IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 9TH DAY OF MARCH, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CR/88/19

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:…....COMPLAINANT

AND

PETER ODIANG ENYIGWE.....DEFENDANT

Mohammed I. Buba for the Prosecution.
Imhanbe Osagie for the Defendant.

RULING ON NO CASE SUBMISSION.

The Defendant was arraigned before this Court on the 24th February, 2020 on a one count charge as follows:

> ***"That you Peter Odiang Enyigwe, on or about the 3rd day of June, 2018 in Abuja, within the jurisdiction of this honourable Court did obtain for yourself, a credit in the sum of N2,000,000.00 from one Emmanuel Unegbu and issued him a First Bank cheque No. 00069787 dated 3rd June, 2018 in the sum of N5,000,000.00 in settlement of the said credit which when presented for payment within three months of issuance, was dishonoured due to insufficient funds standing to your credit and you thereby committed an offence contrary to Section 1(1)(b) of the Dishonoured Cheques (Offences) Act, Cap D11, Laws of the***

Federation of Nigeria 2004 and Punishable under Section 1(1)(b)(i) of the same Act."

Upon arraignment, the Defendant pleaded 'not guilty' to the charge preferred against him. Trial thereafter commenced on 7/12/20 with the Prosecution opening their case with the evidence of one Yepwi Joseph, the IPO, who testified as PW1.

In his evidence in chief, the PW1 told the Court that around the 31st day of July, 2018, the EFCC received a petition from one Okwudili Abarum on behalf of his client, Emmanuel Unegbu, against the Defendant for issuing a dud cheque for the sum of N5m.

He stated that upon receipt of the petition, they invited and obtained statement from the Petitioner and his witness, one Eze Okoro. That they also obtained statement of the Defendant's account from First Bank PLC and after analysing the statement of account, they wrote to the Bank to confirm why the cheque No. 00069787 was returned unpaid; to which the Bank responded stating that the account was dormant and not funded.

The PW1 stated further, that they invited the Defendant and he volunteered statements. He tendered the following documents in support of the prosecution's case.

1. Petition Against Mr. Peter Odang – Exhibit PW1A.
2. "Investigation Activities" (13/9/2018) – Exhibit PW1B.
3. "Investigation Activities" (12/10/2018) – Exh PW1C.
4. "Re: Investigation Activities" (26/10/2018) – Exh PW1D.
5. "Re: Investigation Activities" (27/9/2018) – Exh PW1E.
6. Statement of Peter Odang – Exh PW1F-F2.
7. Additional Statement of Peter Odang – Exh PW1G-G1.

8. Complaint of Unlawful Restriction tendered under cross examination – Exh. PW1H.

Under cross examination, the PW1 stated that the petition which they received was about the issuance of a dud. That there was no reason to investigate the purpose of the loan in respect of which the cheque was issued as same was not subject of investigation.

The PW1 further stated that the amount the Defendant is owing is N2,000,000.00 and that he is aware that the Defendant has paid N500,000 based on the first agreement he had with the nominal complainant.

The nominal complainant, Unegbu Emmanuel, testified as PW2 on the 25th day of November, 2021. He told the Court in his evidence in chief that one Eze Okoro introduced the Defendant to him in February, 2018 and told him that the Defendant had a financial challenge and needed financial help.

He stated that he told Eze Okoro to bring the Defendant so he could hear from him directly. That Eze Okoro made a call and few minutes later, the Defendant appeared with his laptop from where he showed him some mails received from foreign organisations.

He stated that in the said mails, the organisations promised to raise money for the Defendant subject to some conditions. That he asked the Defendant what the Defendant wanted as he did not understand the mail very well, and the Defendant told him that he needed funds to facilitate the reception of the funds from the foreign organisations and that his company, Continental Alliance, needed a minimum of N500,000.00. The PW2 stated that after necessary enquiries, and the Defendant promising to reward him handsomely after the transaction, with

a promise to issue him a post-dated cheque of N2m, he agreed to the deal and they executed an agreement which was witnessed by Eze Okoro. That thereafter, he was given the account number of Continental Alliance into which he paid N500,000.00 and was given a cheque of N2m.

He told the Court that when he noticed that the cheque could not go through clearing, he asked “why?”, and the Defendant’s lawyer told him that he had nothing to worry about; and to give him further assurance that the transaction was for real, the Defendant took him to his house at Trademore Estate, Lugbe where he saw the Defendant’s children as they came and welcomed the Defendant. That after seeing the Defendant’s children, he became convinced and then went back with Eze.

The PW2 stated further, that after a month when the Defendant was supposed to return his money with the compensation promised, the Defendant said that he was unable to conclude the transaction and that they gave him a fresh condition – that he needed to have a reasonable amount in his own personal account. That Eze confirmed that the Defendant told him so, that he needed to have at least, two million naira in his account.

He told the Court that after 4 days, in order to ensure that he recovers his money and help the Defendant succeed in his business, he obliged. That the Defendant then invited him to his office for a fresh agreement and told him that he needed cash.

That two days later, he went back with the cash which he gave to the Defendant after they had signed the agreement prepared by the Defendant.

The PW2 stated that when he asked about the Defendant’s lawyer who was not present to witness the agreement, the Defendant told him that he should not worry; that it was his

personal intention and that he did not want his lawyer to be aware of it. Also, that his request that the Defendant bring his receptionist to be his witness, was rejected by the Defendant who insisted that Eze who introduced them should witness for both of them. That the Defendant said that since he did not have any collateral, he would issue him with his personal cheque for N5m, and stated that he would not hold PW2's money for more than one week, but that for the avoidance of doubt, that he should be given one month. After which, the Defendant received the cash and issued a cheque of N5m.

Testifying further, the PW2 stated that at the expiration of one month, he started calling the Defendant from Umuahia to ask if he could present the cheque, but the Defendant was not picking all his calls or replying his text messages. That when he failed to reach the Defendant even through Eze, he decided to put the cheque in the bank around 6th or 7th of June, 2018, and 24hours later, the bank called him to come and collect the cheque as same had bounced.

He stated that after collecting the cheque, he returned to Abuja to look for the Defendant, but he could not get him, whether through phone, at his office or his home. Consequently, he decided to do a petition to the EFCC to help him recover his money.

When asked about the N2m cheque, the PW2 stated that while he was writing the petition, he discovered that the cheque was missing; that it was during the investigation at EFCC that the Defendant took the cheque.

He tendered the following documents in evidence:

1. First Bank Cheque of N5m – Exhibit PW2A.
2. Contractual Agreement dated 3/4/2018 – Exhibit PW2B.

3. Contractual Agreement dated 3/5/2018 – Exhibit PW2C.

Under cross examination, the PW2 stated that the Defendant is owing him N5m personally and on that the Defendant's company is owing him N1.5m. He admitted that the Defendant has paid him N500,000.00. He further admitted that the Defendant requested the said N500,000.00 from him to access a bank guarantee.

The PW2 however stated that he is not aware that the said bank guarantee was never issued. Also, that he is not aware that the Defendant returned the N500,000.00 to him because the Defendant could not secure the bank guarantee.

On the 1st of February, 2022, one Anurika Okafor, a staff of First Bank PLC gave evidence for the prosecution as PW3 during which she tendered the following documents:

1. Account Opening Package – Exhibit PW3A.
2. Statement of Account – Exhibit PW3B.
3. Certificate of Identification – Exhibit PW3C.

The PW3 confirmed that the reason why Exhibit PW2A was returned unpaid was because there was insufficient fund in the account to accommodate the value of the cheque.

The PW3 stated under cross examination that she does not know the Defendant personally and that she was not aware that the Defendant applied for a Bank Guarantee of N50m.

One Eze Okoro testified for the prosecution on 8th March, 2022 as PW4. He told the Court in his evidence in chief, that on a particular day he went to the office of the Defendant who is his friend and business colleague and was told by the Defendant of his need to source money to make payment for Bank Guarantee which would enable him access grant from foreign

donors. That he asked the Defendant whether he has approached the banks and lending houses, and the Defendant said that he had no collateral to do so. That out of pity, he started making enquiries on Defendant's behalf, in the course of which he called the nominal complainant (PW2) and explained the transaction to him as it was explained by the Defendant.

The PW4 stated that PW2 said he could be of help, subject to some terms, as he was not a lender, but a businessman. That the Defendant asked the PW2 for N500,000 loan and the PW2 demanded for the payment of N2m in return, and when the parties agreed, they executed an agreement, after which he and PW2 went and made the payment to FCMB.

He told the Court that after a week, the Defendant called him, saying that the people that wanted to give him the grant wanted a minimum of N2m in his personal account, without which they would not give him the grant. That the Defendant asked if he could approach the PW2, but he told the Defendant to do that by himself since they have known each other well.

He stated that he however, called the PW2 later and the PW2 agreed to help the Defendant with N2m. That the PW2 asked the Defendant how much he would pay for the N2m and the Defendant agreed to pay N5m, and that when the PW2 asked if he could transfer the money to the Defendant's account, the Defendant said he needed the money in cash to pay it to his personal account as he would not want the white people he had business with to know that he got the money from somewhere else.

The PW4 stated that on a particular date the PW2 brought the cash of N2m to the Defendant's office. That he questioned the absence of the Defendant's lawyer and the Defendant told him

that he did not want his lawyer and security to know, and he thereafter gave the PW2 a cheque of N5m. That on the date the cheque matured, they tried to reach the Defendant but he was nowhere to be found, and when the PW2 went to bank to cash the cheque, the bank told him that there was no money in the Defendant's account.

He stated that the PW2 searched for the cheque of N2m but could not find it, and that as the days were running out without them finding the Defendant they were forced to go to the EFCC. That when the EFCC finally got the Defendant, he told them that he was in possession of the N2m cheque.

The PW4 stated under cross examination that PW2 is his cousin. He stated that before the transaction in question, that he had not done any other business with the Defendant.

The PW4 told the Court that the agreement between the Claimant and PW2 was not a loan agreement. He admitted that the money advanced by PW2 was for a bank guarantee and stated that he is not aware if the Defendant received the said bank guarantee.

The PW4 stated that the amount being owed the PW2 by the Defendant, is N5m.

Exhibit PW4A, an Acknowledgment of receipt of N50,000.00 commission by the PW4, was tendered through the PW4 under cross examination.

At the end of the evidence of PW4, the prosecution closed its case and the Defence counsel opted to file a no case submission.

In his written address on no case submission, learned defence counsel, Imhanbe Osagie, Esq, raised a lone issue for determination, to wit;

> ***"Whether from the evidence adduced so far in the case, the prosecution has made as (sic) prima facie case against the Defendant/Applicant to warrant him being called to enter his defence?"***

Proffering arguments on the issue so raised, learned counsel posited that the essential ingredients which the prosecution must prove beyond reasonable doubt for the offence under Section 1(1)(b) of the Dishonoured Cheque to succeed, are:

(a) That the Defendant obtained credit for himself or any other person.
(b) That when the cheques was presented for payment not later than three months, it 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.

He contended that to secure or sustain a conviction, the prosecution must positively prove beyond reasonable doubt, each of the above listed ingredients, and that failure to prove any of the ingredients, means failure to prove the offence, even if the other ingredients are proved.

He referred to **Bello v. State (2012) 8 NWLR (Pt.1302) 207 at 237**, **Haruna v. State (2012)NWLR (PT.1306)449 at 444-445.**

Placing reliance on Section 1(3) of the Dishonoured Cheque Act, Cap D11, learned counsel posited that it is a settled principle of law that where the drawer of cheque has reasonable grounds for believing that the cheque on

presentation, would be honoured, then that constitutes a valid defence to the criminal infraction of issuance of Dud cheque.

He argued that the PW1 under cross examination admitted that even though the Defendant informed them under interrogation, that he was expecting money from the EU/African Chamber of Commerce, the EFCC did not bother to investigate the truth or falsity of the defence. He contended that the Defendant reasonably apprehended that if the bank guarantee which he was pursuing had materialised, he would have been able to access the foreign loan which would have made the instrument/cheque, on presentation, to be honoured.

The learned counsel in conclusion, submitted that the prosecution has failed woefully to establish its case against the Defendant, and that as such, the Court should decline to call the Defendant to give evidence, but rather, to discharge and acquit the Defendant.

In opposition to the no case submission, the prosecution filed a Reply, wherein the learned prosecuting counsel, M.I. Buba, Esq, raised a lone issue for determination, to wit;

> ***"Whether upon a careful scrutiny and close examination of the evidence so far adduced in this case, a prima facie case has been made against the Defendant/Applicant to enable this Court call on him to open his defence?"***

The learned counsel posited that at the stage of no case submission, what the Court is invited to do is to determine whether or not the prosecution has made out a prima facie case against the defendant to justify his being called upon to defend himself, and not to make a finding on the guilt of the

Defendant. He referred to professor **Adenike Grange v. F.R.N. (2010)7 NWLR (Pt.1192)135 at 146-165.**

He contended that in view of the evidence so far led before the Court, that it is crystal clear that the two essential elements of the offence of issuance if dud cheque as stated by the Defendant in his address on no case submission, have been proved by the prosecution beyond reasonable doubt.

He argued that the prosecution witnesses, in their respective evidence before the Court, stated that the Defendant issued a First Bank Cheque in the sum of N5,000,000.00 to the PW2 in a bid to liquidate a credit facility, and that when the PW2 presented the cheque at the bank for payment, it was returned unpaid for insufficiency of funds in the account.

He contended that this evidence was not discredited by the defence even under the fire power of cross examination.

On the Defendant's claim in his no case submission that he reasonably believed that the cheque would be honoured if presented for payment because he was expecting that his account would be funded by the EU/Africa Chamber of Commers; learned counsel argued that there is no evidence before this Court that the Defendant was expecting any funds from EU/Africa Chamber of Commers. He submitted that it is trite that a no case submission, which is essentially an address of counsel, does not override or supersede legal evidence such as exhibits.

He contended further, that the Defendant cannot prove his assertion that his account could not be funded to the value of the cheque because of the failure of his foreign aids transaction through the instrumentality of a no case submission, but

through legal evidence, hence the need for him to open his defence and give such evidence.

He urged the Court on the whole, to discountenance and disregard the Defendant's no case to answer for lacking in merit and substance, and to order him to enter his defence.

The issue to be determined in the consideration of this no case submission, is whether the prosecution has made out a prima facie case against the Defendant.

At this stage of the proceedings, the guilt or otherwise of the Defendant is not in issue.

The Supreme Court made this clear in the case of **Ajiboye v. The State (1995) LPELR – 300 (SC)**, where it held, per Iguh, J.S.C, that:

> ***"What has to be considered in a no case submission is not whether the evidence against the accused is sufficient to justify conviction, but whether the prosecution has made out a prima facie case requiring at least some explanation from the accused."***

Thus, the essence of a no case submission lies in the contention by the defence, that the evidence adduced by the prosecution failed to establish a prima facie case against the defendant to make it imperative for the court to call upon the defendant to defend himself or answer to the charge.

It now befalls the court to consider whether the prosecution has adduced evidence linking the defendant to the offence. In other words; whether the prosecution by the evidence led, has made out a prima facie case requiring at least, some explanation from the defendant as regards his conduct or otherwise. See **Tongo v. C.O.P (2007) NWLR (Pt. 1049)525 at 544-545**.

In the circumstances of this case, I am of the considered view, and I so hold, that the prosecutor has made out a prima facie case that requires the Defendants explanation.

Accordingly, I hold that this no case submission fails and is hereby dismissed.

The Defendant is therefore, ordered to enter his defence.

HON. JUSTICE A. O. OTALUKA
9/3/2023.