IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 16TH DAY OF MARCH, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO.:-CR/630/21

BETWEEN:

INSPECTOR GENERAL OF POLICE:……...COMPLAINANT

AND

1. MRS. NKEM NNAJI
2. FOLN DOMINO NIG. LTD :……..DEFENDANTS

Peter Ejike for the Prosecution.
P.F. Joseph for the Defence.

RULING ON NO CASE SUBMISSION.

The Defendants were arraigned before this Court on 1st day of February, 2022 on a 2 Counts charge as follows:

Count One:

"That you Mrs. Nkem Nnaji, 'F' aged 41 yrs, (on) or about the 24/2/2021 at 1230 hrs, at Sabon Lugbe Axis, FCT, Abuja, within the jurisdiction of this Honourable Court did commit an illegal act, to wit: cheating, when you, Mrs Nkem Nnaji, 'F', being the MD/CEO Foln Domino Nig. Ltd used your company account Foln Domino Nig. Ltd posing as the Managed of Dayspring Home Estate and criminally collected from one Mr. Eze Michael, a prospective subscriber of Dayspring Home, Sabon Lugbe, Abuja, the sum of 1,700,000.00 (One Million and Seven Hundred Thousand Naira) only as part payment of a plot of land at

Dayspring Home Estate situate at Sabon Lugbe, without lawful authority from the management of the Dayspring Home sabon Lugbe, an act done and you thereby committed an offence contrary to section 321 and punishable under Section 322 of the Penal Code Law."

Count Two:

"That you Mrs. Nkem Nnaji, 'F' aged 41 yrs, (on) or about the 31/5/2021 at 1230hrs, at Wuse Zone 3 Axis, FCT Abuja, within the jurisdiction of this Honourable Court did commit an illegal act, to wit: issuance of dud cheques when you, Mrs Nkem Nnaji 'F', being the MD/CEO Foln Domino Nig. Ltd used your Fidelity Bank Cheque and issued a dishonoured cheque of N1,700,000.00 (One Million and Seven Hundred Thousand Naira) only, in favour of one Michael Eze when he requested for the refund of his N1,700,000.00 (One Million and Seven Hundred Thousand Naira) which you fraudulently collected from him in respect of a plot of land as a subscriber of Dayspring Home Estate; an act done and you thereby committed and offence contrary to Section 1(a) and punishable under Section 1(b) of the Dishonoured Cheque (offence) Act."

The Defendants, upon arraignment, pleaded 'not guilty' to the two counts charge and the case thereafter, proceeded to trial.

The prosecution opened its case on the 2nd day of February, 2022 with the evidence of one Michael Eze who testified as PW1. He told the Court in his evidence in chief, that he subscribed to Dayspring Estate, Lugbe and was introduced to the Defendant by the office of the Estate.

He stated that he was charged N4.5m for the space he was given and was given the option of paying by instalments.

That he started the building and when he was ready to complete the balance of the instalments, he called the Defendant, who directed him to the office where to meet her, and on getting there, the Defendant reeled out what he was supposed to pay, including infrastructural payment of N1.7m.

The PW1 stated that the Defendant gave him the account details of Foln Domino to pay the money and he paid same in two instalments of N1m and N700,000.00 respectively. That when she went to her office to ask for receipt, the Defendant asked him to return in 24 hours, and that when he went back later, the Defendant asked him to go to the Estate office to collect a receipt. He told the Court that when he got to the Estate office, he was informed that the Defendant had been relieved of the responsibility of managing the office; that he should go back to the Estate in full. That on getting back to the Defendant, the Defendant refused to refund his money, on the ground that the Estate was indebted to her.

He stated that after several efforts without positive result, he had to report the matter to Zone 7 Police Headquarters, where upon invitation, the Defendant told the Police that she does not want any problems with him, and agreed to issue a cheque. That he left the Police station and the next day, the Police informed him that the Defendant has issued a post-dated cheque, which upon the due date of the cheque, he presented the cheque and same was returned unpaid.

The PW1 tendered the following documents in evidence:

1. Statement of PW1 to the Police – Exh PW1A.
2. First Bank Statement of Account with certificate of authentication – Exh PW1B-B1.
3. Jaiz Bank Statement of Account with certificate of authentication – Exh PW1C-C1.

4. Cheque leaf – exh. PW1D.

Under cross examination, the PW1 stated that he could not remember when he paid for the land, but that the first payment he made was N2,250,000 after which he was given a provisional offer letter.

He stated that the Defendant was the manager of the Estate, but that he later got information from the Estate office that the Defendant was no longer the manager.

On whether he read what was written at the back of the cheque before presenting it, the PW1 stated that the Defendant was at the Police station the day she gave the cheque and that she knew that the cheque would be presented on due date.

On 29th day of March, 2022, one Dakas Usman, a legal officer of Dayspring church, testified as PW2. He told the Court in his evidence in chief, that the Defendant, as a member of Dayspring Church, volunteered to manage the Church's estate, Dayspring Homes, and was given a standing instruction that all payments should be made into the church's account.

He stated however, that PW1 who purchased a plot in the estate, on the Defendant's account instead of the Church's account and the Defendant failed to remit the money into the Church's account. That when PW1 attempted to take possession of the land, he was asked to show evidence of payment and he told the management of the estate, Dayspring Homes, that he made payments into the Defendant's account, and he was consequently made to pay another N1.7m. the PW2 told the Court that eth PW1 has made several efforts for the Defendant to pay him back the money, all to no avail, which thus resulted to this case.

He stated that when the Defendant failed to remit the money to the estate account, the Police invited the General overseer of Dayspring Church, who went and made statement to the Police.

The said statement made by the General overseer of Dayspring Church to the Police was tendered by the PW2 and same admitted in evidence as Exhibit PW2A.

Under cross examination, the PW2 stated that he was not there when the transaction between the Defendant and PW1 took place.

The following documents were further tendered by the PW2 under cross examination:

a. Ref: A letter of Demand for payment – Exh PW2B.
b. Letter of Commission – Exh. PW2C.

With reference to Exhibit PW2C, the PW2 insisted that the Defendant volunteered to manage the Dayspring Homes Estate. He stated that it was after the Defendant volunteered to do the work, that her company was commissioned as per Exhibit PW2C.

The PW2 stating that the Defendant should not collect money from subscribers. He stated however, that there is a form given to subscribers wherein they were directed to make all payments into the church's account.

One Mercy Ibrahim, a Police detective, detective, testified as PW3 on the 16th day of May, 2022. In her evidence in chief, she told the Court that a case of criminal breach of trust, cheating and issuance of dud cheque was reported to the Assistant Inspector General of Police and same was referred for investigation. She stated that in the course of the investigation,

they found that the PW1 contacted the Defendant for the development of his property with Dayspring Estate and the Defendant asked him to pay N1.7m, which he did. But when he went to develop the land the PW1 was stopped by the management of Dayspring for not paying the Development fee and he told them that he had paid to the Defendant. whereupon the PW1 was informed that the Defendant was no longer working with the company and the company decided that the PW1 pays another N1.7m, which he did. The PW3 stated that the PW1 made a report to the Police consequent upon which the Defendant was invited and she made a statement under caution and in the presence of her lawyer. That the Defendant also wrote an undertaking to pay the PW1 N1.7m, which sum she never paid back.

The said statement and undertaking of the Defendant were tendered and admitted in evidence as Exhibits PW3A and PW3B respectively.

Under cross examination, the PW3 stated the 1st Defendant was still working with the company at the time the PW1 bought the land. She however stated that she did not know the position of the 1st Defendant in the company.

The PW3 admitted that there is no bank stamp on the cheque, Exhibit PW1D, to show that same was presented to the bank for payment.

The PW3 told the Court that the Police did not find out from the bank whether the cheque was presented to it since the nominal complainant told them that he went to the bank and the cheque was returned.

She also stated that they did not investigate the 2nd Defendant which is a limited liability company.

The prosecution closed its case at the end of the evidence of PW3 and the Defendant opted to make a no case submission.

In his written address on no case submission, learned Defendants' counsel, Femi P. Joseph, Esq, raised two issues for submission, namely;

i. Whether the prosecution has failed to establish the essential ingredients of the offences of cheating contrary to Section 321 of the penal code and issuance of dud cheque contrary to Section 1(a) and (b) of the Dishonoured Cheque (Offences) Act to warrant the Court to call upon the Defendants to answer the charges against them?
ii. If the first issue is answered in the affirmative, whether the Court can uphold a no case submission in the circumstances?

Proffering arguments on issue one, learned counsel submitted that the essential ingredient of the offence of cheating Section 321 of the Penal Code (Count 1), is that the Defendant cheats by pretending to be some other person who she is not.

He referred to **Omueda v. FRN (2018)LPELR-46592(CA),** and further submitted that the significant feature of the offence of cheating (by personification), is that it is committed, not merely by the offender pretending to be what he/she is not, but also by substituting one person for another in his/her act of pretence.

He contended that the prosecution has failed to prove the ingredients of the offence of cheating, as the testimony of PW3 and the letter of commissioning dated 11th July, 2011 (Exh. PW2C) show that the Defendants were acting as the Manager of Dayspring Estate when PW1 paid the sum of N1.7m to the 2nd Defendant's account. He argued that these pieces of

evidence show that the Defendants did not pretend to be what they were not, or substituted one person for another in the process of relating with the PW1.

Learned counsel further argued that the testimony of PW3 under cross examination to the effect that the said sum of N1.7m was paid by PW1 as development fee, contrary to the charge in Court 1 and the testimonies of PW1 and PW2 to the effect that the said sum was paid as part payment of a plot of land in Dayspring Homes Estate, is a material contradiction in the evidence of the prosecution. He posited that the law is clear that where there are material contradictions in the evidence of the prosecution, the Court is not entitled to prefer one testimony against the other.

Relying inter alia on **Igbo v. State (1975)11 SC 129,** submitted that it is trite law that contradictions in the evidence adduced by the prosecution on material issues, must be resolved in favour of the defendant.

On the element of the offence of issuance of dishonoured (dud) cheque, learned counsel referred to **State v. Ugokwe (2018)LPELR-46075(CA),** where it was held inter alia, that to succeed in proving the said offence, the following ingredients must be established, namely;

1. That the accused person obtained credit for himself.
2. That the accused person issued a cheque to the complainant.
3. That upon presentation, the cheque was dishonoured on the ground that there was insufficient funds standing to the credit of accused person.
4. That the cheque was presented not later than three months from the date of the issuance.

He contended that for the prosecution to establish a prima facie case for the offence of issuance of dud cheque, all the four ingredients of the offence must be established. He argued that the prosecution has only established the second ingredient of the offence, which is that the Defendants issued a cheque to the nominal complainant, but failed to prove the other ingredients of the offence.

Learned counsel contended that at the close of the prosecution's case, the prosecution failed to establish the ingredients of the offences of cheating and issuance of dud cheque. That from the totality of the evidence before the Court, the prosecution has failed to make a prima facie case against the Defendants in respect of the two counts charge to warrant the Court to call upon the Defendants to enter their defence.

He urged the Court to discharge and acquit the Defendants on the ground that no prima facie case has been established against them.

On issue two, learned counsel posited that before a no case submission can be upheld by the Court, the prosecution must have failed to fulfil the conditions as enumerated by the Supreme Court in the case of **Emedo & Ors v. The State (2002)13 SCM 61 ab 62,** to wit;

a. When there has been no evidence to prove an essential element in the alleged offence;
b. When evidence adduced by the prosecution has been so discredited as a result of cross examination, or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

Relying on **Owonikoko v. State (1998)1 LRCNCC 281 at 290,** he submitted that where it is apparent on the record that

through effective cross examination, the case of the prosecution has been shattered or manifestly discredited, and on the totality of the evidence so far led, it is apparent that an essential ingredient of the offence charged has not been proved, the defendant will be entitled to an acquittal.

He argued that the evidence of the prosecution witnesses in this case are worthless and cannot be relied upon by this Court, even as same have been shattered under cross examination.

He urged the Court to uphold the no case submission and acquit the Defendants for failure of the prosecution to make out a prima facie case against the Defendants at the close of its case.

The prosecution in its written address in opposition to the no case submission, raised a sole issue for determination, to wit;

> ***"Whether the prosecution has made out a prima facie case against the Defendant to warrant calling the Defendant to enter her defence?"***

Arguing the issue so raised, the learned prosecuting counsel, DSP Peter Ejike, submitted that the success of the prosecution depends on the achievement of any of the following two conditions set down for upholding that a prima facie case has been made out against the defendant;

a. When there has been evidence to prove an essential element in the alleged offence.
b. When the evidence adduced by the prosecution has not been discredited as a result of cross examination or is so manifestly reliable that a reasonable tribunal can safely convict on it.

Learned counsel referred to Section 323 of the Penal Code and posited that the 1st Defendant's failure to refund the money paid to her by the nominal complainant amounts to cheating.

Making further reference to Section 1(b) of the Dishonoured Cheques (Offences) Act, he argued that on the face of the cheque issued by the 1st Defendant, that upon presentation of same by the Nominal Complainant, it was returned unpaid on grounds of insufficient funds in the account of the 1st Defendant. He contended that it is not mandatory that the bank's stamp must be inserted or date on the cheque showing the date it was dishonoured.

Learned counsel contended that the totality of evidence adduced by the prosecution is sufficient to establish and ground conviction against the Defendants, the prosecution having proved all the ingredients of the offences with which the Defendants were charged.

He urged the Court to uphold the prosecution's submission and call upon the Defendants to put in their defence if any, as no case submission is not a time to evaluate evidence of the prosecution.

The guiding principle in the consideration of no case submission was succinctly laid down by the Supreme Court in the case of **Ajiboye & Anor v. The State (1995)LPELR-300(SC),** where the Court held per Iguh, J.S.C., that ;

> ***"What has to be considered in a no case submission 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 stage of no case submission, is not one for the evaluation of evidence of the prosecution as to determine whether the guilt of the defendant has been established.

The duty of the Court at this stage is to ascertain whether a prima facie case has been made out against the defendant by the prosecution in relation to the offence(s) charged.

What then is prima facie case? Prima facie case is not same as proof. It only means that there is a ground for proceeding.

In other words, that evidence discloses a prima facie case means that such evidence, if uncontradicted and if believed, will be sufficient to prove the case against the defendant. See **Ubanatu v. COP (2000)LPELR-3280(SC).**

Where no evidence was adduced by the prosecution, which if believed and uncontradicted could be sufficient to prove the case against the defendant, the prosecution in such a situation, is said not to have made out a prima facie case against the defendant, and no case submission, in such circumstance, would be sustained, leading to the discharge and acquittal of the defendant from that particular offence(s) charged.

In the instant case, the Defendants were charged in Count 1, with offence under Section 321 of the Penal Code, to wit, cheating.

Under this count, the allegation against the Defendants is that they held themselves out to have the requisite authority to represent Dayspring Homes Estate and to receive the sum of N1.7m from the PW1.

In Count 2, the Defendants were charged with the offence of issuance of dishonoured cheque, contrary to Section 1(a) of the Dishonoured Cheque (Offences) Act.

With respect to said count 2, the ingredients of the offence of issuance of dishonoured cheque, as stipulated by the Supreme Court in **Abeke v. The State (2007)vol. 38 WRN 1 at 27-28(SC),** are:

(a) That the defendant obtained credit for himself;
(b) That the cheque (issued by the defendant) was presented within three months of the date thereon; and
(c) That upon presentation, the cheque was dishonoured on the ground that there was no sufficient funds or insufficient funds standing to the credit of the drawer of the cheque (defendant) in the bank in which the cheque was drawn.

To make out a prima facie case against a defendant charged with the offence of issuing dishonoured chequed, the prosecution must adduce credible evidence establishing the above essential ingredients.

It is pertinent to note that the fact that the evaluation of the evidence led by the prosecution, is not the concern of the Court at the stage of no case submission, does not mean that the Court does not as much as take a look at the evidence adduced by the prosecution. However what is required of the Court is to take note of the evidence and rule on whether or not a prima facie case has been made out by the prosecution's case against the Defendant. Thus, in **Agbo & Ors v. State (2013)LPELR-20388(SC),** the Apex Court, per Fabiyi, J.S.C. held that:

> ***"The purpose of a no case submission is that the Court is not called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and rule that there is before the Court no legally admissible evidence linking the***

accused person with the commission of the offence charged. But if there is legally admissible evidence, however slight, the matter should proceed as there is something to look out at."

Pursuant to the above position of the law, and in consideration of the afore stated essential ingredients of the offence of issuance of dishonoured cheque, it is my opinion, that the prosecution has not made out a prima facie case against the Defendants herein, as there is no legally admissible evidence linking the Defendants with the commission of the said offence of issuance of dishonoured cheque.

Accordingly, and pursuant to Section 302 of the Administration of Criminal Justice Act, 2015, the Defendants are hereby discharged of Count 2 of the charge.

With respect to Court 1 of the charge, it is my considered view, that the prosecution has made out a prima facie case requiring at least, some explanation from the defendants as regard their conduct or otherwise. See **Tongo v. C.O.P. (2007)NWLR (Pt.1049)525 at 544-545.**

Accordingly, the Defendants are hereby ordered to enter their defence in respect of Count 1 of the Charge.

HON. JUSTICE A. O. OTALUKA
16/3/2023.