

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 14 APO ON THE 4TH DAY OF APRIL, 2017

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO:FCT/HC/CR/139/14

COURT CLERK: JOSEPH BALAMI ISHAKU

BETWEEN:

FEDERAL REPUBLIC OF NIGERIACOMPLAINANT.

AND

BELLO MOH'D TAMBUWAL.....DEFENDANT.

JUDGMENT

The Prosecution filed a Charge against the Defendant on 17/06/14 which was subsequently amended by Amended Charge of Two Counts dated and filed on the 19th November, 2015.

It reads:

COUNT 1

That you Bello Muhammed Tambuwal sometimes in 2009 within the Abuja Judicial Division of the High Court of the Federal Capital Territory with intent to defraud, did issue a Finbank Cheque No. 00756405 dated 19/02/2009 in the sum of two Million, five Hundred thousand (N2,500,000.00) to one Anagor Jane Ekene which when presented within three months was dishonoured on the ground of 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)(i) of the same Act.

COUNT TWO

That you Bello Muhammed Tambuwal sometimes in January 2009 within the Abuja Judicial Division of the High Court of the Federal Capital Territory did commit a criminal breach of trust by converting to your own use the sum of N4 Million being

value of a Honda Fit 2008 Model entrusted to you and thereby committed an offence punishable under Section 312 of the Penal Code Act, Laws of the Federation of Nigeria 2004.

The Charge was read to the Defendant, he said he understood same and pleaded NOT GUILTY to the two Counts.

The Prosecution called three witnesses in proof of its case.

The first Prosecution Witness is Jane Anagor. She stated that she used to be a businesswoman but now works in the National Assembly. That she knows the Defendant. That she met him sometime in 2009 and she gave two cars to him to sell for her. One Honda 2006 model and Honda Fit 2008 model which were sent to her by her elder brother from America.

Sometimes early January 2009, he told her that he had sold the Honda Fit but that they had not finished paying him. He gave her a cheque of N2.5 Million which she lodged into her account in the Bank and it bounced. She called him to intimate him and he promised to pay her but he failed to do so. She then instructed her lawyer to petition the Economic & Financial Crimes Commission. The lawyer wrote and they were invited.

On the day she arrived Economic & Financial Crimes Commission, she saw one of the cars, the Honda Fit parked in front of the Economic & Financial Crimes Commission's Office. She therefore told her IPO. A woman Corper said she bought the car. She subsequently produced the persons who sold the car to her. They said the Defendant gave them the car to sell and they had paid him.

Two months later, he returned the 2006 Model of Honda Accord to the Economic & Financial Crimes Commission which they handed over to her. He promised paying for the Honda Fit but has not given her any money till now.

She wrote a statement at Economic & Financial Crimes Commission dated 25/07/09 which is Exhibit A .

Under Cross-examination by the Defendant, the witness said the cheque for N2.5 was not for Honda Accord 2006 but Honda Fit. That she did not accept N2.5 for Honda Fit.

To another question, she answered that the people who sold the car to the lady said it was Defendant who gave the car to him to sell. That she does not know those people. That it was the Defendant she gave her car to sell. That it was the N250,000 commission the people gave to the EFCC that was given to her. It was the commission the Defendant gave to the people for selling the car.

To another question, the witness said the Defendant gave her a Cheque of N2.5 Million as part payment which bounced and she took her case to EFCC. That Defendant continued to promise to return the cars but he failed. That this case has been on since 2009. She did not see balance of her money or car.

The 2nd Prosecution witness is Hamidu Waziri. He is a Police Officer on secondment to the EFCC. He investigates, conducts, searches, arrests and obtains statements of suspects. He knows the Defendant. Sometimes in 2009 around June, while he was on duty, his team leader called him and handed over a Petition which was assigned to him for investigation. He invited the Complainant who volunteered a statement. The Defendant was arrested around November. He obtained his statement. He gave him the Petition to read. He said he could not read or write. He authorised him to do that for him and he did. He read it over to him and he asked if he understood and he said yes. He thereafter asked if he has something to say. He narrated his own side of the story. He cautioned him, read out the word of caution and he said he understood after which he signed. He also countersigned. He volunteered a statement which he

recorded. He read it over to him. He said he understood, he signed and witness countersigned.

He was granted an administrative bail after which a letter of investigation was written to Finbank with a Finbank cheque for N2.5 Million attached to the Petition on which is written 'Drawers Attention Required'. They requested for the Statement of Account of the Defendant. The bank responded stating that at the time the Cheque was issued, there was no money in the account. They later recovered one of the cars in the course of investigation which is a Honda Accord. It was handed over to the Complainant even though it was not hers. They asked him when he would pay the balance of N4 Million. The Defendant made additional statement pleading that he sold the car and converted the money to his own use. He said he had discussed with the Complainant and that he would settle her with the remaining balance.

They called witnesses to the sale of the car and they said they were given N200,000 each. The first person refunded the money while the second absconded. He was enjoying his bail but he failed to comply with his promises. When they were packing from their premises, the original Cheque was misplaced. Investigation revealed that the suspect dishonestly handed over the Cheque to the Complainant which shows that he intentionally defrauded her. The Petition by PW1's Solicitors is Exhibit B.

Exhibit C is the statement of the Defendant.

Exhibit D-D1 is the letter of EFCC to the Bank and the bank's response.

Exhibit E is the Certified True Copy of the Cheque for N2.5 Million.

Under Cross-examination by Defendant's Counsel, he answered as follows:

That he investigated the matter. That he cannot remember Exhibit B. That he saw an agreement attached to the Petition but he case is not a contract. He cannot remember when Exhibit E was issued but he is aware of the existence of Exhibit E, the Cheque.

To another question, he answered that the Defendant issued the cheque to the Nominal Complainant for N2.5 Million stating he has money in the account and that she should go and withdraw same. It was a post dated Cheque. That he cannot recall the date given by the Defendant to the Complainant.

To another question, he said he cannot remember the post dated time for the presentation of the Cheque.

To another question, he answered that it ought to have been presented after three months. The Defendant returned and Honda Accord Car to the Petitioner. The Defendant did not deny the agreement. The Defendant asked for time to pay instalmentally.

The 3rd Prosecution Witness is Wilson Idiagbonya. He works with the First City Monument Bank. He lives in Lugbe while his office is situated at Ladoke Akintola boulevard, Garki II, Abuja. He is an Account officer of First City Monument Bank formerly Fin Bank.

He can recall a letter written by EFCC stating that the bank furnishes them the Statement of Account of the Defendant which said letter is dated 19/04/10 and the Bank responded on 21/04/10.

In 2014, they received another letter from EFCC requesting the bank to furnish it with Certificate of Identification, Account Statement, Account Opening Package and Cheque which the Bank obliged. At the time the letter was written was Fin Bank, after amalgamation it became First City Monument Bank. They were requested to state why the Cheque was returned.

He identifies Exhibit D1 and E. That cheque was returned as a result of insufficient balance. As at 29/04/09 the balance standing to the credit of the Defendant was N2,142: 79K – debit.

Under Cross-examination, the witness said, the date on Exhibit E is 19/02/09. The Cheque was presented for clearing on 29/02/09.

The above is the case of prosecution.

The Defence opened its case and called only one witness. It is the Defendant himself. He states that he is a businessman and a car dealer. He lives at Maitama, Abuja. In 2009, he had a friend called Alhaji Baba who lives at Asokoro. That Baba informed him on phone that he has a business. When he got to his house, he met a lady called Janet. Janet said she had two cars Honda Fit and Honda Accord 2006. She said the Fit was N4 Million while the Accord was N3 Million. He said the price was too high and that nobody will buy them. Buyers refused to buy at the agreed price. They priced the Honda Fit for N3 Million but Janet did not agree.

One Ahmed Yinusa priced the Honda Fit for N2.5 Million. He contacted Janet the Nominal Complainant and she gave him the go ahead and further asked him to collect the money. Alhaji Yinusa collected the car and asked him to send his Fin Bank Account number. That Yinusa refused to pay the money into his account. That Alhaji Yinusa said he collected Cheque that he did not have cash. That if the money is ready, he would send it to his account. That Janet asked him to bring Cheque and that when the money is ready he should bring it. That he said he had no money in the account but she insisted he should give her the Cheque. He gave her the cheque.

That Yinusa said the money will not be ready until after three months. He called Janet and she agreed. However she presented the Cheque and it bounced. Later somebody called him about Janet's Petition. He went to EFCC and he was arrested. She presented the Cheque before three months. He made a statement to the EFCC. That Alhaji Yinusa later said he sold the car for N2.6 Million. Janet agree but later called him two hours later to say it should be sold for N3 Million. That when he called her to come and collect her money, she said she needed the whole N3 Million. That Alhaji Yahaya and Mohammed gave him only N2.2 Million. They removed N200,000 each as commission. That Janet the Nominal Complainant failed to answer

his call. He also refused to call her. He used the N2.2 Million to his business. That he returned the Honda 2006 Model because the money was not ready. He collected it back from Ahmed Yinusa. It is not the same 2006 Honda of Janet but another one. That he signed an agreement with Janet. She collected the Honda 2006 even though it was not her original car.

Under Cross-examination by the Prosecution she answered that he knew PW1 through Baba. He buys and sells cars. That he entered into an agreement to sell the cars for N7 Million. That he sold the Honda 2006 for N2.5 Million. He also sold the Honda Fit for N2.6 Million but he was paid N2.2 Million. He confirmed that Exhibit C is his Statement.

To another question, he confessed that he operates a Fin Bank account. To another question, he confirmed issuing a Cheque for N2.5 Million for Honda 2006. He said he told Janet, he had no money in the account. That he used the money for his business. That one of the car dealers returned N250,000 which was his commission. That the transaction was on trust.

The above is the case of the Defendant. Parties were ordered to file Written Addresses.

The Prosecution's Final Written Address is dated and filed on 5/08/16. Learned Counsel adopted same as her oral argument. She raised a sole issue for determination which is whether the Prosecution has proved the Charge beyond reasonable doubt. The Defendant also adopted his Final written Address dated and filed on 1/07/16. He raised two issues for determination. The two issues are one and the same with the issue raised by the Prosecution which is whether the Prosecution has proved his case beyond reasonable doubt so as to entitle her to Judgment.

I have read the evidence and considered the Written Addresses of both Counsel. In a Criminal trial such as this, the onus lies upon the Prosecution throughout to establish

the guilt of the Defendant beyond reasonable doubt by virtue of Section 135 of the Evidence Act 2011. The burden does not shift.

See ***AKINFE VS STATE (1988) 3 NWLR (PT.85) 729.***

AIGBADION VS. STATE (2000) 4 SC (PT.1) 1 at 15 and 16.

ANI VS. STATE (2003) 11 NWLR (PT830) 142.

GARKO VS. STATE (2006) 6 NWLR (PT.977) 524.

BELLO VS. STATE (2007) 10 NWLR (PT.1043) 564.

IGABELE VS. STATE (2006) 6 NWLR (PT.975) P 3 SC.

The case against a Defendant such as the one in this case must be proved beyond reasonable doubt. Any doubt in the Prosecution's case must be resolved in favour of the Defendant.

ONUOHA VS. STATE (1998) 5 NWLR (PT.548) 118.

BARUWA VS. STATE (1996) 7 NWLR (PT.460) 302.

The two Count Charge against the Defendant is dishonoured Cheque on the ground of insufficient funds contrary to Section 1(1)(b) of the Dishonoured Cheques (Offences) Act Cap D11 Laws of the Federation and Criminal breach of trust contrary to Section 312 of the Penal Code.

Section 1(1) (b) of the Dishonoured Cheques Offences Act states:

“Any person who obtains credit for himself or any other person by means of a Cheque that, when presented for payment not later than three months after the date of the Cheque is dishonoured on the ground that no funds or insufficient fund were standing to the credit of the drawer of the Cheque in the Bank on which the Cheque was drawn shall be guilty of an offence.”

Section 312 Of the Penal Code states:

“Whoever being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property

in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied which he has made touching the discharge of such trust or wilfully suffers any other person so to do commits criminal breach of trust under Section 312 of the Penal Code.”

The evidence of Prosecution Witnesses have earlier been summarised. The evidence of the Nominal Complainant in relation to Count 1 is that sometimes in January 2009, the Defendant sold her Honda Fit car and gave her a Cheque of N2.5 Million which she lodged into her account but same bounced. That till date he has not paid the said sum.

Exhibit E is the said Fin Bank Cheque for N2.5 Million dated 9/02/09.

Exhibit C is the statement of the Defendant.

The Prosecution contends in her Final Written Address that the totality of the Prosecution’s Witness, evidence clearly reveal that the Defendant issued Exhibit E without reasonable expectation that the account will be funded on the due date of the Cheque. That the essential elements of the offence were established by the Prosecution.

The Defendant on the other hand contends that the Prosecution has failed to prove the essential ingredients of the offence. That there is no denial that the Defendant issued the Cheque to PW1. That the Defendant never issued the Cheque with any fraudulent or dishonest intention. That he post dated the Cheque (orally) to future date after three months or upon giving PW1 the go ahead to lodge same.

Exhibit E is the Cheque. It is dated 29/02/2009.

The evidence is that it was presented for payment. It was returned unpaid. Clearly written on the Cheque is ‘DRAWER’S ATTENTION REQUIRED’.

PW3 in his evidence stated that the cheque was returned as a result of insufficient balance. Exhibit D1 is the Statement of Account. The amount standing to the credit of the Defendant at the time the cheque was paid in was N2,142:79K debit not sufficient to fund the Cheque.

Exhibit B is the Nominal Complainant's Solicitors' Petition with Exhibit E and the agreement between the Complainant and Defendant.

The essential elements of the offence in Count 1 of the Charge is:

1. That the Defendant obtained or induced the delivery of anything capable of being stolen either to himself or any other person.
2. That the Cheque was presented for payment to the Bank not later than three months.
3. That the reason for dishonouring the Cheque is lack of funds or insufficient funds.

There is evidence that the Defendant presented himself as a car dealer, entered into an agreement to sell the Nominal Complainant's two cars and remit the sum of N7 Million into her account. There is evidence that he issued the Cheque of N2.5 Million and gave same to Jane Anagor, the Nominal Complainant. The evidence is that the said Cheque was presented for payment and it bounced as a result of insufficient funds. The Defendant's evidence is that he issued the Cheque but orally told her not to present the Cheque until after three months. I have gone through Exhibit E the Cheque. It is dated 29/02/09. On the face of it, it is not post dated. The law is that oral evidence cannot be given to contradict a document in writing. That piece of evidence of postponing the presentation until after three months is given to beat the count under which the Defendant is charged. I do not believe same.

In my respectful view, the Prosecution has proved this Count beyond reasonable doubt and I so hold.

Count 2 is a Criminal Breach of Trust. The Prosecution in its Written Address submits that from the testimonies before the Court, the Defendant was entrusted with property, the Honda Fit and Honda Accord 2006.

I have perused the evidence of the Prosecution. There is no doubt that the Defendant was entrusted with the two cars for the purpose of selling same and remitting the realised sum of N7 Million to the Nominal Complainant Janet Anagor. See Exhibit B containing the Agreement of Sale.

Exhibit C the written statement of the Defendant.

The evidence is that after sale, Defendant failed to remit the money to the Nominal Complainant. In his statement to the Police and evidence before the court, he said he applied the fund to his business. The agreement is that the money should be remitted to the Nominal Complainant but he failed to do so but rather he applied the funds to his business.

Pursuant to Section 10 of the Penal Code, the Defendant acted dishonestly.

I find as a fact that the Defendant was entrusted with two cars and that the Defendant misappropriated the funds after sale dishonestly.

I am equally satisfied that the Prosecution has proved Count 2 beyond reasonable doubt.

The Defendant is found guilty of the two Count Charge and is accordingly convicted.

Prosecution: I am grateful.

Defendant's Counsel: I am also grateful.

SENTENCING PROCEEDINGS:

Defendant’s Counsel: I do not intend to call witnesses to mitigate sentence but we want to say that the Defendant is still a young person. We urge the Court to be lenient and give him another opportunity in life.

Prosecution: I urge the Court to sentence the Defendant as charged. May I also apply for restitution. I urge the Court to order the Defendant to retribute by paying the sum of N3,750,000:00

Court: I have carefully listened to the Defendant’s Counsel’s plea for leniency and the Prosecution’s reply.

On the 1st Count the Defendant is sentenced to 2 years imprisonment without an option of fine.

On the 2nd Count, the Defendant is sentenced to 2 years imprisonment, Sentences to run concurrently.

The Defendant is further ordered to pay to the Nominal Complainant the sum of N3,750,000 being the cost of the Honda Fit car.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

04/04/17