

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA  
COURT CLERKS: JIMOH IBRAHIM SALAWU & OTHERS  
COURT NUMBER: HIGH COURT TWO (2)  
CASE NUMBER: FCT/HC/CR/70/2011  
DATE: 19<sup>TH</sup> JUNE, 2017**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT/RESPONDENT**

**AND**

**1. WILLIAMS UMAH )  
2. LEADGATE LIMITED ) - ACCUSED/APPLICANT**

Defendants absent.

Court – The case is for judgment. I observed that the parties are absent and not represented.

## **J U D G M E N T**

The Defendants were arraigned and are standing trial on a two count charge as amended as follows:

### **COUNT 1**

That you, William Umah on or about the 12<sup>th</sup> of August 2010 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did obtain credit by issuing a PHB Bank Plc Cheque No. 20906152 in the sum of N6,750,000.00 (Six Million, Seven Hundred and Fifty Thousand Naira) only in favour of Umen Eucharica which when presented within three months was dishonoured on the

ground that there was no sufficient funds and thereby committed an offence punishable under Section 1(b) (1) of the Dishonoured Cheque (Offences) Act 2004 LFN.

## **COUNT 2**

That you, William Umah on or about the 10<sup>th</sup> of August 2010 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did obtain credit by issuing a PHB Bank Plc Cheque No. 20906153 in the sum of N2,900,000:00 (Two Million, Nine Hundred Thousand Naira) only in favour of Umeh Eucharia which when presented within three months was dishonoured on the ground that there was no sufficient funds and thereby committed an offence punishable under Section 1(b) (1) of the Dishonoured Cheque (Offences) Act, 2004 LFN.

In prove of the charge against the Defendant, the prosecution called the following witnesses. Eucharia Umeh testified as the PW1. In her evidence-in-chief, she stated that she was introduced to the Defendant by Mr. Femi Alloh who was a staff of Leadgate.com in which the Defendant was the Managing Director/Chief Executive Officer.

It is the testimony of PW1 that on 9/2/2010 she transferred N12 Million into Leadgate.com with Intercontinental Bank Plc Account which was to run for 90 days with the mature date of 24/5/2010.

PW1 further stated that she increased her initial deposit of N12 Million by an additional N750,000 with the Leadgate.com making

her total deposit to N12,750,000:00. The total sum was to mature on 24/5/10.

That on the maturity date she did not get an alert of the credit into her account; that on 6/8/2010 Mr. Femi Alloh and the defendant came into the PW1's office did apologise and enter into an agreement accepting to pay 1% flat fee of the borrowed N10 Million. The said agreement was admitted and marked Exhibit A.

It is the evidence of PW1 that the Defendant issued her with 3 cheques. One was for Bank PHB draft of N6 Million dated 6/8/2010 and the other 2 cheques were post-dated. The two post-dated cheques dated the 12/8/2010 and 6/8/2010 for the sum of N6,750,000 and N2,900,00 were admitted as Exhibit B and C respectively.

The PW1 further stated that on 11/8/2010 she called the Defendant to inform him that she will be presenting the cheque of N6,750,000 and the Defendant told her to go ahead. When she presented the said cheque it was not honoured, the PW1 represented the said cheque again on 16/8/2010 and it came back unpaid; it was written on it "DAR".

The Cheque for N2.9 Million dated 16/8/2010 was presented on 17/8/10 and it came back unpaid with "DAR" written on it.

On the 14/9/2010 the PW1 petitioned the Chairman EFCC Abuja. PW1 urged the court to do justice in this matter.

Under cross-examination, PW1 stated that she made investment with Leadgate.com. The 2 cheques were that of Leadgate.com Limited; that she signed a document that is backing the transaction. By signing the document an agreement she was entering a contract with Leadgate.com.

That her intention in entering into transaction with the Defendant was to do business.

No re-examination, PW1 was discharged.

The PW2 is one EFFah David Atoe, a Detective with the EFCC. In his evidence-in-chief he stated that sometime in 2011 a petition was referred to his team for investigation written by the PW1 against the defendant alleging that the defendant gave her 2 dud cheques to the tune of N6,750,000:00 and N2,900,000:00. The CTC of the said petition was admitted in evidence as Exhibit D.

After receiving the petition, a case file was opened and the PW1 was invited and she made a statement. The Defendant was also invited and was confronted with the petition. The Defendant confirmed that he gave the PW1 2 cheques belonging to the Leadgate.com for the sum of N6,750,000 and N2,900,000:00. The Defendant also volunteered a statement under caution.

The PW2 stated that the Defendant made 5 statements; the said statements were admitted in evidence as Exhibits E1, E2, E3, E4 and E5 respectively.

The PW2 further stated that after recording the Defendant's statement, he wrote a letter to the Registrar General of the CAC

on the states of Leadgate Technology. The PW2's letter and reply from CAC was admitted and marked Exhibit F.

The witness also stated that upon the receipt of the report from CAC, it was discovered that the Defendant is a major share holder and Director of the two companies.

Under cross-examination, the PW2 stated that the defendant was acting on behalf of the 2<sup>nd</sup> defendant in the transaction that led to this case. That the amount the defendant is supposed to pay to the complainant was N2.9 Million. The Defendant refunded N6 Million to the complainant.

No re-examination, PW2 was discharged.

The PW3 is a subpoenaed witness one Ehezou Chukwuma, a banker. In his evidence-in-chief, the PW3 stated that he was subpoenaed to produce some documents and give evidence. The witness produced the account opening package and Statement of Account No. 1040629064 of the Defendants with Keystone Bank formerly Bank PHB; the said documents were admitted in evidence as Exhibit G and H respectively.

The PW3 stated that on 12/2/2010 in Exhibit H was that a cheque drawn and issued by the customer was presented through clearing but the cheque was not honoured and returned and marked "DAR". The cheque was returned because there were insufficient fund in the account.

That the cheque presented was in the sum of N6,750,000:00. From Exhibit H on 5/8/10 the account has sufficient balance or had

enough money to cover the cheque but on the 6/8/10 a total of N14,400,000.00 was withdrawn leaving a balance of N123,236.50k.

On 16/8/10 another cheque of N2.9 Million was presented and posted through the account but the said cheque was also returned for insufficient fund.

Under cross-examination, the PW3 stated that the name on the statement of account is that of Leadgate Communication. As at 5/8/2010 there was sufficient fund in the account. The PW3 also informed the court that he did not know the details of the case the Defendants is standing trial before the court; that he was not aware that the beneficiary of the cheque of N6,250,000.00 that was returned unpaid got the value of the cheque later.

No re-examination, PW3 discharged and that is the case for the prosecution.

After the close of the prosecution's case, the Defence filed a No Case Submission which was ruled upon and the Defendants were directed to enter their defence on the ground that the prosecution have made out a prima facie case against the defendants.

On 16/2/2016 when the matter came up for defence the Defendant was not in court and after several adjournment at the instance of the Defence, the Defence counsel filed Notice of Withdraw of Appearance dated 7/3/17 and the counsel was accordingly discharged from representing the Defendant.

By an application of the prosecution counsel under Section 352 ACJA, the Defendant's right to defend this case was foreclosed and he is to be tried in absentia.

Subsequently, the prosecution counsel was directed by this court to file his final written address.

The prosecution's counsel filed a 9-page written address dated 7/4/17 wherein counsel submits a sole issue for determination, to wit:

***“Whether the prosecution has proved the essential elements of the offence alleged against the accused person beyond reasonable doubt thus warranting the Honourable Court to convict the accused person”***

On this sole issue, it is the submission that the prosecution has proved beyond reasonable doubt the offence of issuance of dud cheque committed by the Defendants.

It is submitted that the PW1 who is the nominal complainant testified to the effect she was introduced first to the 2<sup>nd</sup> Defendant by one Mr. Femi Alloy who is a staff of the 2<sup>nd</sup> Defendant. Convinced by the discussion she had with the said Femi Alloy, she transferred the sum of N12 Million to the account of the 2<sup>nd</sup> Defendant on the 9/2/2010 and added another N750,000.00 with the hope of reaping the fruit on the 24/5/2010.

When 24/5/2010 came, the Defendants could not pay, the 1<sup>st</sup> Defendant apologised for the delay in payment and even

guaranteed to pay the 1% which was evidenced in writing. See Exhibit A.

It is also the evidence of PW1 that she was given three cheques by the 1<sup>st</sup> Defendant in the sum of N6,750,000 dated 12/8/2010 and the second cheque is a Leadgate cheque dated 16/8/2010 in the sum of N2,900,000.00 all Bank PHB cheque (Exhibit B & C).

It is in evidence that the two cheques were returned unpaid due to insufficient fund in the account of the 2<sup>nd</sup> Defendant and the 1<sup>st</sup> Defendant was aware that there was no fund in the said account.

It is submitted that the evidence of the PW1 was not contradicted under cross examination. Court is urged to accept same as the truth of the matter.

It is the submission that the ingredients of the offence of issuance of dud cheque are:

- (a) That the accused person obtained credit for himself.
- (b) That the cheque was presented within three months of issuance thereon and
- (c) That on presentation, the cheque was dishonoured on the ground that there was no sufficient funds standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn. See ABEKE v THE STATE (2007) (Pt 1040) 9 NWLR Pg 411 at 436 Paras C – E.

It is submitted that the evidence adduced by the prosecution's witness proved that the cheques were presented for payment within three months of issuance on the 2 Defendant bank

account with Keystone Bank Plc and that the account was not funded; that the evidence given by the prosecution witnesses were not in any way discredited by the defendants.

It is submitted that the prosecution was able to prove through the evidence of its witnesses and the documents tendered and admitted as exhibit before the court, that the Defendants intentionally issued the cheques to the nominal complainant knowing fully well that there was no money in that account having withdrawn the money that would have covered the face value of the cheques the previous day and neither was he expecting any money into the account. Court is urged to hold that the prosecution has proved all the ingredients of the offence of issuance of dud cheque.

I have carefully considered the processes filed, evidence of PW1, PW2 and PW3 and submission of learned prosecution counsel. I am in one with the prosecution's counsel that the sole issue that call for determination is whether the prosecution has proved the essential elements of the offence alleged against the Defendant beyond reasonable doubt, thus warranting the court to convict the defendant.

It is a laid down principle that in criminal matter, the standard of proof is beyond reasonable doubt which does not mean beyond all shadow of doubt. See *UDO v STATE (2006) All FWLR (Pt 337) 456 at 457.*

The Defendants were arraigned and standing trial under Section 1(b) (1) of the Dishonoured Cheques (Offences) Act, Laws of Federation of Nigeria, 2004.

The Defendant pleaded not guilty and that kick starts the full trial with the prosecution calling three witnesses i.e. PW1, PW2 and PW3.

The PW1 who was the nominal complainant led evidence to the effect that she transferred the sum of N12 Million to the account of the Leadgate Limited on 9/2/10 and added another N750,000.00 with the hope of reaping the fruit on the 24/5/2010.

On the 24/5/2010, the Defendants were unable to pay to the PW1 her investment with the accrued interest. Elementarily, the 1<sup>st</sup> Defendant issued two cheques (Exhibits B and C) to the PW1 which upon presentation were returned for lack of sufficient funds.

The ingredients of the offence of issuance of dud cheque are:

1. That the Defendant obtained credit for himself.
2. That the cheque was presented within three months of issuance thereon; and
3. That on presentation, the cheque was dishonoured on the ground that there was no sufficient funds standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn. See ABEKE v THE STATE (Supra).

From the evidence of PW1 and PW3, it was clear that the cheques (Exhibits B and C) were presented for payment within three months of issuance on the 2<sup>nd</sup> Defendant's bank account with Keystone Bank Plc and that the account was not funded.

The PW3 in his evidence-in-chief stated how a total sum of N14 Million was withdrawn on the 5/8/2010 from the 2<sup>nd</sup> Defendant's account leaving a balance of N123,238.50k a day preceding the date (6/8/2010) when the 1<sup>st</sup> Defendant instructed PW1 to present Exhibit B and C for payment. The 1<sup>st</sup> Defendant knew there was no sufficient fund in the account of the 2<sup>nd</sup> Defendant having withdrawn the said N14 Million the previous day.

It is instructive to point out that the evidence given by the prosecution witnesses were not in any material way discredited by the defence. In fact the cross-examination of the witnesses only goes to affirm their testimonies on oath.

It is pertinent to state that under the Dishonoured Cheques (Offences) Act, the only defence for issuance of dud cheque is a reasonable belief on the part of the drawer of the cheque that he had sufficient fund in his account as at the time he issued the cheque or that he was reasonably expecting money in the account at the maturity of the cheque.

In the instance case, there is no such evidence by the Defendants.

In the light of the above stated, I hold the considered view that the prosecution has proved its case beyond reasonable doubt to warrant the conviction of the Defendants.

Accordingly, the Defendants are found guilty and are hereby convicted on the two court charge against him. The Defendants will be sentence whenever they are re-arrested and brought before the court.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**19/06/2017**