

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON WEDNESDAY, 16<sup>TH</sup> DAY OF NOVEMBER, 2022**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**CHARGE NO. FCT/HC/CR/172/2016**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA    ---    COMPLAINANT**

**AND**

**1. FOLAKE JOY YOBAB [MRS.]  
2. SKYHIGH VENTURES LIMITED    }    DEFENDANTS**

**RULING ON NO CASE SUBMISSION**

On 5/2/2018, the defendants were arraigned on the 7-count amended charge filed on 31/10/2016 and each of them pleaded not guilty to the 7 counts in the amended charge. The 1<sup>st</sup> defendant represented the 2<sup>nd</sup> defendant.

**Count 1** reads:

*That you Folake Joy Yobah [Mrs.], Managing Director and sole signatory of Skyhigh Ventures Limited and Skyhigh Ventures Limited, sometime in 2014, in Abuja, within the jurisdiction of the High Court of the Federal Capital Territory, in settlement of a legal obligation to wit: a debt owed to Emmanuel Uzomah, Managing Director of United Surgical Limited in Abuja, did issue a*

*United Bank for Africa Plc. cheque no. 25127375, dated 3<sup>rd</sup> November, 2014, in the sum of N10,000,000.00k [Ten Million Naira only] which when presented within three months was dishonoured on the ground that no sufficient funds were standing to the credit of the account upon which the cheque was drawn; and you thereby committed an offence contrary to Section 1 [1] [b] and punishable under Section 1 [1] [b] [ii] Dishonoured Cheques [Offences] Act, Cap. 102, Laws of the Federation, 2004.*

**Count 2** is similar to count 1 save that the cheque number is 25127378 dated 2<sup>nd</sup> February, 2015. **Count 3** is similar to count 1 save that the cheque number is 25127377 dated 30<sup>th</sup> January, 2015. **Count 4** is similar to count 1 save that the cheque number is 25127376 dated 31<sup>st</sup> January, 2015. **Count 5** is similar to count 1 save that the cheque number is 25127374 dated 30<sup>th</sup> October, 2014. **Count 6** is similar to count 1 save that the cheque number is 25127373 dated 31<sup>st</sup> October, 2014.

**Count 7** reads:

*That you Folake Joy Yobah [Mrs.], Managing Director and sole signatory of Skyhigh Ventures Limited and Skyhigh Ventures Limited, on or about the 21<sup>st</sup> day of March, 2014, at Abuja, being entrusted with certain property, to wit the sum of N30,242,102.75 [Thirty Million, Two Hundred and Forty Two Thousand, One Hundred and Two Naira, Seventy Five Kobo only] committed criminal breach of trust; and you thereby committed an offence punishable under Section 312 of the Penal Code.*

In proof of the charge, the prosecution called 6 witnesses, namely: Detective Nwankwo Oluchi [PW1]; Emmanuel Okechukwu Uzomah [PW2]; Zubairu Sani [PW3]; Peter Durojaiye [PW4]; Sunday Okide [PW5]; and John Ibrahim Yisa [PW6]. The details of the testimonies of the witnesses are in the record of proceedings. Let me refer to parts of the testimonies of the witnesses for the purpose of this ruling.

**Evidence of Detective Nwankwo Oluchi [PW1]:**

PW1 stated that on 5/6/2015, the office of the Executive Chairman of EFCC received a petition from *Custodians of Law Solicitors* on behalf of United Surgicals Ltd. against the 2<sup>nd</sup> defendant and another. The petition was referred to Bank Fraud Team 3 for investigation; she is a member of the Team. Attached to the petition are a copy of the contract award letter to the defendants from Central Bank of Nigeria [CBN] and photocopies of 6 UBA cheques each for N10 million issued to the nominal complainant by the defendants. Nominal complainant submitted the originals of the 6 cheques to EFCC. 2 of the cheques were not stamped because they were presented to the Bank for payment, one of the cheques was presented 2 times; while 3 went through clearing. The cheques were dishonoured and returned to the nominal complainant due to insufficient funds in the account of the defendants.

PW1 narrated how investigation was carried out by the Team; they wrote letters to CBN, Fidelity Bank, Unity Bank, United Bank for Africa [UBA], etc.

and received responses from them. On 10/7/2015, the 1<sup>st</sup> defendant wrote her statement where she agreed that she collected money from the nominal complainant and that she issued the 6 UBA cheques to him. On 13/7/2015, 4/8/2015, 2/9/2015 and 20/10/2015 the 1<sup>st</sup> defendant made additional statements. PW1 tendered Exhibits A, B, C, D, E, F, G, H1-H6, J1, J2, K1-K6. The details of the Exhibits are in the record of proceedings. The investigation revealed that:

- i. the 1<sup>st</sup> defendant collected money from the nominal complainant;
- ii. the 1<sup>st</sup> defendant issued 6 UBA cheques each for N10 million which were presented to the bank and dishonoured due to insufficient funds in the 2<sup>nd</sup> defendant's account;
- iii. 1<sup>st</sup> defendant fraudulently withdrew N5 million on series of different withdrawals with her ATM card without informing the nominal complainant;
- iv. the 1<sup>st</sup> defendant and the nominal complainant opened a joint account in Skye Bank for the purpose of the contract payment from CBN;
- v. the 1<sup>st</sup> defendant made the nominal complainant a signatory to her Fidelity Bank account to enable him get his money back as soon as CBN paid for the contract;
- vi. the 1<sup>st</sup> defendant instructed CBN to transfer the Advance Payment Guarantee and all subsequent payments to her Unity Bank account;

- vii. CBN acted on 1<sup>st</sup> defendant's instructions; and
- viii. CBN has so far paid the 1<sup>st</sup> defendant over N90 million.

The further evidence of Detective Nwankwo Oluchiis that the UBA cheques issued by the 1<sup>st</sup> defendant were deliberately issued to United Surgicals Ltd. because she did not want to pay the nominal complainant. If the 1<sup>st</sup> defendant wanted to pay the nominal complainant the money, she would have issued the cheques of Fidelity Bank or Unity Bank where CBN paid over N90 million.

During cross examination, PW1 stated that 2 of the cheques [i.e. Exhibits K1 & K2] were not stamped because they went through the counter of the bank; "DAR" was written on the 2 cheques by the bank cashier to whom the cheques were presented. The limit that someone can cash across the counter is N10 million. A letter was written to UBA on why the 6 cheques were returned. The response was that the 6 cheques were returned due to insufficient funds in the 2<sup>nd</sup> defendant's account.

**Evidence of Emmanuel Okechukwu Uzomah [PW2]:**

PW2, the managing director of United Surgicals Ltd., narrated that in August 2013, Mr. Felix Yobah [his friend] approached him with a contract document dated May 2012 from CBN awarded to Skyhigh Ventures Ltd. [2<sup>nd</sup> defendant]. Mr. Yobah said he, his wife and one of their partners are beneficiaries of the award letter. He said they had made efforts for more than

one year to execute the contract without success; and that there was an opportunity for them to request for advance payment of 15% of the contract sum from CBN. They approached their bank [Fidelity Bank Plc.] for an Advance Payment Guarantee [APG] which was the condition CBN gave them to be able to access the 15% advance payment. Fidelity Bank Plc. requested for a collateral from them as a condition for issuing the APG. The defendants submitted the certificate of occupancy of a property to Fidelity Bank Plc. and the APG was issued to them.

When they submitted the APG to CBN, CBN paid the sum of about N33 million to them less VAT and tax into their account in Fidelity Bank. The following day, they went to draw on the inflow and the bank informed them that it is not possible for them to access that fund because the collateral was found wanting. The bank asked them to either replace the collateral or move to site to work to the extent of the fund released to them. They approached his company, United Surgicals Ltd. and him [as the managing director] for financial assistance. On 22/8/2013, United Surgicals Ltd. made a commitment of N48 million and there was an agreement. The parties agreed that United Surgicals Ltd. will be discharged in 2 months at most. He was made a signatory to the account in Fidelity Bank where the inflow was domiciled.

On 23/8/2013, United Surgicals Ltd. moved in N40 million into the account in Fidelity Bank. He narrated how he counter-signed some cheques in furtherance of the execution of the project. The defendants requested for

another N1.5 million, which he gave to them. At that time, the N40 million was exhausted. After 2 months when payment was expected from the defendants as per the agreement, United Surgicals Ltd. approached the defendants to find out why payment has not been made. There were so many excuses. On 29/11/2013, there was an inflow of N16.7 million into the 2<sup>nd</sup> defendant's account in Fidelity Bank where he was appointed a co-signatory. Later, the account officer from Fidelity Bank informed him that between 29/11/2013 and 23/12/2013, there were 104 withdrawals with ATM card; and about N5.2 million was withdrawn from the account.

PW2 further stated that after several denials, the 1<sup>st</sup> defendant confirmed that she was the one that made the withdrawals because she had some personal problems. There was another inflow into the account on 27/12/2013. When the inflow came in, he wanted to opt out of the transaction if the defendants could settle him. The defendants were able to pay United Surgicals Ltd. the sum of N25 million. Before the transfer of N25 million, the defendants pleaded that they had no working capital and requested for an additional loan of N10 million. Initially, United Surgicals Ltd. refused but later accepted. The parties entered into a new agreement and collapsed the old agreement. The account in Fidelity Bank was closed and by the agreement of the parties, a joint account was opened in Skye Bank, Wuse Zone 5. The account was a joint account.

They were persuaded by the defendants to write Fidelity Bank to transfer the advance payment [which was still with it] to CBN and for CBN to return the Performance Bond to Fidelity Bank in order to end the relationship in respect of the joint account they had with Fidelity Bank. The advance payment was returned to CBN and CBN returned the Performance Bond to Fidelity Bank. The 1<sup>st</sup> defendant and one Clement Nsebong came to his office for a letter to be written to CBN that the fund refunded to it should be deposited in the joint account in Skye Bank. The letter was written and brought to him, which he signed. The letter was given back to them to send to CBN. When he could not get the funds into the new account for some months, they invited 1<sup>st</sup> defendant to their office and she insisted that the payment had not come.

The PW2 further stated that he made some contacts at CBN and found that the money had been paid. He invited the 1<sup>st</sup> defendant to find out if the money had been paid. The 1<sup>st</sup> defendant, in the presence of Mr. Felix Yobah and Clement Nzebong, said the money had not been paid. His source furnished him with details of the bank, the amount paid and the date of the payment. At that point, it became clear that he and United Surgical Ltd. had been defrauded. The letter he signed, which was to be sent to CBN, was not sent but was switched with another letter having a different account number and bank belonging to the defendants. The proceeds of the job they were expecting from CBN were paid into that account of the defendants.



When he eventually met with the 1<sup>st</sup> defendant, she admitted that the money had been paid into her account but that she is objecting to the terms of their agreement. She said the terms of the agreement must be re-negotiated if they must receive any amount from her. In July 2014, some persons intervened. The money he was expecting at that time [made up of principal and profit] was about N122 million. The 1<sup>st</sup> defendant agreed that she was owing the said sum but that she did not have money to pay. After several plea by her husband, her siblings and others, the 1<sup>st</sup> defendant said what she can pay is N60 million out of the N122 million. They agreed to accept the N60 million. The 1<sup>st</sup> defendant promised to make the payment in July 2014. When they waited till 22/9/2014, they wrote a letter to the defendants demanding the sum of N60 million.

When they had a meeting on 30/9/2014, the defendants issued 6 UBA cheques of N10 million each to them. The monies from CBN were paid into Unity Bank account but the cheques they issued were UBA cheques. They objected to the cheques but the defendants insisted that that was the account they want to pay them from. The cheques were from 30/10/2014 to 2/2/2015. When the first cheque was due for payment, they presented it to the bank and it was returned for lack of funds. The second was on 31/10/2014 while the third was on 3/11/2014. They were all returned unpaid upon presentation on the due dates for lack of funds.

On 10/11/2014, they wrote a letter to the defendants to inform them of the 3 cheques that were returned. On 26/11/2014, the defendants wrote a letter to them captioned "*Intent to liquidate*" and requested them not to present the other cheques until December 2014 or January 2015. In January 2015, they presented one of the cheques earlier returned and it was returned unpaid for lack of funds. Later, the other remaining cheques were presented on the due dates and they were returned for lack of funds. Exhibits K1-K6 are the 6 cheques issued by the defendants which were returned unpaid. They wrote a complaint [Exhibit A] to EFCC in June 2015 through the company lawyer.

Emmanuel Okechukwu Uzoma further testified that Exhibits J1 & J2 are the agreements between United Surgicals Ltd. represented by himself and Skyhigh Ventures Ltd. represented by 1<sup>st</sup> defendant. He tendered the letter they wrote to the defendants dated 10/11/2014 as Exhibit L. Upon receipt of Exhibit L, the defendants wrote a letter to them on 11/11/2014 in which they questioned why they presented the 3 cheques without recourse to them. They did not deem it necessary to reply that letter because they saw the content as an after-thought. He explained that in their meeting of September 2014, there was no instruction or agreement for them to consult the defendants before presenting the cheques.

During cross examination, PW2 stated that United Surgicals Ltd. and the 2<sup>nd</sup> defendant were supposed to execute the CBN contract as partners. The value of the CBN contract was about N220 million. They demanded instant

payment knowing that there was payment or inflow from CBN, but the defendants said they will pay instalmentally and by post-dated cheques. It is not correct that the cheques were issued to him on the agreement that he will present them when there is fund in the account.

The further evidence of PW2 during cross examination is that it is far from the truth to suggest that defendants wrote him a letter that he should not present the cheques until they give him a go-ahead to do so. The 2<sup>nd</sup> defendant's letter to the managing director of United Surgicals Ltd. dated 11/11/2014 was tendered through the PW2 as Exhibit M. PW2 stated that after Exhibit M, he presented the remaining cheques because the letter was of no effect. Exhibits K1 & K2 do not have the stamp of any bank to show that they were presented. Exhibits K1 & K2 have "DCR". Exhibits K4-K6 were presented after Exhibit M. "DAR" was written on Exhibits K3, K4 & K5. Nothing is written on Exhibit K6.

**Evidence of Zubairu Sani [PW3]:**

The evidence of the PW3, a staff of Unity Bank Plc, is that they received a letter from EFCC requesting for account opening packages, statement of account, certificate of identification and other relevant documents, which may assist EFCC in its investigation into this case. They responded to the letter and attached the documents requested. The letter from Unity Bank to EFCC dated 25/6/2015 and the attached documents were admitted as Exhibit N. He referred to the documents attached to the letter in respect of the

account of the 2<sup>nd</sup> defendant in Unity Bank Plc. He also mentioned some of the transactions in the statement of account including FDSPO NEFT credit of N30,242,102.75 on 23/5/2014 and NEFT credit of N13,567,614.09 on 22/9/2014.

When PW3 was cross examined, he stated that from Exhibit N, the deposits on 23/5/2014, 22/9/2014, 17/11/2014 and 15/1/2015 carry the same narration and from their investigation, the deposits were from CBN.

**Evidence of Peter Durojaiye [PW4]:**

In his evidence, PW4, a staff of Fidelity Bank Plc., stated that in 2015, there was a request for statement of account and bank details of Skyhigh Ventures Ltd. by EFCC. They supplied the records and he attested to it. The documents were delivered to EFCC with a cover letter and an attestation letter. The letter from Fidelity Bank Plc. to EFCC dated 29/6/2015 and the attached documents were received in evidence as Exhibit O.

PW4 further stated that from the statement of account of the 2<sup>nd</sup> defendant [i.e. part of Exhibit O], there was an inflow into the account on 8/3/2013 from CBN for the sum of N10,027,185.22. There was also an inflow into the account on 23/8/2013 for the sum of N40 million by order of United Surgicals Ltd. There was an inflow from CBN on 29/11/2013 for N16,791,216.22 and another inflow from CBN on 27/12/2013 for N14,253,897.27. From 29/11/2013 to 23/12/2013, there were majorly ATM multiple withdrawals and ATM Visa card payments; all the transactions were ATM card related.

During cross examination of PW4, he stated that from Exhibit O, the account was opened on 21/5/2012. From the statement of account, N25 million was paid back to United Surgicals Ltd. on 16/1/2014.

**Evidence of Sunday Okide[PW5]:**

The evidence of PW5, a staff of UBA, is that based on the letter from EFCC, he sent the documents of the account of Skyhigh Ventures Ltd. to EFCC i.e. account opening package, statement of account, mandate card, identification documents and reference. The letter from UBA Plc. to EFCC dated 2/7/2015 and the attached documents were admitted in evidence as Exhibit P. The mandate card shows the signatory of the account as Mrs. Folake Ojotu Yobah. The highlighted portions in the statement of account show that:

- a) Cheque numbers 25127378, 25127377 and 25127376 each for N10 million were presented into the account on 9/2/2015; but they were returned unpaid on that day.
- b) On 4/11/2014, cheque No. 25127375 for N10 million was presented into the account for payment but was returned unpaid.
- c) On 8/1/2015, the cheque No. 25127375 for N10 million was presented into the account for payment but was returned unpaid.

The balance of the account on 8/1/2015 before the presentation of the cheque was N1,754.40. Before cheque numbers 25127378, 25127377, 25127376 were presented on 9/2/2015, the balance of the account was N2,415.89k. The balance as at 4/11/2014 when cheque No. 25127375 was presented was N92.51.

The further evidence of PW5 is that from the statement of account, on 9/2/2015, cheque numbers 25127378, 25127377, 25127376 were returned with the comment *"Drawer's Attention Required"*. On 4/11/2014, cheque number 25127375 was returned with Information *"Drawers Attention Required"*. On 8/1/2015, cheque number 25127375 was returned with the Information *"Drawer's Attention Required"*. PW5 explained that the circumstance under which the bank can write *"Drawers Attention Required"* is if the amount of money in the customer's account is not enough to honour the cheque.

When PW5 was cross examined, he stated that if a customer's signature on a cheque presented is irregular, the bank will not pay; the bank will write *"Drawer's Confirmation Required"*. Any cheque that was presented for payment will be reflected in the statement of account. Exhibits K1 & K2 [i.e. cheque numbers 25127374 and 25127373] are not in the statement of account; they were not part of the cheques that went through clearing. A cheque issued in the name of a company cannot be cashed across the counter except the beneficiary of the cheque gives an instruction at the back for the money to be paid to someone else. There is no instruction at the back of Exhibits K1 & K2.

**Evidence of John Ibrahim Yisa[PW6]:**

The evidence of the PW6 is that he works with CBN as a project manager. The defendants were engaged as sub-contractors on the CBN Bauchi branch renovation project to deliver Closed Circuit Television [CCTV], access control and other physical security installations. Presently, the project is at a practical stage of completion. In the course of executing the contract, they received a request from EFCC to provide details of payments that had been made by CBN to the 2<sup>nd</sup> defendant. The information was released to EFCC via an official letter accompanied with: [i] a spread sheet containing details of all payments made; and [ii] a Certificate of Identification. The letter from CBN to EFCC dated 19/2/2021 and the attached documents are Exhibit Q.

PW6 further testified that from the spreadsheet, Fidelity Bank, Unity Bank and First Bank were captured. He listed: [i] the amounts paid to Fidelity Bank in 3 instalments and the dates of payment; [ii] the amounts paid to Fidelity Bank in 5 instalments and the dates of payment; and [iii] the only sum paid to First Bank and the date of payment. The payments through Fidelity Bank and Unity Bank are in respect of the sub-contract which the 2<sup>nd</sup> defendant was executing at the Bauchi branch of CBN.

During cross examination, PW6 stated that the main contract was terminated at a time and re-awarded to another contractor before the 2<sup>nd</sup> defendant could continue the job. The main contract was terminated in November 2014 and re-awarded between June/July 2015. It took the new contractor sometime to mobilize to site and get the main contract up to the stage for the 2<sup>nd</sup> defendant

to perform its own contract. The letter from CBN to EFCC dated 22/6/2015 was tendered through PW6 and admitted as Exhibit R.

**Written Addresses of the Parties and Issues Formulated for Determination:**

At the close of the case of the prosecution, the defendants made a no case submission. Seun Olokeogun Esq. filed the defendants' 41-page written address on 10/1/2022. In response, Iwebafa Gift Odibo Esq. filed the 16-page written address of the prosecution on 5/9/2022. On 19/9/2022, Seun Olokeogun Esq. filed the defendants' 7-page reply on points of law. The written addresses were adopted on 21/9/2022.

Learned counsel for the defendants distilled two issues for determination, which are:

1. Whether the complainant has been able to adduce evidence substantial enough to prove the elements of the alleged offence.
2. Whether whatever evidence adduced by the complainant which might have linked the defendants with the alleged offences is so manifestly unreliable that no reasonable court/tribunal could safely convict on it.

On the hand, learned counsel for the prosecution formulated one issue for determination, to wit:

Whether upon the evidence adduced by the prosecution before the Court, a *prima facie* case has been made out against the defendants to



warrant some form of explanation or defence from them for the offences with which they are charged.

**Principles Guiding No Case Submission and Issue for Determination:**

It is trite law that a submission that there is no case to answer may properly be made and upheld: [i] when there has been no evidence to prove an essential element of the alleged offence; and [ii] when the evidence adduced by the prosecution has been so discredited as a result of cross examination or is manifestly unreliable that no reasonable tribunal could safely convict on it. See **Ekpo v. The State [2001] 7 NWLR [Pt. 712] 292** and **Ricky Tarfa Mustapha, SAN v. FRN [2019] LPELR-50662 [CA]**. The grounds upon which a no case submission could be upheld by the Court have been codified in section 303[3] of the Administration of Criminal Justice Act, 2015.

In considering a no case submission, the credibility of witnesses and the weight to be attached to their testimonies do not arise. In **Fidelis Ubanatu v. C.O.P. [2000] 2 NWLR [Pt. 643] 115**, it was held that *prima facie* case means that there is a ground for proceeding. In other words, that something has been produced to make it worthwhile to continue with the proceedings. It is not the same as proof, which comes later when the Court has to find whether the accused person [or defendant] is guilty or not guilty. The evidence of the prosecution is said to disclose 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 person [or defendant]. See also the case of **Duru v. Nwosu [1989] 1 NWLR [Pt. 113] 24.**

In **Ajisogun v. State [1998] 13 NWLR [Pt. 581] 236 @ 257,** the Court of Appeal [per Nsofor, JCA] aptly stated the essence of no case submission. It was held that in a no case submission, what the accused person is saying is to this effect: *“Accept all that the prosecution has said through its witnesses, yet it [the prosecution] cannot secure a conviction either of the offence charged or any other alternative offence of which I may possibly be convicted, upon the evidence...”* It was further held that at the stage of no case submission, there ought to be some evidence direct or indirect against the accused person, which evidence, unless and until it be displaced or explained off, would be enough to support a conviction.

In the light of the foregoing, the Court is of the considered view that the main issue for determination is whether the prosecution has made out a *prima facie* case against the defendants in respect of the offences charged.

**Submissions of Learned Counsel on Counts 1-6 and Decision of the Court:**

The charges in counts 1-6 are hinged on Exhibits K1-K6, which, from the evidence of the prosecution, are the cheques issued by the 1<sup>st</sup> defendant on the account of the 2<sup>nd</sup> defendant. Section 1[1][b] of the Dishonoured Cheques [Offences] Act under which the defendants are charged in counts 1-6 provides:

[1] Any person who –

[a] .....

[b] *obtains credit for himself or any other person, by means of a cheque that, when presented for payment not later than three months after the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn, shall be guilty of an offence and on conviction shall - [i] in the case of an individual be sentenced to imprisonment for two years, without the option of a fine; and [ii] in the case of a body corporate, be sentenced to a fine of not less than N5,000.*

The ingredients of the offence are that: [i] the defendant obtained credit for himself or for any other person by means of a cheque; [ii] the cheque was presented within 3 months of the date thereon; and [iii] on presentation, the cheque was 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. See **Abraham v. FRN [2018] LPELR-44136 [CA]**.

The summary of the submissions of Seun Olokeogun Esq. is that prosecution has not been able to establish the ingredients constituting the offence in counts 1-6 and the evidence produced by prosecution is manifestly unreliable and has been discredited under cross examination that the Court cannot uphold any of them to warrant calling the defendants to enter a defence. In the defendants' reply on points of law, learned counsel for the defendants stressed the point that making out a *prima facie* case is fundamentally based

on the ability of the prosecution to establish the elements of the offences in the charge. The Court will consider anon the specific arguments put forward by learned defence counsel in support of the no case submission on counts 1-6.

On the other hand, Iwebafa Gift Odibo Esq. reviewed the evidence of PW1 to PW5 from pages 4 to 11 of the written address of the prosecution. In paragraph 4.1 thereof, learned prosecuting counsel submitted that from the evidence of PW1-PW5 and the documents admitted, the prosecution has shown sufficient evidence of a *prima facie* case that would warrant the Court to call on the defendants to enter their defence as they have a case to answer.

The arguments of the defence counsel will be considered and resolved in turn. **Firstly**, in paragraphs 6.4 & 6.5 of the defendants written address, Mr. Seun Olokeogun referred to the evidence of PW2 that he and his company [United Surgicals Ltd.] were partners with the defendants in the execution of the contract awarded by CBN. He argued that being "*full partners*" in the execution of the contract, payment, sharing of profit and issues of interests and liabilities cannot be determined until the end of the project. It was submitted that prosecution failed to establish the first element of the offence in counts 1-6 i.e. that the cheques were issued to obtain credit because the money advanced by PW2 was his contribution as full partner in the CBN contract.

On the other hand, learned counsel for the prosecution argued that from the facts before the Court, it is manifestly evident that the defendants obtained credit for themselves by the issuance of the cheques. The contention of defence counsel that there is no evidence to show that defendants issued the cheques to obtain credit from PW2 is misconceived. Counsel relied on section 1[2][b] of the Dishonoured Cheques [Offences] Act. Iwebafa Gift Odibo Esq. submitted that the fact that the cheques issued by the defendants to PW2 were returned unpaid due to insufficient funds standing to the credit of the defendants requires an explanation by the defendants.

Now, it would appear that in canvassing the argument that there is no evidence that the cheques issued by the defendants, Exhibits K1-K6, were issued to obtain credit, learned counsel for the defendants overlooked the provision of section 1[2][b] of the Dishonoured Cheques [Offences] Act, which reads:

*A person who draws a cheque which is dishonoured on the ground stated in the subsection and which was issued in settlement or purported settlement of any obligation under an enforceable contract entered into between the drawer of the cheque and the person to whom the cheque was issued, shall be deemed to have obtained credit for himself by means of the cheque, notwithstanding that at the time when the contract was entered into, the manner in which the obligation would be settled was not specified.*

The evidence of PW2 is that the 1<sup>st</sup> defendant agreed that she was owing the sum of N122 million but that she did not have money to pay. After several plea by her husband, her siblings and others, the 1<sup>st</sup> defendant said what she can pay is N60 million out of the N122 million. They [i.e he and United Surgicals Ltd.] agreed to accept the N60 million. She promised to make the payment in July 2014. When they waited till 22/9/2014, they wrote a letter to the defendants demanding the sum of N60 million. When they had a meeting on 30/9/2014, the defendants issued 6 UBA cheques of N10 million each to them.

The decision of the Court is that from the evidence of PW2, defendants issued the cheques "*in settlement*" of their obligation under the contract between them and PW2 and United Surgicals Ltd. Thus, by section 1[2][b] of the Dishonoured Cheques [Offences] Act, they are deemed to have obtained credit for themselves by means of the cheques, Exhibits K1-K6. The submission of defence counsel in this regard is untenable. The prosecution has proved the first element of the offence under section 1[1][b] of the Dishonoured Cheques [Offences] Act.

**Secondly**, in paragraphs 7.0 to 7.2 of the defendants' written address, learned defence counsel argued that from the testimonies of PW2 & PW5, cheque number 25127374 dated 30/10/2014 [Exhibit K1] and cheque number 25127373 dated 31/10/2014 [Exhibit K2] were not presented for payment in any bank. One of the ingredients of the offence [i.e. that the cheque was

presented not later than three months from the date of issuance] has not been established by the prosecution. Seun Olokeogun Esq. urged the Court to uphold the no case submission in respect of counts 5 and 6, which are predicated on the cheques, Exhibits K1 & K2 respectively. The learned prosecuting counsel did not put forward any argument in response to this specific argument.

The defence counsel is correct that during cross examination, PW2 admitted that Exhibits K1 & K2 do not have the stamp of any bank to show that they were presented. The PW5 also confirmed that cheque numbers 25127374 and 25127373 [i.e. Exhibits K1 & K2] are not in the statement of account of the 2<sup>nd</sup> defendant and were not part of the cheques that went for clearing. PW5 further explained that a cheque issued in the name of a company cannot be cashed across the counter except the beneficiary of the cheque gives an instruction at the back of the cheque for the money to be paid to someone else; and there is no instruction at the back of Exhibits K1 & K2.

An ingredient of the offence in counts 1-6 is proof that the cheque in issue was presented within 3 months of the date thereon. I hold the considered view that the piece of evidence of PW2 that he presented the cheques [Exhibits K1 & K2] to the bank for payment and they were dishonoured has been discredited and rendered manifestly unreliable by the evidence of PW5 and the statement of account of the 2<sup>nd</sup> defendant in Unity Bank, which forms part of Exhibit N. The decision of the Court is that the prosecution failed to

establish an element of the offence in counts 5 and 6. The Court hereby upholds the no case submission in respect of counts 5 and 6.

**Thirdly**, in paragraphs 7.3& 7.4 of the defendants' written address, Mr. Seun Olokeogun argued in respect of counts 1, 2, 3 and 4 - which are based on the cheques, Exhibits K3, K4, K5 & K6 - that the cheques were presented by the PW2 for payment against the express instruction of the 1<sup>st</sup> defendant in the letter dated 11/11/2014 [Exhibit M] that they should not be presented yet. PW2 ignored the directive and went ahead to present the cheques. It was submitted that PW2's action of presenting the cheques after receiving Exhibit M amounts to "*engaging in a sharp and unconscionable practice*" and should be condemned. Such action cannot be used to establish the ingredient of any offence.

For clarity, Exhibit K3 is cheque number 25127375 dated 3/11/2014; Exhibit K4 is cheque number 25127377 dated 30/1/2015; Exhibit K5 is cheque number 25127376 dated 31/1/2015; and Exhibit K6 is cheque number 25127378 dated 2/2/2015. Count 1 is in respect of Exhibit K3, count 2 is in respect of Exhibit K6, count 3 is in respect of Exhibit K4 while count 4 is in respect of Exhibit K5.

I note that during cross examination, learned defence counsel suggested to the PW2 that the cheques were issued to him on the agreement that he will present them when there is fund in the account. The PW2's answer was an



emphatic No. The defence counsel tendered defendants' letter dated 11/11/2014 through PW2 and it was admitted as Exhibit M. The PW2 stated that the said letter is an after-thought and that he presented the remaining cheques after Exhibit M *"because the letter was of no effect."* With respect to the cheque dated 3/11/2014 [Exhibit K3], it is noteworthy that the prosecution adduced evidence that it was presented for payment on 4/11/2014 and was returned unpaid. The cheque was presented a second time on 8/1/2015 and was returned unpaid.

It seems to me that the decision of the Court on the effect of the defendants' letter dated 11/11/2014 [Exhibit M] on the cheques [Exhibits K4, K5 & K6] and its effect on counts 2, 3 & 4 will be based on the evaluation of the evidence at the end of the trial. In my respectful opinion, that decision cannot be reached at this stage of no case submission where the Court is not expected to express any opinion on the evidence before it. See the case of Dele Fagoriola v. FRN [2013] 7 SCNJ 78; [2013] LPELR-20896 [SC]. Also, as I had said, the evaluation of evidence, credibility of witnesses and evidential weight to be attached to the testimonies do not arise.

The cases of Nzegbuna & Anor. v. Okoye & Anor. [2018] LPELR-43943 [CA] and F.R.N. v. Olutola Ojo & Anor. [2018] LPELR-45541 [CA] relied upon by Seun Olokeogun Esq. respectively in paragraphs 7.4 & 7.5 of the defendants' written address are not applicable to the instant case. None of the decisions was on no case submission or whether the prosecution established a

*prima facie* case. The first case was for the enforcement of fundamental rights. The second case was an appeal against the decision of the trial court in which the accused persons/respondents were discharged after a full trial. From the foregoing, the decision of the Court is that there is no basis to uphold the no case submission of the defendants on counts 1, 2, 3 & 4.

**Fourthly**, in paragraph 7.6 of the defendants' written address, learned counsel for the defendants relied on the provision of section 1[3] of the Dishonoured Cheques [Offences] Act in urging the Court to uphold the no case submission. He submitted that the PW2 participated in the business [i.e. the CBN contract awarded to the 2<sup>nd</sup> defendant]; therefore, the matter falls under the exception in section 1[3] of the said Act. He referred to portions of the evidence of PW2 relating to the fact that he participated in the said business.

Now, section 1[3] of the Dishonoured Cheques [Offences] Act reads:

*"A person shall not be guilty of an offence under this section if he proves to the satisfaction of the court that when he issued that cheque he had reasonable grounds for believing, and did believe in fact, that it would be honoured if presented for payment within the period specified in subsection [1] of this section."*

My humble opinion is that this provision cannot be a basis for upholding a no case submission because by the provision, it is for the defendants to prove to the satisfaction of the Court that they had reasonable grounds for believing

that the cheques would be honoured when they are presented for payment. I so hold.

**Submissions of Learned Counsel on Count 7 and Decision of the Court:**

Section 312 of the Penal Code under which the defendants are charged in count 7 provides:

*Whoever commits criminal breach of trust shall be punished with imprisonment with a term which may extend to seven years or with fine or with both.*

Section 311 of the Penal Code, which defines criminal breach of trust reads:

*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 wilfully suffers any other person so to do, commits criminal breach of trust.*

In **Adeniji v. FRN [2021] LPELR-52818 [CA]**, it was held that the ingredients of the offence of breach of trust are that the defendant was entrusted with property or dominion over it; and that he misappropriated, converted, used, disposed of it contrary to any law regarding the trust or the contract

expressed or implied between the parties or that he allowed someone to do so.

In paragraphs 8.0 to 8.6 of the defendants' written address, the defence counsel argued that the prosecution failed to prove the allegation in count 7. There is no evidence to show that the sum of N30,242,120.75 returned by Fidelity Bank to CBN and later paid by CBN to Unity Bank belonged to any other person or entity other than 2<sup>nd</sup> defendant and it was payment for the contract awarded to it by CBN. The PW6 confirmed that the amount was payment made by CBN to the 2<sup>nd</sup> defendant being the advance payment that the defendants could not access through Fidelity Bank and was later paid to them through Unity Bank. It cannot be said that the defendants were entrusted with certain property to wit: the sum of N30,242,120.75. Also, the entire transaction on the said sum of N30,242,120.75 preceded the relationship between PW2 and the defendants.

The viewpoint of Iwebafa Gift Odibo Esq. in paragraphs 5.1 to 5.3 of the written address of the prosecution is that the prosecution was able to show *prima facie* proof through the testimonies of the PW1, PW2, PW3 and the exhibits tendered that the defendants dishonestly misappropriated the money in violation of the legal contract made by the parties touching the discharge of the contract funds. It was submitted that the prosecution has shown that the money was diverted by the defendants against the contract entered into by the parties.

Let me refer to the evidence of PW2 that the 1<sup>st</sup> defendant and one Clement Nsebong came to his office for a letter to be written to CBN for the money which was refunded to it [CBN] by Fidelity Bank to be deposited in the joint account in Skye Bank. The letter was written and brought to him, which he signed. He later discovered that the letter which he signed to be sent to CBN was not sent but was switched with another letter having a different account number and bank belonging to the defendants. The proceeds of the job they were expecting from CBN were paid into that account of the defendants instead of the joint account.

I am of the considered view that a decision on whether or not PW2 [and/or United Surgicals Ltd.] had any interest in the sum of N30,242,120.75 paid by CBN to the defendants' account in Unity Bank instead of the joint account of the defendants and PW2 in Skye Bank in line with the letter which PW2 said he signed can only be arrived at by the Court at the end of the trial after evaluating the evidence before it. Also, the effect of the evidence of the prosecution on the allegation in count 7 can only be determined at the end of the trial. It has been said before that at this stage of the proceedings, the evaluation of evidence, credibility of witnesses and weight to be attached to the testimonies do not arise.

**Conclusion:**

From all that I have said, the decision of the Court is that the no case submission in respect of counts 5 and 6 is upheld. The defendants are discharged on counts 5 and 6. The no case submission on counts 1, 2, 3, 4 & 7 is overruled. The defendants are called upon to enter their defence in respect of counts 1, 2, 3, 4 and 7.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

**Appearance of Learned Counsel:**

1. I. G. OdiboEsq. for the prosecution.
2. Seun OlokeogunEsq. for the defendants; with Dorcas AutaEsq., TobechukwuEnemEsq. and Olayinka IsajimiEsq.
3. C. O. NnoliEsq. watching brief for the nominal complainant.