

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

BEFORE HIS LORDSHIP : HON. JUSTICE .Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 32

CASE NUMBER : SUIT NO. CR/169/15

DATE: : THURSDAY 23RD MARCH, 2017

BETWEEN

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

ALABI AMOS ALABI ACCUSED

The Accused Person in court and speaks English

M. Saraya for the Prosecution.

J.C Njikoye for the Defendant with I.A Arotiowa and

Blessing Yusuf (Ms).

Prosecution's Counsel the case is adjourned for Judgment

and we are ready.

JUDGMENT

By an application to prefer a criminal charge dated 10th day of April, 2015 the prosecution brought 11 (eleven) counts charge against the Defendant bordering on criminal breach of Trust, dishonest or fraudulent execution of deed of transfer, cheating by personation, public servant dishonesty receiving money not due contrary to section 313, 31, 177, 291, 320 and 122 of the penal code cap. 89 law of the northern Nigeria 1963.

The Defendant was charged as follows:-

COUNT ONE

That you, Alabi Amos Alabi, (M) 36 years, public servant, of Plot 154 Sultan Dasuki way, Kubwa, Abuja within the jurisdiction of this Honourable court on or before September, 2014 fraudulently collected a car, Mitsubishi space Wagon, 3 seater and royal blue in colour belonging to Mr. Akaanan Jacob Gwaza, for three Hundred and Fifty Thousand Naira (N350,000) only.

You hereby committed an offence of Criminal Breach of Trust, contrary to section 311, and punishable under section 313 of the Penal Code Cap 89. Law of Northern Nigeria 1963.

COUNT TWO

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, of plot 154 Sultan Dasuki way, Kubwa, Abuja within the jurisdiction of this

Honourable Court on 13th November, 2014 bought a Bajaj Boxer Motorcycle of One Hundred and Fifteen Thousand (N115, 000) only belonging to Mr. Charles Agwunoha and issued a dud cheques on same on the 21st November, 2014 knowingly that there was no money in the account.

You hereby committed an offence of criminal breach of trust, contrary to section 311, dishonest or fraudulent execution of deed of transfer containing false statement of consideration section 177 and punishable under section 313 and section 177 respectively of the Penal Code Cap 89, law of Northern Nigeria 1963.

COUNT THREE

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, or plot 154 Sultan Dasuki way, Kubwa, Abuja within the jurisdiction of this Honourable court on 2nd July, 2013 issued a dud cheque knowingly that there was no money in favour of one Shorunke Akeem Temitayo in NIMEE EXECUTIVE NIG. LTD of Two Hundred and Thirty Thousand Naira (N230,000) only.

You hereby committed an offence of criminal breach of trust, contrary to section 311, dishonest or fraudulent execution of deed of transfer containing false statement of consideration section 177 and punishable under section 313 and section 177 respectively of the Penal Code Cap 89, Law of Northern Nigeria 1963.

COUNT FOUR

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, of plot 154 Sultan Dasuki way, Kubwa – Abuja within the jurisdiction of this Honourable court on 16th December, 2014 issued a dud cheque knowingly that there was no money in favour of Infinite Mercy Multi Purpose Cooperative Ltd of Five Hundred and Sixty Thousand Naira (N560,000.00) only.

You hereby committed an offence of criminal breach of trust, contrary to section 311, dishonest or fraudulent execution of deed of transfer containing false statement of consideration section 177 and punishable under section 313 and section 177 respectively of the Penal Code Cap 89, law of Northern Nigeria 1963.

COUNT FIVE

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, of Plot 154 Sultan Dasuki way, Kubwa – Abuja within the jurisdiction of this Honourable Court on 9th May, 2014 you issued a dud cheque knowingly that there was no money in favour of one Okunola Maraina of behind Conoil filling station, Area 1, Garki Abuja for the sum of Eighteen Thousand Naira (N18,000.00) only.

You hereby committed an offence of criminal breach of trust, contrary to section 311, dishonest or fraudulent execution of deed of transfer containing false statement of consideration section 177 and

punishable under section 313 and section 177 respectively of the Penal Code Cap 89, law of Northern Nigeria 1963.

COUNT SIX

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, of Plot 154 Sultan Dasuki way, Kubwa, Abuja within the jurisdiction of this Honourable Court on or before May 2013 obtained a loan of Fifty Thousand Naira (N50,000.00) only from one Popoola Yemisi of Cooperative Unit of FCT Command of NSCDC.

You hereby committed an offence of criminal breach of trust, contrary to section 311 and punishable under section 313 of the Penal Code Cap 89, Law of Northern Nigeria 1963.

COUNT SEVEN

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, of Plot 154 Sultan Dasuki way, Kubwa – Abuja within the jurisdiction of this Honourable court, on or before December, 2013 fraudulently collected the sum of One Hundred and Fifty five Thousand Naira (N155,000.00) only from Collins Cheta Ezenwa ASC II of NSCDC FCT Command as reported on 24th February, 2015 for the following reasons:

- i. Money plus of NNPC N100,000.00
- ii. Collected N20,000.00 for his damaged car
- iii. Collected N15,000.00 during the eve of traditional wedding.

- iv. Collected N10,000.00 for arms training
- v. Collected N10,000.00 for hilux for an even organized by his younger brother, Nonso Exenwa.

You hereby committed an offence of cheating by personation, contrary to section 320 and extortion section 291 and punishable under section 322 and section 292 respectively of the Penal Code Law Cap 89 law of Northern Nigeria 1963.

COUNT EIGHT

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, of plot 154 Sultan Dasuki way, Kubwa – Abuja within the jurisdiction of this Honourable Court extorted money to the sum of Four Hundred Thousand Naira (N400,000) only from Mr. Siaka Alih of Kuchigoro of FCT Abuja with the pretence to secure employment in the Nigeria Security and Civil Defence Corps.

You hereby committed an offence of cheating by personation, contrary to section 320; and Public Servant dishonesty receiving money not due, section 122 punishable under section 322 and section 122 of the Penal Code Cap 89 Law of the Northern Nigeria 1963.

COUNT NINE

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, of plot 154 Sultan Dasuki way, Kubwa – Abuja within the jurisdiction of this Honourable Court collected the sum of One Hundred and Fifty

Thousand Naira (N150,000.00) only from one Mr. Ohan Chinedu of No. 10 His grace Avenue, Dei – Dei Abuja under the pretence to secure him employment with Nigeria security and Civil Defence Corps.

You hereby committed an offence of cheating by personation contrary to section 320; and Public Servant dishonestly receiving money not due, section 122 punishable under sections 322 and section 122 of the Penal Code Cap 89 Law of the Northern Nigeria 1963.

COUNT TEN

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, of Plot 154 Sultan Dasuki way, Kubwa- Abuja within the jurisdiction of this Honourable Court, that you collected the sum of Five Hundred and Ninety Five Thousand Naira (N595,000.00) only from one Mrs. Fabian Excel in respect of granting her employment with Nigeria Security and Civil Defence Corps.

You hereby committed an offence of cheating by personation contrary to section 320; and Public Servant dishonesty receiving money not due, section 122 punishable under section 322 and section 122 of the Penal Code Cap 89 law of the Northern Nigeria 1963.

COUNT ELEVEN

That you, Alabi Amos Alabi, (M) 36 years, Public Servant, of plot 154 Sultan Dasuki way, Kubwa – Abuja within the jurisdiction of this Honourable Court that in 2013 you extorted the sum of Three

Hundred Thousand Naira (N300,000.00) only from one Miss Janet Eroh from Mpape under the false pretence of securing her a job with Nigeria Security and Civil Defence Corps all within the jurisdiction of this Honourable Court.

You hereby committed an offence of cheating by personation contrary to section 320; and Public Servant dishonesty receiving money not due, section 122 punishable under sections 322 and section 122 of the Penal Code Cap 89 law of the Northern Nigeria 1963.

The Defendant plea was taken on the 6th day of May, 2015 and he pleaded not guilty to all the 11 counts charge.

The case proceeded into hearing on the 16th day of June, 2015. The prosecution called a total of 9 witnesses who testified as Pw1 to Pw9 respectively and tendered 9 documents in evidence marked as Exhibits “A” – “I” in that Order.

The case of the prosecution as distilled from the testimony of the witnesses is as follows:-

Pw1 (Mike Obadofin) an Inspector of the Corps from the department of Anti fraud unit with service number 4779 testified how they arrested the accused person in his house at plot 154 Dasuki way, Kubwa and how the accused person threatening them with broken bottle. But they were able to force him to followed them to their office.

During cross – examination the following take place.

Qus:-You said you are from the Anti Fraud Unit?

Ans:-Yes.

Qus:-Are you from the National Headquarter or FCT Command?

Ans:-Headquarters

Qus:-The Accused person is from the FCT Command?

Ans:-Yes.

Qus:-Where you given a search warrant before you went into his house?

Ans:-I did not have a search warrant.

Qus:-Nil

Re-examination:-

Qus:-What is the connection between the headquarter and FCT Command of the NSCDC?

Ans:-The National Headquarter is the Headquarter. Some cases are from FCT Command to National Headquarter.

Pw2 Aniete Utibe James also gave evidence in respect of the arrest of the accused person. He testified that he is a staff of Nigeria Civil Defence and Security Corps from anti fraud unit. He stated that on the 14th March, 2015, he received a call from his 2/1C who happens to be his Superior Officer that they were at the accused person's house and

that he was resisting an invitation. When he got to the accused house, he saw broken bottles on the ground. And they later took the accused person to their office.

Learned counsel for the Defendant cross – examined Pw2 as thus;

Qus:-Whose shirt was torn?

Ans:-Zacheaus Akinosu, my 2/IC.

Qus:-You are from the anti fraud unit of the NSCDC?

Ans:-Yes.

Qus:-When you were called by your 2/IC, did they tell you they had a warrant of arrest?

Ans:-No.

Qus:-Are you aware the Accused person is from FCT Command of NSCDC and not the National Headquarters?

Ans:-Yes.

Pw3 (Ali Isiaka) stated that sometime in 2013 he met one Alabi Peter whom he later find out he was his tribe man. That Alabi Peter showed him his identity card as staff of Nigerian Communication Commission. After later discuss about a job at NSCDC, where Alabi Peter said he had opportunity and that he should make available N400,000 for him to help him. The next day, he called to tell Alabi Peter that he got N170,000 which he gave him in his office.

That Alabi Peter called the next day to said the person in charge of the employment said the money was small and he later raised additional N130,000 which he handed over to Alabi Peter and that he later borrowed N100,000 at an agreed interest of 10% and handed over the money to Alabi peter.

That on 19th March, 2013 Alabi Peter handed over an envelope to him while congratulating him on the job. And also gave him a phone Number to call when he arrive FCT Command of NCDSC. On arriving the FCT Command, he called the number and met the accused person who introduced himself as younger brother to the accused person.

That the accused person latter said, he was supposed to be in level 07 not level 8 and he collected his appointment letter. Later in the day, Alabi Peter called to say that the Accused person will revalidated the appointment letter and bring it back but never did till date.

Counsel cross – examine PW3 as thus;

Qus:-How much did you give to the Accused person?

Ans:-I did not give him any money.

Qus:-What effort did you make in getting your money from Peter Alabi?

Ans:-When embelembe called the both of them, they agreed to refund the money to me.

Qus:-Did you receive any written acknowledgment from Peter Alabi?

Ans:-No.

Qus:-The Accused played the role of a mediator between you and Peter Alabi?

Ans:-No.

Pw4 (Mrs. Amaka Onyia) testified that she knew the accused person through one Martins and she later discovered that the accused person is her church member.

Pw4 stated that she did visa for one of her client and the client asked her to meet her by an ATM with the passport. That she called the accused person and handed over the passport to him and the woman's phone number but the accused person collected the money and refused to remit same to her.

Pw4 was cross- examined as follows:-

Qus:-You said you are a consultant?

Ans:-Yes.

Qus:-What is your qualification?

Ans:-WASC holder.

Qus:-What do you consult on?

Ans:-How to apply for VISA.

Qus:-What is the name of the woman in question who had the passport?

Ans:-Mrs. Shade.

Qus:-Have you spoken with the woman with the passport?

Ans:-Yes.

Qus:-What did Mrs. Shade tell you?

Ans:-She said she had settled the Accused person.

Qus:-Were you on salary when you were working?

Ans:-Yes, N35,000.00

Qus:-When did you live your place of employment?

Ans:-February, 2015.

Qus:-Do you have any means of identification as having worked where you worked?

Ans:-I have an identity card which is in my house.

Qus:-Where now do you work?

Ans:-I am not working but attached to one company.

Qus:-What is the name of the company you are attached to?

Ans:-Global Communication Company.

Qus:-Where is the address?

Ans:-Jabi upstairs.

Qus:-Since you left Havac Consultant, you have been at Jabi upstairs?

Ans:-Yes.

Qus:-Can you read and write?

Ans:-Yes.

Pw5 (Akaanan Jacob Gwaza) testified and tendered Exhibit “B” and “C”. it is the testimony of Pw5 that in April, 2014 the Accused person called him and introduced himself as Alabi Amos Alabi serving with NSCDC FCT Command. The accused person said one George reported him to the command, when he came, he met the accused person with the George. The accused person handed over the agreement between him and the George containing certain amount which he admitted. That he however offered explanation but the accused did not allow him but insisted he must pay the money in the agreement.

PW5 stated that he offered to sell his car for N400,000 – 450,000. When the accused called him to be able to come over with the car, he directed him to come over to the NSCDC headquarters.

At the headquarters, they met and the accused inspected the Mitsubishi Space Wagon Car. He then gave me the car dealer’s number which name is Emmanuel.

That Emmanuel directed him to his car stand at NICON Insurance building area. And he later drove to Kubwa and met Emmanuel. The car dealer who later offered to pay N400,000 but not immediately as he was not in possession of cash.

The Accused person asked him to drop the car with the car dealer with photocopies of the car papers, which he did on the 1st day of August, 2014. The following week, he traced the Emmanuel to his car stand and met him with his car. From the 1st August, 2014 to the end of month, the car was not sold. The Accused person later collected the car from the car dealer (Emmanuel) to sell.

Accused later called him to come with the original paper which I did. He urged me to drop my original papers of the car with him. So he can show the potential buyer.

At some point in time the Accuse person sought for his Account number for the particular price to be paid into same.

Accused never paid such money.. when he discovered how the Accused was dribbling him, he later made a formal complaint to the commandant NSCDC FCT Command with the photocopy of the proof of his ownership of the car. FCT unit of the NSCDC Command investigated the matter. The Accused admitted that he was in possession of the car and papers.

The Accused promised to produce the car and or money but never did. He later absconded from his house and put off his phone lines most of the time.

PW5 was cross – examined by learned counsel for the Defendant as thus;

Qus:-One Mr. George reported you to the Provost Unit of the NSCDC, FCT Command in April, 2014 because you are owing him the sum of N450,000 true or false?

Ans:-False.

Qus:-Who then reported you to the provost Unit of the NSCDC?

Ans:-Alabi called me on phone to say Mr. George reported me.

Qus:-Did you see the said Mr. George at the FCT Command of NSCDC?

Ans:-Yes.

Qus:-Did you collect the sum of N450,000 from the said George or not?

Ans:-I did not.

Qus:-How much did you then collect from Mr. George.

Ans:-I can't say off hand how much I collected from Mr. George but on the paper presented on that day it was Two Hundred and Seventy something Thousand.

Qus:-Is it true that the said sum was for you to secure a job for him at NSCDC?

Ans:-No.

Qus:-What was the monies meant for?

Ans:-I collected the monies from him based on the various challenges I had, most importantly my wife who was pregnant was on admission on bed rest and later delivered of twins through CS.

Qus:-You also said you made deposits of sums N20,000.00, N10,000.00 and another N10,000.00 in April, May and June 2014 through the Accused person. Is there any evidence that you paid these monies to the Accused?

Ans:-They are all with the Accused person.

Qus:-Is it true that Mr. Emmanuel, the car dealer paid you the sum of N25,000.00?

Ans:-False.

Qus:-Can you remember sending a text message to the Accused person agreeing to the payment of N270,000 as full and final payment for the Mitsubishi Car?

Ans:-Yes.. but it was meant to be part payment for my Mitsubishi car which he hasn't given to me.

Pw6 (Ohaine Chinedu Friday) testified that he met the accused person through friend club known as "one on one ambition ventures."

That three months after he became a member, the Accused told the club members that he could get employment in Civil Defence for any interested person.

That he personally approached the accused person and told him that he was interested in the Job, but that he do not have any money. The accused undertook to help him secure the job. He informed him that replacement was being made at Civil Defence Corps and that I should make some money available. He insisted he didn't have the money and undertook to forefeet his one year salary for him and his Boss who he said he knew very well.

The Accused then offered to raise a cheque on his behalf, he still said he didn't have the money.. when he requested to see his Boss and explain his plight, he refused.

In October, 2014 when he was at the TAAN rally at the Eagles Square, Abuja, the Accused asked him to send his details which he did. The Accused further said there was a woman whose husband asked her to give the job and that I was going to be replaced with her.. He said if I could raise the money, he will be employed. After much persuasion, he called his brother in Lagos who borrowed money from Microfinance in Lagos in the sum of N150,000.00 and sent to him. As soon as he got the money he called the Accused person on phone.. when he offered to transfer the money into his account, he refused and requested to collect cash.

The Accused who kept calling me on the pretext that my name will go with the money and that he should give him the money. I position my friends to snap me and him since he refused to have the money transferred into his account.

I gave them my phone Asha 200 Nokia to use and snap which has a memory card. It was captured very well when he was giving him the money and when he was pocketing the money. He later went to sky memorial to process the pictures.

That when the job was not forthcoming, he later went to his house and reported his ordeal to his wife. His wife then told him how the Accused struggled to secure his job with N500,000.00 and requested him to calm down, he later went back to Civil Defence and met an Asst. Commandant General, Civil Defence to explain his ordeal. Who advise that he should try his best to arrest the Accused person whom she said was on AWOL in the same December.

The Accused later gave us N50,000.00 in his house.. He undertook to pay the balance in the next ten days. He then called me after the ten days passed, to meet him at phase III, under bridge by Kubwa Express. He handed over N20,000.00 to me on that day and left.

The Anti Fraud Unit of the Civil Defence then called me on phone to say they wanted to visit the Accused's house and that I should accompany them.. before the Anti Fraud Unit could visit him, the Accused told our club members that I had written petition against him and that my club member should intercede in view of the fact that his job was on the line.

He was prepared to make any undertaking. Before our club members, he gave an undertaking to pay my money in 30 days which he failed to.

Which eventually they visited his house with the Civil Defence Officers, he was arrested and N20,000 was recovered on him which was handed over to him.

Pw6 was cross – examined as thus;

Qus:-What is your qualification?

Ans:-H.N.D in marketing.

Qus:-Did the Accused person tell you that he was involve in the employment of applicant into the Civil Defence?

Ans:-He said he was the one helping his boss.

Qus:-Did anyone tell you that you needed to pay money before you are given employment?

Ans:-Yes, the Accused said he bought his job with N500,000.00

Qus:-Apart from you, has the Accused person collected money from any other member of One on One Ambition Ventures?

Ans:-I am not aware.

Pw7 (Okunola Muzaina) testified that sometime in 2014, the Accused took his car to his shop.. the Accused urged him to check his car tyres

and replace the bad ones. I later discovered the two rear tyres were bad. He offered to pay by cheque for the replacement of the two rear tyres. I presented the cheque after fixing the tyres for the Accused person on the date written on the cheque and was told there was no money... when I contacted the Accused person, he asked me to go back to my shop and wait for him.

I waited for him and later called him to say I was waiting at the shop on his instruction, he asked me to wait when I later reported the matter to my Army brother, he said I should go to Civil Defence and report the matter, which I did. At the Command Headquarter, I was directed to Anti fraud Unit of Civil Defence Corps. I was later requested to forward petition in writing.

He was cross – examine as thus,

Qus:-You were told to return the cheque to the Accused person from the bank?

Ans:-Yes.

Qus:-Did they tell you why ‘DAR’ was written on the cheque?

Ans:-No.

Pw8 (Collins Chetta Ezenwa) stated that the Accused person collected N155,000.00 from him. That he collected the money from him in trenches. It all started when he was preparing for his traditional marriage, he gave the Accused person N15,000.00 to transport his

Dad to the East. He failed to do it and could not give him the money. He also requested for N20,000.00 to Fix his car, which he did with the promised of paying back in one week, which he failed. He also got him to give him N10,000.00 for arms training at the NSCDC if he was interested, he gave him the money before he discovered it fraud.

At a time again, my junior brother who was planning a concert wanted a Hilux.. the Accused person promised to provide a Hilux Van at the cost of N10,000.00. Accused never brought the Hilux and or the money.

On another occasion, his friend, Pius was owing him N100,000.00 he went to the Pius' office with the Accused. And agreed that the said N100,000.00 be paid into the Accused's account, having brought the Accused into the matter. The said Pius called after one year to inquire why I stopped calling him. He later told him that he paid the N100,000 into the Accused's account upon calling the Accused person, he came down to his house and admitted receipt of the money.

Qus:-Is there any acknowledgement of the monies you are talking about as collected by the Accused?

Ans:-I did all on trust. There was no document.

Court:- PW8 is hereby discharged in the absence of any re-examination.

Pw9 (Akinoso O. Zacheaus) testified as thus, on 14th March, 2015, he received instruction from his head of unit to investigated the

Accused person with series of petitions from both the staff of NSCDC and other member of the Public where it was established against him that he committed some allegation. In the cause of his investigation, the following were admitted:-

1. The case of ***OGUNOLA MURIANA OF AREA 1, GARKI, ABUJA***, where the Accused person bought two nos. Bristone tyres at the rate of N18,000.00 and issued a cheque which later was dishonoured.
2. Mr. Siaka Ali of Chief Palace Road, Kuchigoro, Abuja, paid the sum of N400,000.00 to the Accused person in Order to secure employment into the Corps.
3. Mr. Chukwudi Ohani of his Grace Avenue, Sabari Residential Dei – Dei, Abuja. The Accused person collected the sum of N150,000.00 in Order to secure his employment into NSCDC
4. Mrs. Fabian Excel also complained to have paid the sum N595,000.00 to the Accused person in Order to secure her junior brother employment with NSCDC.
5. Mr. Akona Jacob Gwaza, of Keffi Division of NSCDC Nasarawa State Command, gave a car, Mitsubishi Space Wagon, three seater, Royal Blue in colour, valued at N350,000.00 to the Accused person. The Accused person refused to pay the money nor the car to owner.

6. Mr. Charles Agwunga sold a Bajaj Boxer Motor – Cycle to the Accused person at the rate of N115,000.00.

The Accused person refused to pay till date... the Accused person issued a cheque in the said sum which was dishonoured.

7. Collins C. Ezenwa, of FCT Command NSCDC, Gudu District, Abuja, also complained against the Accused person that he has collected monies on several occasion from him which amounted to the sum of N155,000.00 and the Accused person refused to pay till date.

8. Infinite Mercy Multipurpose Corporative Society, also complained against the Accused person that he collected a soft loan of N200,000.00 and due to his refusal to repay the loan, the Accused interest rose to the sum of N360,000.00 which brings all to N560,000.00

The Accused person wrote a case for the said sum of N560,000.00 to the Corporative Society dated 16th December, 2014. The Accused refused to pay the money.

9. Yemin Popoola of the NSCDC, FCT Command, Gudu District, Abuja, lend the sum of N50,000 to the Accused person and refused to pay up till date.

10. Mrs. Emeka Onyia of No. 39 Lobito Crescent, Wuse II, Abuja also complained against the Accused person of a case of breach

of trust which involved the sum of N50,000.00 being the money from international passport which is still with Accused.

11. Nimee Exquisite Nigeria Ltd of No. 4, Wani Street, Wuse Zone 4, Abuja, also gave a soft loan of N230,000.00 to the Accused person and he issued a cheque knowing well there was no money in that account.

PW9 was cross – examine as thus;

Qus:-Take a look at Exhibit “G”, what is the meaning of “DAR” written in the cheque?

Ans:-I don’t know.

Qus:-See Exhibit “H”, pages 1 and 2. There is a tipex on the name of the Accused person?

Ans:-Yes.

Qus:-Do you know the meaning of “DAR” written on the cheque?

Ans:-It is usually ascribed to any bounced cheque.

Qus:-Is that the meaning?

Ans:-That is not the meaning.

Qus:-Nil.

Re –examination:-

Qus:-How do you identify failed cheques?

Ans:-Cheques with “DAR”

The prosecution at this stage close its case to pave way for defence.

The accused person testified for himself as thus; that he don't know the Ali Isiaka before 2013. That Ali Isiaka came to his office in FCT Command and was asking of Alabi and he was called upon to meet him. He gave him an envelope and that one Peter (his brother) asked him to give him an envelope to take home for him.. about 2 weeks thereafter, thesame Isiaka Ali came back to his office reporting his brother to him that he gave his brother N400,000 and that he needed the money back. He said he had a transaction with his brother.

The PRO of FCT Command of NSCDC was around he invited his brother and I left the three people together.

That did not you collect any money from Isiaka Ali?

Dw1 testified that PW5 is his colleague and that he was in the office when one Mr. George came to report him. That he was the provost on duty that afternoon. He said PW5 collected N450,000 from him and that he needed his money back. George then gave him PW5 mobile number. I called him on phone and invited PW5 to come to FCT Command.. When PW5 came, he did not deny owing N450,000 to Mr. George.

DW1 stated that he then reported the matter to his Head of Department. Pw5 pleaded to pay the money. He said he had a Mistubishi bus which he wanted sell and pay off but could not get a buyer he offered to assist PW5 get a buyer. He then introduced him to a car dealer in Central Area, Area 10. PW5 confirmed he met the man and said he had handed over the car to the car dealer to get a buyer. PW5 told him he was selling his car for N250,000 last.

Dw1 stated that he knew Pw6 and that they are in the same club. He solicited for financial Assistance from him. He borrowed him N150,000 to be paid back with interest of 10%. he gave him a cheque as security for the loan he gave him.

That he have paid back the money in the following instalment; N50,000, N20,000 and N75,000 leaving a balance of N20,000 which he collected from my office (Anti Fraud Unit).

Dw1 stated that when he was arrested and brought back to the office, he had N31,500.00 when PW6 came and said he needed his balance of N20,000, same was removed from his money with Anti Fraud Unit and given to him.

In his testimony Dw1 stated that he know Pw7 as car tyre dealer, he brought tyre for his car from him at the cost of N24,000 he gave him N6000 cash and a cheque of N18,000 to be cashed. He called him later the next day to say that the cheque was not honoured he then called his account officer who confirmed to him that the beneficiary

did not have any valid identity card on him and that he then gave him the N18,000 and collected back my cheque. But when officers from the Anti Fraud Unit of NSCDC came to his house, they left with his diary and in his diary, Exhibit “E” was found there.

It is the testimony of Dw1 that Pw8 is his family friend and a colleague. He gave him N15,000 to take to his father who had stroke down to the East (Okija, Anambra State).. that he used his car to drive his father to Anambra State. That is the only thing that transpired between them.

Dw1 was cross – examine as follows:-

Qus:-You Said Ali Isiaka came to your office... How many times in all did he came to see you?

Ans:-He came only once to see me and came the second time to see the PRO.

Qus:-What is the name of the PRO?

Ans:-Mr. Akinbenu.

Qus:-Where is your brother (Mr. Peter)?

Ans:-I don't know where he is presently.

Qus:-What was the content of the envelope handed over to you by Mr, Ali Isiaka?

Ans:-I can't remember because it was sealed.

Qus:-Mr. Ali Isiaka said you are aware of the transaction between him and your brother?

Ans:-That is false. I did not know the said Ali Isiaka and when the struck the transaction.

Qus:-Why did you ask for Mr. Isiaka's educational qualification?

Ans:-I did not.

Qus:-You told Mr. Ali Isiaka the qualification required for employment into the NSCDC..true or false?

Ans:-False.

Qus:-The envelope Mr. Isiaka brought to you contained a fake appointment letter ... True or false?

Ans:-False.

Qus:-Why did your brother ask Ali Isiaka to handover the envelope to you?

Ans:-My brother merely asked me to take the envelope home for him.

Qus:-Does Ali Isiaka know where your brother is?

Ans:-I don't know.

Qus:-I put it to you that Mr. Ali Isiaha brought appointment letter to you for documentation in NSCDC?

Ans:-That is not true.

Qus:-You said your brother wanted you to take the envelope home for him... where is home?

Ans:-To then where he resides.

Qus:-Where is the address?

Ans:-Durumi Area, here in FCT.

Qus:-You did not know your brother's address. Where then did you take the envelope?

Ans:-They came to the office with my brother.

Qus:-Ali Isiaka had a transaction with your brother?

Ans:-I don't know.

Qus:-You said you did not know how PW5 and the car dealer concluded the transaction?

Ans:-PW5 told me himself.

Qus:-What is the name of the car dealer?

Ans:-Emmanuel.

Qus:-What are the schedule of duty of a Provost Marshall?

Ans:-We are like the police of the Corps.. we are in charge of discipline.

Qus:-Does it involve settlement of monetary issues?

Ans:-Yes.. you can settle once it involves serving officers and not civilians.

Qus:-Where did you read your schedule of duties?

Ans:-We have a guideline for all corps members.

Qus:-Is there Anti- Fraud Unit in the Corps?

Ans:-Yes.

Qus:-Is there an Anti Corruption Unit in the Corps?

Ans:-Yes.

Qus:-You said you are involved in discipline as a provost please explain.

Ans:-It cover all areas of discipline of officer in the Corps

Qus:-From what you read on the guideline of Civil Defence Corps from the witness box, is there any position dealing with money recovery?

Ans:-I did not recover any money for anybody.

Qus:-You said Mr. George laid complaint about PW5.. you also said you were meant to discipline only Corps Members. The transaction between George and PW5 includes an officer and a civilian?

Ans:-The report was made by George (Civilian) against one of our officers. I called him on phone and he came.

Qus:-You said you reported the matter to your HOD?

Ans:-I briefed him and not report.

Qus:-What was his response?

Ans:-He said the officer should go and pay the money.

Qus:-Is that how you operate?

Ans:-Yes.

Qus:-What is the name of your Head of Department?

Ans:-I can't remember for now.

Qus:-What was his rank?

Ans:-Chief Superintendent.

Qus:-What is yours in the Provost Unit?

Ans:-Head, Group B with 14 junior officers under me.

Qus:-What was the colour of the Mitsubishi Car?

Ans:-I never saw the car.

Qus:-PW9 as staff of the Corps (Anti Fraud Unit) as a provost, I believe you are conversant with the duties of all units.. the

provost unit usually will only sanction an erring officer based on the decision of the department of such an officer.

Ans:-Yes.

Qus:-You know the duties of anti fraud unit?

Ans:-Yes.

Qus:-You then know that the Anti Fraud Unit deals with monetary complaints?

Ans:-Yes.

Qus:-Did you report PW5's issue to Anti Fraud Unit?

Ans:-No.. it wasn't their duty.

Qus:-You said you know the duties of all the departments.

Ans:-Yes.. I only dealt with the issue as a Provost Mashall, until when they connived to implicate me.

Qus:-You met PW5 at Kubwa express way?

Ans:-I did not.

Qus:-You said PW6 is your friend?

Ans:-Yes.

Qus:-He loaned you some money?

Ans:-Yes.. N150,000.00 (One Hundred and Fifty Thousand Naira).

Qus:-And your friend collected interest?

Ans:-Yes.

Qus:-How did you pay back the loan?

Ans:-I paid him N50,000.00, N20,000.00, N75,000.00 leaving a balance of N20,000.00 which was deducted from my N31,000.00 with the Anti Fraud Unit.

Qus:-When did you collect the loan?

Ans:-I can't remember.

Qus:-Where was the monies given to you?

Ans:-Close to his office.

Qus:-Where is his office?

Ans:-He works at the secretariat.

Qus:-I put it to you that Mr. Chinedu who is a business man does not have an address?

Ans:-Yes.

Qus:-Chinedu snapped picture of you.. are you aware?

Ans:-Yes.

Qus:-Why did he snap you?

Ans:-Because he wasn't paying into my account.

Qus:-When did you buy tyres from PW7?

Ans:-I can't remember.

Qus:-How many tyres did you buy?

Ans:-Two tyres for N24,000.00.

Qus:-What is the name of your account officer you called to find out why your cheque was not honoured?

Ans:-I don't know his name.. I know him as account officer.

Qus:-Did you see the dishonoured chequed?

Ans:-Yes.

Qus:-What was written on it?

Ans:-I don't know.

Qus:-See Exhibit "E"... what is the amount therein?

Ans:-N18,000.00.

Qus:-What is written on the cheque?

Ans:-DAR.

Qus:-What is the meaning?

Ans:-I don't know.

Qus:-You said you came down immediately PW7 called you?

Ans:-I did not.. I came after work.

Qus:-Was it the same day?

Ans:-Yes.

Qus:-If you paid all the money as claimed, why did he report you?

Ans:-My lord.. I paid what I was owing.. Exhibit “E” was taken from my house when officer raided my house whilst on investigation. The cheque was in my diary.

Qus:-Between when you collected the tyres and when you paid, time how long was it?

Ans:-It wasn't more than a week.

Qus:-What is your relationship with PW8?

Ans:-He is my colleague and family friend.

Court:- Defendant who gave evidence as PW1 is hereby discharged. Case adjourned to the 30th November, 2016 for adoption of final written addresses. Defendant shall enjoy his bail.

Learned counsel for the prosecution and accused person filed their respective final written addresses and adopted same on the 30th November, 2016 to give way for this judgment.

Learned counsel for the Defendant formulated the issue; “*whether the Defendant is not entitled to be discharged and acquitted the prosecution having failed to discharge the legal burden placed on it by law to wit: to prove the guilt of the Defendant beyond reasonable doubt.*”

Learned counsel for the Defendant in its final written address and under the issue formulated for determination, made elaborate submission on counts 1 to 11.

On count one, it is the submission of learned counsel for the Defendant that the law places the obligation on the prosecution to prove an offence as charged irrespective of the provisions of the statute creating the offence. Counsel cited the case of ***GEORGE VS F.R.N (2014) 5 NWLR (Pt. 1399)***.

It is the submission of learned counsel for the Defendant that prosecution which charged the Defendant for the offence of criminal breach of trust failed to discharge its onus by linking Defendant with the offence.. learned counsel for the Defendant maintained in its submission that Mr. Akaanan Jacob Gwaza who testified as PW5 and tendered Exhibits “B” and “C” i.e two petitions written by PW5 to the Commandant General of NSCDC and a car receipt has failed to linked the accuse person with the commission of the offence.

It is the contention of learned counsel for the Defendant that, Defendant having denied collecting the car of Pw5 from one

Emmanuel, prosecution should have called the said Emmanuel to give evidence on the whereabouts of the car (Mitsubishi Space wagon), and the failure should be treated as fatal to the case of the prosecution.

Learned counsel for the Defendant relied on the case of *STATE VS AJIE (2000) 7 SCNJ 1 at 14* and argued that there was no evidence before the court that the car in question belonged to PW5 since there was no such evidence before the court. Learned counsel for the Defendant equally made heavy weather on the absence of date and place the offence was committed on the charge.

The authority of *SANI VS STATE (2015) 15 NWLR (Pt. 1483) 522 at 544 F* was cited and relied upon by learned counsel for the Defendant.

It is also the contention of learned counsel for the Defendant that the prosecution has failed to prove count one.

On the part of the prosecution, it is their submission on count No. 1 that they have established their case beyond reasonable doubt.

It is the submission of learned counsel for the prosecution that Amos Alabi (Defendant) conspired together with the car dealer (Emmanuel) he admittedly introduced PW5 to.. Counsel placed reliance on Exhibits “B” and “C” tendered to urge the court to so hold that charge no 1 has been proved.

On the part of court – with relation to count 1, the law is firmly established on the issue of the duty of prosecution.

The Presumption of innocence constitutionally speaking, is in favour of a Default.. section 36(5) of the 1999 constitution of FRN.

Therefore, Prosecution must prove its case beyond reasonable doubt and convincingly too, under section 139 of Evidence Act, for doubt to be cast on the presumption of innocence of the Defendant.

Count 1 borders on criminal Breach of Trust contrary to section 311 of the penal code.

To succeed in the prove of said count 1, Prosecution is required to prove:-

- a. That accused was entrusted with property or with dominion over it.
- b. That he;
 - i. Misappropriated it or
 - ii. Converted it to his own use
 - iii. Used it
 - iv. Disposed of it.
- c. That he did so in violation of;
 - i. Any direction of law prescribing the mode in which such trust was to be discharged, or

- ii. Any legal contract expressed or implied which he had made concerning the trust, or
 - iii. That he intentionally allowed some other persons to do as above.
- d. That he acted as in (b) above.

PW5 (Akannan Jacob Gwaba) testified that Amos Alabi (Accused) called him in the month of April, 2014 and introduced himself as staff of Nigeria Security and Civil Defence Corps with FCT Command.

It is his evidence that accused then informed PW5 that one Mr. George reported PW5 to the command and that he was to come over for clarification.. At the FCT Command of Nigeria Security and Civil Defence Corps (NSCDC), accused person introduced the said George to PW5 and handed over an agreement concerning a certain amount of money between PW5 and the George.

It is the evidence of PW5 that when he wanted to offer explanation, accused person insisted that PW5 paid the money in the agreement,.. PW5 then accepted to pay by installment and commenced the payment by dropping N20,000.00.

PW5 said he paid N10,000 in the months of May and June, when accused person then said the owner of the money (George) was not comfortable with the payment and that a lumpson amount of money be paid. Accused person and PW5 then agreed to sell PW5 Mitsubishi space wagon car to settle the debt.

PW5 then drove his car on the instruction of Accused person to Nigeria Security and Civil Defence Corps (NSCDS) headquarters, where same was inspected and accused then gave PW5 a car dealer's number by name Emmanuel, who had a car stand at NICON Insurance building, who then offered to pay N400,000.00 but not the moment. It is the evidence of PW5 that accused person then asked him to drop the car with the dealer with photocopies of the car paper which he did on the 1st August, 2014. Pw5 further testified that accused person later collected his car from the Emmanuel when the car could not be sold after one month, to sell himself.. PW5 stated in his evidence that accused person later called him to come over with the original papers of the car to enable him show potential buyer, which he did.

It is the evidence of PW5 that accused person at some point asked him for his account number which he never paid no money, and that when he got tired of being dribbled by the accused, he reported the incidence to the commandant of Nigeria Security and Civil Defence Corps (NSCDC) FCT Command attaching proof of ownership of the car and that the command investigated the matter and accused admitted being in possession of the car and papers and promised to produce the car or money which he never did but absconded from his house and switched off his phone.

PW5 also said accused person also absconded from work and that so many other complaints were made against him at the National

Headquarters of Nigeria Security and Civil Defence Corps (NSCDC) and that he was also asked to make another complaint to the National headquarters of NSCDC, which he did.

Pw5 tendered the said complaints he wrote against the accused person to FCT Command of the Nigeria Security and Civil Defence Corps (NSCDC) and the National Headquarters of the NSCDC which were admitted as Exhibits “B” and “C” respectively dated 22nd October, 2014 and 17th February, 2015.

Dw1 (accused) admitted the fact that PW5 brought his car for sale to pay one George N450,000, but that he directed him to a car dealer after reporting the matter to his Head of Department.

It is the evidence of DW1 (accused) that he offered to assist PW5 get a buyer.

Dw1 denied collecting the original car papers from PW5 and that Pw5 was paid N200,000.00 being value of his car leaving a balance of N50,000.00.

I have considered the statement of the accused person made, which was tendered as Exhibit “F” by PW9 wherein accused stated, “that he later got a buyer for the car and called PW5 to bring the original car papers and that PW5 collected N200,000.00 leaving a balance of N50,000.”

From the statement of accused person, i.e Exhibit “F” which was made on 14th March, 2015 on the Nigeria Security and Civil Defence

Corps statement form, which accused on his volition made during interrogation, it is very clear that the Mitsubishi space wagon car belonging to PW5 left the custody of the earlier car dealer (Emmanuel) back to the accused person without the knowledge of PW5 (owner).

The onus to proof on the whereabouts of the Mitsubishi car now shifts to the Defence. This is because the statement in Exhibit “F” amounts to admission in law which is conclusive proof of the entire matter in litigation. *KAMALU VS UMUNA (1997) 5 NWLR (505)*.

The following questions now come to my mind to be answered by the accused:-

Qst.. Who bought Pw5’s car and for how much..

Qst.. Where does the buyer live and why was he not called by accused person to give evidence that he bought the said Pw5 car, now that Pw5 is accusing DW1 (Accused) of criminal breach of Trust involving the said car?

Qst.. How was PW5 paid the said N200,000 as alleged by accused being part value of his car... was it paid into his account or cash? Where is the evidence?

Under cross –examination DW1 (accused) stated that he could not remember the name of his Head of Department (HOD) and could not also remember the color of PW5’s car and that he did not know how PW5 concluded with the car dealer (Emmanuel).

Qst.. Who introduced PW5 to the car dealer?

Ans.. Accused person.

Qst..Is the accused person not drunk in his several lies?

Qst.. Which of the evidence of the accused is the court to believe?

Qst.. Which of the evidence is the court to believe?

Accused person stated in his statement during investigation i.e Exhibit “F” that he later got a buyer for PW5’s car and called Pw5 to come with original papers, and now he is saying under cross –examination that he did not know how the car transaction between PW5 and the initial car dealer he introduced PW5 to ended.

The inability of the defence to ensure the person whom accused person said he got to buy PW5’s car and who indeed as alleged by accused person paid N200,000 to Pw5 which was disputed to come and give evidence, remain fatal to accused’s defence with respect to count 1.

In all criminal trials, the burden or anus of proof is always on the prosecution to prove its case beyond reasonable doubt.

If the judge has any doubt at all, the accused person shall be given the benefit of such doubt. ***SEE OKPUTU OBIODE & ORS VS STATE (1970) ALL NLR 36. KALU VS STATE (1988) NWLR (Pt. 90) page 503.***

Furthermore, what is most fundamental in criminal trials is the sustenance of justice of fair hearing. Where the court is satisfied that the prosecution has proved its case beyond reasonable doubt, the argument by the defence counsel that the absence of date and time of the commission of the offence on the charge makes same defective and liable to be dismissed as done in this case, unless that has led to miscarriage of justice, is merely a fass and indeed a technical argument geared toward getting the Defendant against all odds off the hook. Appellate courts have held in plethora of judicial decisions that in considering whether there had been a miscarriage of justice, the court must be satisfied that it is substantial, and not one of mere technicality which hadn't caused no embarrassment or prejudice to the appellant.

I rely on the authority of *ADEBAYO VS AG OGUN STATE (2008) WRN (Vol. 20) 1 at 3 page 10 lines 30 – 45 (SC)*.

From the foregoing therefore, I am very much convinced that prosecution has been able to establish the salient ingredients of criminal breach of Trust against the accused as contained in charge 1.

The accused person is guilty as charged.

On count 2, it is the submission of learned counsel for the Defendant that prosecution did not call any evidence to prove this charge and that since the burden of proof is on the prosecution, the court should discharge and acquit the accused person. The authority of *UCHE VS*

STATE (2015) 11 NWLR (Pt. 1470) at page 393 C-D and section 135 (1) Evidence Act was cited.

On the part of court, I have considered the oral and documentary evidence adduced by prosecution. It is true that the onus of proving allegations before the court rests on the prosecution. Indeed no evidence was led in prove of count 2. Accused is discharged and acquitted of the said count 2.

On count no. 3, learned counsel for the Defendant contended that Defendant having pleaded not guilty, prosecution was under an obligation to lead evidence in prove of his guilt but failed to call a single witness. Section 135 (1) Evidence Act was cited and the authority of *UCHE VS STATE SUPRA* was relied upon.

It is the contention of learned counsel for the Defendant that the only document remotely related to the allegation in count no. 3 is Exhibit “G” tendered through PW9 i.e the Dud Cheque.

It is the submission of learned counsel for the Defendant that PW9 who tendered the said Exhibit “G” said that the petitioner with regards to count 3 could not be reached to come to court and give evidence. Counsel then urged the court not to give value to the said Exhibit “G”, and on the whole discharge and acquit the accused person.

On the part of the prosecution, it is their legal argument that count 3 have been established against the Defendant on the strength of the evidence of PW9 i.e Investigating Officer of the Nigeria Security and

Civil Defence Corps (NSCDC) who gave evidence on the series of complaints against the Defendant.. prosecution urge the court to hold that prosecution has proved count No. 3 and accordingly convict the Defendant.

On the part of court with relation to count 3, I have considered the content of Exhibit “G” i.e cheque issued in favour of one Shetunke Akesm Temitayo which was returned unpaid.

I have also considered the evidence of the investigating officer of Nigeria Security and Civil Defence Corps (NSCDC) who said he could not get them to come to court and give evidence. It is most important to restate the earlier position of the law on the duty of prosecution. The prosecution has the onerous responsibility of proving its case against the Defendant or accused beyond reasonable doubt... any lorta of doubt must be resolved in favour of the accused person. I rely on *HALILU VS STATE (2016) CA., DANLADI VS STATE (2014) LPELR 23812 (CA)*.

The inscription “DAR” on a cheque means, “Drawer’s attention required.”

It does not necessarily infer there isn’t money in the drawer’s account.

Therefore evidence must be led by tendering the statement of such an account in evidence to show that as at when the instrument was issued, there wasn’t funds in the said account.

Although the accused person in his defence and evidence didn't say anything with respect to the said Exhibit "G", the onus I dare say, did not shift.

I must state at this stage that personnel of the Nigeria Security and Civil Defence Corps (NSCDC) who are in charge of investigation and prosecution of criminal cases in court from what has been done in the case before me, are all ill prepared, professionally incompetent and lazy.

I am in agreement with the submission of learned counsel for the Defendant that prosecution has failed to lead credible evidence on this count. Accused is discharge and acquitted of the said charge under count 3.

Arguing in its final written address under count No. 4, learned counsel for the Defendant contended that prosecution has again failed to prove the said charge and merely adopted it's argument under count 3 in urging the court to discharge and acquit the Defendant.

On the part of the prosecution, heavy weather was made of the evidence of PW9 in urging the court to convict the Defendant.

On the part of count, I adopt my initial judgment under count 3. I further wish to restate that both the investigating officers of the Nigeria Security and Civil Defence Corps (NSCDC) and the prosecution are most untidy and professionally unprepared to do their

jobs. Investigations bothering on Dud cheques must be very thorough and professional. This is so unfortunate.

Accused person is hereby discharged and acquitted for lack of evidence under count 4.

Learned counsel for the Defendant contended under count 5 in its written address that the said count is inconsistent with the offence the Defendant was alleged to have committed.. learned counsel contended that prosecution charged Defendant for the offence of criminal breach of Trust contrary to section 311 and punishable under section 313.

Learned counsel submitted in its final address that no evidence was led to prove the ingredient of criminal breach of Trust under section 311 of Penal Code counsel urged the court to therefore discharge and acquit the Defendant.

On the part of the prosecution, it was submitted that a case of criminal breach of trust was made out against the Defendant on the strength of the evidence of PW7 and on the strength of the issued cheque i.e Exhibit “E”.. Court was urged to hold that prosecution proved count 5 beyond reasonable doubt.

On the part of court, I have considered the argument of the respective counsel in their written addresses. The law is very settled on the duty of the prosecution in the area of proving its case beyond reasonable doubt.

A Defendant shall be set free regardless of the overwhelming characteristics antecedents of premium criminal tremors, once prosecution fail to prove his guilt. This is an age long principle which has been give constitutional backing under our presumption of innocence under section 36(5) of 1999 constitution of Federal Republic of Nigeria.

Defendant under count 5, was charged for the offence of criminal breach of Trust under section 311 and punishable under section 313 of the penal code.. Prosecution is under an obligation to prove the following:-

- a. That the Defendant was entrusted with property or had dominion over property
- b. That Defendant dishonestly misappropriated or converted to his own use or disposed of that property in violation of any direction of law prescribing the made in which such trust is to be discharged or of any legal contract express or implied, which he has made touching the discharge of the trust,
- c. or that the Defendant willfully suffered any other person so to do.

I must say that the prosecution again has failed to lead any evidence to establish any of the vital ingredients of criminal breach of Trust under section 311 Penal Code.

I sincerely do not understand the corrolation between criminal breach of Trust and issuing of Dud cheque as it were in this instance.

This, I must not forget to say smacks clear display on the part of the prosecution of legal and intellectual bankruptcy. Defendant is discharged and acquitted of the said count 5.

Under count No. 6, learned counsel for the Defendant submitted that prosecution failed to lead evidence to proof of the count which bothers on obtaining loan of N50,000.00 from one Popoola Yemisi.

On the part of the Prosecution, no mention of the said count 6 was made specifically with relation to the evidence.

On the part of court therefore, after a calm consideration of the submission of learned counsel for the Defendant visa – vis the offence charged under section 311 and punishable under 313 of the Penal Code, no evidence was led by the Prosecution in proof of the offence.

I adopt my judgment under count 5. Defendant is discharged and acquitted.

Under count 7, learned counsel for the Defendant contended that the charge is bad for duplicity and should be dismissed. Learned counsel maintained that a count which contains an allegation of morethan one offence is bad for duplicity counsel submitted that count 7 has five (5) different allegations. Counsel relied on the case of *ADEBAYO VS STATE (1987) 2 NWLR (Pt. 57) 468* to urge the court to dismiss the

said count 7...Counsel then urge the court to dismiss count 7 for duplicity.

On the other hand, counsel for the Defendant argued in its final written address with vigour the fact that there is no offence to our law as cheating by personation as charged by the prosecution... court is then urged to discharge and acquit the Defendant. Counsel cited the authority of *OLOWOYO VS THE STATE (2012) 17 NWLR (Pt. 1329)*.

Learned defence counsel in the event that court takes cognizance of the unknown crime of “cheating by personation” contented that the prosecution failed to tender any evidence in proof of the ingredients of the offence, if any... counsel cited the case of *ALABI VS STATE (1993) 7 NWLR (Pt. 307) 511 at 523* counsel also maintained in its legal submission that the allegation in count 7 do not constitute any offence known to law..

Counsel on the whole urged the court to discharge and acquit the Defendant under count 7.

Prosecution on its part maintained in its written address that from the evidence adduced by PW8, count 7 has been proved.. the court was urged to so hold.

On the part of court, the law as clearly reproduced in the preceding part of this judgment on the responsibility of the prosecution to always proof the basis ingredients of any offence accused person in

charged. Count 7 bothers on the offence of cheating by personation contrary to section 320 and extortion contrary to section 291 and punishable under sections 322 and 292 of the Penal Code.

Prosecution is under legal obligation to prove the following:-

- i. That the accused put the complaint in fear of some injury
- ii. That the injury was either to the complainant or to some other person
- iii. That the accused acted intentionally.
- iv. That the accused thereby induced the person to deliver to some person some property of valuable security of something signed or sealed which was convertible into a valuable security
- v. That accused acted dishonestly.

Before I proceed to consider the ingredients in proof of the offence charged under count 7, permit me to address the issue of duplicity raised by learned counsel for the Defendant in its final written address, reaching the fact that it is jurisdictional in nature.

A charge would be said to be bad for duplicity where in the charge two or more offences are lumped together in one count.

A charge must be clear with complete particulars and the punishment section stated. See *UKET VS F.R.N (2008) Page 938 – 939 paragraphs H – C (CA)*.

I have considered the legal argument of learned counsel for the Defendant... aside the fact that prosecution counsel relied heavily on the evidence of PW8, no effort was made to legally respond to the legal argument of learned counsel for the Defendant on the competence of the charge.

This is most regrettable and embarrassing on the part of the prosecuting counsel.. this is clearly a walk over.. argument of Defence counsel is upheld. Count 7 is dismissed for duplicity.

On count No. 8, it is the argument of learned counsel for the Defendant that there is no offence as cheating by personation, and that there is no such offence under section 320 Penal Code. Counsel referred the court to the case of *SANI VS STATE (SUPRA)* to urge the court to discharge and acquit the Defendant. Section 36 (8) of the 1999 Constitution of the Federal Republic of Nigeria which prohibits any citizen from being tried under any unknown law was cited.. counsel however proceeded to argue charge No. 8 on the merit and contended that prosecution has failed to prove its case beyond reasonable doubt in view of the fact that PW3 stated in his evidence that he did not give any money to the Defendant.

On the part of prosecution, it relied on the evidence of PW3 in urging the court to convict the Defendant.

I have considered the submissions of both counsel for the Defendant and prosecution with respect to count No. 8.

The said count 8 bothers on extortion of N400,000 contrary to section 320, and public servant dishonestly receiving money not due under section 122 punishable under sections 322 and 122 Penal Code.

It is the case of the Prosecution through the evidence of one Mr. Isiaka Ali who gave evidence as PW3 on how he was duped of the sum of N400,000 by the Defendant (Amos Alabi) and his elder brother (Peter Alabi) under the pretence of giving Pw3 employment into the Nigeria Security and Civil Defence Corps (NSCDC). Pw3 gave evidence on how Peter Alabi sent him to his brother's place at Nigeria Security and Civil Defence Corps (NSCDC) (accused) with employment letter wherein accused informed PW3 that he was given a higher rank and would work on the correction.

It is the evidence of PW3 that Accused never gave him the said employment letter again thereby necessitating petition to Nigeria Security and Civil Defence Corps (NSCDC). It is the contention of prosecution counsel that what accused and his brother did was an organized crime and that failure to call his brother was fatal to his Defence. Prosecution then contended that accused conspired with his brother to dupe PW3 of the sum of N400,000.00 with the understanding that he'll be employed by Nigeria Security and Civil Defence Corps (NSCDC).

On the part of the Defence, it's the evidence of the Accused (Amos Alabi) that he never knew Pw3 until the day he came over to Nigeria Security and Civil Defence Corps (NSCDC), FCT Command to

deliver an envelope from his brother to take home for him and that he did not know what happened between PW3 and his elder brother (Peter Alabi) but that when eventually PW3 informed him that he gave his brother (Peter) N400,000 to secure a job with Nigeria Security and Civil Defence Corps (NSCDC) for him and that he wanted his money, Accused said he took PW3 and his brother to the PRO, Nigeria Security and Civil Defence Corps (NSCDC) FCT Command and left them together, and that he didn't know his brother has not paid back the money.

I need observe at this point that a charge is akin to pleadings in Civil Trial and remains like skeleton without flesh until evidence is led to give it the desired shape.

Cases are not made afresh in final written addresses. Final written address is an avenue for counsel to give a more compressed legal submission on the evidence adduced during trial and garnish same with law in an attempt to sway the judge.

Learned counsel for the Prosecution contended in its written address that Accused person and his conspired to dupe PW3 of N400,000.00 with the understanding of getting him Nigeria Security and Civil Defence Corps (NSCDC) job.

Qst.. How come Accused person's brother (Peter Alabi) who sent PW3 with NSCDC employment letter was not arrested, investigated and arraigned with his brother (Accused) person if Prosecution

wanted to charge them for criminal conspiracy? Clearly, something is really wrong with both Prosecution and Investigating Officers of Nigeria Security and Civil Defence Corps (NSCDC).

The argument of Prosecution counsel on conspiracy is rather too late in the day for this court to entertain. Defendant in his defence has denied knowledge of any such monetary transaction between PW3 and his brother.. PW3 who tendered Exhibit “A” (Petition) said clearly under cross – examination that he did not give Accused any money.

Prosecution clearly again has demonstrated how unserious and unprofessional they are.. prosecution clearly is not serious with its work. The court is seriously taken aback.

Qst.. How can prosecution be talking about conspiracy or organized crime when it’s only one person that was arraigned?

This is so unfortunate.

Regardless of the fact that the Accused person is clearly sitting on the fence, prosecution failed to ensure he joined in the party to enable him drink and get drunk.

The Prosecution has again failed in its obligation.. I can’t hold the Defendant guilty for an offence that has not been proved. Suspicion cannot ground conviction.. see *AHMED VS STATE (2001) 8 NSCOR 273*. I agree with Defence counsel.

Defendant is hereby discharged and acquitted of count 8.

The next count is No. 9 wherein accused was charged for cheating by personation contrary to section 320 and public officer dishonestly receiving money not due, section 122 punishable under section 322 and 122 Penal Code.

Learned counsel for the Defendant contended that there is no offence as cheating by personation.

Learned counsel for the Defendant adopted its earlier argument in count 8 in urging the court to discharge and acquit the accused person for want of date and place in the charge.

Counsel on the other argued in its final written address that Prosecution failed to establish the charge contained in count 9 beyond reasonable doubt.

Learned counsel for the Defendant questioned the how and manner accused person would offer to give PW6 a cheque in reform for payment of N150,000 for a job. Learned counsel for the Prosecution stated how accused person repaid the said money was paid back in installments.

Learned counsel for the Defendant also argued that the pictures tendered in Exhibit "G" failed admissibility test under section 84 (4) Evidence Act and should so be expunged. The authority of *ABUBAKAR VS CHUKS (2007) 18 NWLR (Pt. 1066) 386 at Page 416 Paragraph F* was cited.

Further, counsel questioned why the said friends of PW6 who snapped Exhibit “G” were not called to give evidence for them to be cross – examined. *BELGORE VS AHMED (2013) 8 NWLR (Pt. 1355) 60* was cited. Counsel on the whole urged the court to discharge and acquit the Defendant.

On the part of the Prosecution, reliance was placed on Exhibit “G” and the evidence of Pw6 to submit that Accused person collected the sum of N150,000 for the purposes of securing employment for the said PW6 into Nigeria Security and Civil Defence Corps (NSCDC).

Prosecution urged the court to hold that it has proved its case beyond reasonable doubt.

On the part of court, I have considered the submissions of learned counsel for the Prosecution and Defendant.

The law on presumption of innocence is firmly established constitutionally speaking.. Therefore prosecution is under an obligation to always get prepared to proof its case against the accused person, failure he or she shall be set free.

It is the case of the Prosecution that Accused person collected N150,000.00 from PW6 to secure employment into the Nigeria Security and Civil Defence Corps (NSCDC), an allegation Defendant denied but accepted borrowing the said money from PW6 as loan.

Prosecution which tendered Exhibit “G” i.e three pictures showing PW6 and the accused with wards of money on display.

Pw6 gave evidence of the fact that both accused person and himself are members of the same Friends Club called “One on one ambition ventures” where PW6 is the Executive Secretary.

Pw6 stated in his evidence that accused person made a written undertaking before their club members to repay the said N150,000.00 but failed.

Qst.. What was the money for?

Employment into Nigeria Security and Civil Defence Corps (NSCDC) or Accused borrowed the money?

Qst.. Where is the letter of undertaking accused wrote before PW6 club members?

Qst.. Where is the evidence that accused collected N150,000 for employment purpose and not the fact that he borrowed the money?

The fact that accused person appeared in Exhibit “G” with PW6 is not enough. There ought to be further evidence to corroborate the said Exhibit “G”.

What more.. learned counsel for the Defendant cited section 84 (4) Evidence Act in urging the court to expunge Exhibit “G” (pictures), an argument prosecution counsel allowed unshaken.

The argument of learned counsel for the Prosecution is upheld. The said pictures i.e Exhibit “G” are hereby expunged for failing to meet

the criteria stated under section 84(4) Evidence Act. See *AKEREDOLU VS MIMIKO (2013) LPELR 20532 (CA)*.

I also agree again with learned counsel for the Defendant that Prosecution has failed to prove count 9. Indeed a judgment which seeks to send a man to prison thereby curtailing his liberty of those unalienable rights and freedom, must be punctuated by logical thinking based on cogent and admissible evidence in which the acts leading to his conviction are hardly be allowed to stand if founded on scraggy reasoning or a perfunctory performance.

Defendant is discharged and acquitted of the charge in count 9.

Under counts 10 and 11, no evidence was called by the Prosecution. Accused is there consequently discharged and acquitted.

Allocutors

Defendant's counsel

We urge the court to consider the fact that the accused person is only 37 years old with family and wife and Defendants.

There is no evidence of previous conviction.

We urge the court to therefore temper justice with mercy. We urge the court to inliers of imprisonment, caution the accused person. We rely on section 311 (1) and (2) of ACJA 2015.

We shall be asking that fine be imposed on the Defendant that is not burdensome. We urge the court to consider section 420 ACJA 2015.

Prosecution

We urge the court to exercise its discretion judicially and judiciously.

Court

I have considered the allocutors of the Defendant.. I must say that the Defendant is an officer of a very sensitive security outfit (NSCDC). I have also considered the fact that there is no evidence of any previous conviction before me on record. I however must observe that characters like the Defendant deserve to be kept away from the public to serve as deterrent to other officers alike.

I hereby sentence Defendant to 5 years imprisonment without any option of fine.

He shall serve the term in Kuje prison.

*Justice Y. Halilu
Hon. Judge
23rd March, 2017*