rule accordingly that there is before the Court no legally and credible evidence linking the accused person with the commission of the offence with which he is charged. If the submission is based on discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail…"***

See also the cases of ***TONGO V C.O.P (2007) LPELR -3257 (SC); FRN V BANKOLE (2012) ALL FWLR (Pt. 629) 1150.***

On the meaning of "prima facie case", the Supreme Court held in the case of ***TONGO V C.O.P (2007) NCC VOL. 2, Page 529, Page 531 Ratio 2*** as follows:-

> ***"In an Indian case, however, Sher Singh V Jiterndranathsen (1931) I.L.R. 59. Cak. 275, we find the following dicta:-***
> ***"What is meant by a prima facie (case)? It is grounds for proceeding. But a prima facie case is not the same as proof which comes later when the Court has to find whether the accused" is guilty or not guilty. (Per Grose J.) and the evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the***

case against the accused (per Lort Williams J.) Oguntade, JSC at pages 538 – 539."

I've noted the definition of the offence of criminal breach of trust as provided under Section 311 of the Penal Code.

For the purpose of clarity, I hereby reproduce same hereunder. It provides thus:

> ***"Section 311: Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust."***

Likewise, on the mode of proof of offence of issuing Dishonoured (Dud) cheques, the Prosecution has a duty to prove the following: -

"(a). That the Defendant obtained credit by himself.

(b). That 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 or insufficient funds standing to the credit of the <u>drawer</u> of the cheque in the bank on which the cheque was drawn."

On this, please see the case of ***BOLANLE ABEKE V STATE (2007) NCC V2, Page 451, Page 455, Ratio 9 thereof.***

I've also noted the very pertinent questions put forth for determination contained in paragraph of the Prosecution's Written Address.

"3:12

(a). What are the true facts of this case?

(b). Is there any evidence that such payments were made by Pw1 to Defendants?

(c). Has the Defendant denied the fact that he collected the money from the Nominal Complainant?

(d). Is there any evidence that such payments were received by the Defendant?

(e). Upon receipt of these monies by the Defendant, has he supplied or paid back the money to the Nominal Complainant as promised?

(f). Did the Defendant pay the total sum of the money to Nominal Complainant now?

(g). Has the Defendant issued the cheques?

(h). Are there sufficient funds in those accounts when the cheques were issued by the Defendant?"

In that light this Honourable Court has the duty to consider the principles highlighted in the case of ***ADUKU V FRN (2009) NCC V4, Page 350 at 354, Ratio 6***, to determine whether a prima facie case has been made out against the Defendants in this case.

The Court has held thus:

"In a Criminal Charge if an objection is raised that a prima facie case has not been made out against an accused person and as a result that all counts in the charge be quashed, the Court before whom the application is made would be guided by the following principles: -

(1). The Court must confine itself to the Statement and documents put forward in the proof of evidence at the time

the objection was raised. Once proof of evidence does not disclose any offence the charge must be quashed.

(2). The proof of evidence needs to show the probability and not the certainty that the accused person is linked with the offence charged. Such evidence may be direct or circumstantial. Whether there are other co-existing circumstances which could weaken the inference that may be drawn from the circumstances or whether the evidence leads irresistibly to accused person's guilt can only be determined at the trial.

(3). In coming to a decision on whether a prima facie case has been made out, the Court must examine all the depositions made by the potential witnesses and accused persons so as to find if there is a ground for proceeding against the accused. It is only where a consideration of the totality of the evidence discloses no link of the accused with the offences that the charge would be quashed.

(4). Although the Statements and the documents in the proof of evidence are deemed to be true and uncontradicted at this stage, the learned trial Judge must still ensure that only legally admissible evidence is considered. There must be an examination and application of principles of law to the facts and the Court cannot act on any piece of evidence which even if believed would be irrelevant or inadmissible in law. " J. O. Bada JCA, at pages 376-377.

Furthermore, on how to determine whether a prima facie case is disclosed against an accused person the Court further held in Aduku's case supra at page 378 thus:

"***In determining whether a prima facie case is disclosed for the purpose of quashing an indictment, the Court must have regard to the entire proof of evidence attached to the charge or information. This view is supported by pronouncement of***

Belgore JSC (as he then was) in ABACHA VS. THE STATE (supra) that:-

"However, in deciding whether a prima facie case exists for the accused to answer in an information for indictment the authorizing Judge, or the Judge before whom the indictment is placed, must look at the proofs of evidence attached to the information in totality and not pick words out of context. I have indicated earlier what a prima facie case is. The entire proofs of evidence i.e. statements from all relevant persons and perhaps also the suspect must be read and considered." J. O. Bada JCA, at page 378."

Therefore in the instant case, I've considered the entire evidence led by the Prosecution, including the two charges against the Defendants, the proof of evidence i.e. Statement from all the Prosecution witnesses including that of the 1st Defendant, and I am satisfied that a prima facie case has been established against the Defendants on the two charges before the Court. Consequently therefore, the sole issue is hereby resolved in favour of the Prosecution against the Defendants. The no case submission is hereby overruled. I hold that the Defendants have a case to answer. They are hereby called upon to enter their defence.

Signed

Hon. Justice S. U. Bature
25/11/2021