IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 3RD DAY OF JUNE, 2019.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO.:-FCT/HC/CR/293/16

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:.....COMPLAINANT

AND

1) JOHN JOSHUA ULOH
2) INTEGRATED BUSINESS NETWORK INTERNATIONAL :.....DEFENDANTS

Ijeabalum Diribe for the Prosecution.
John O. Agu for the Defence.

JUDGMENT.

The Defendants were arraigned before this Court on a four-count charge as follows;

1. That you John Joshua Uloh, on or about the month of January, 2012 in Abuja within the jurisdiction of this Honourable Court with intent to defraud, obtained the sum of Five Million Naira from one Francisca Sambo under the pretence of securing a plot of land for her at Wuye Abuja, which pretence you knew was false and thereby committed an offence contrary to Section 1(2) of the Advance Fee and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.
2. That you John Joshua Uloh, on or about the month of March, 2012 in Abuja within the jurisdiction of this Honourable Court, with intent to defraud, obtained the sum of Five Million Naira from one Francisca Sambo

under the pretence of securing a plot of land for her at Asokoro, Abuja which pretence you knew was false and thereby committed an offence contrary to Section 1(2) of the Advance Fee and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

3. That you John Joshua Uloh, being the managing director of Integrated Business Network International Limited, a company incorporated in Nigeria, and you Integrated Business Network International Limited, on or about the 6th day of April, 2014 in Abuja within the jurisdiction of this Honourable Court, with knowledge that you had insufficient fund in your Zenith Bank account, issued to one Bena Franco Nigeria Limited, Zenith Bank Cheque No. 89007790 dated 6th April, 2014 for the sum of Five Million Naira (N5,000,000.00) which when presented for payment within three months of issuance was dishonoured due to insufficient fund in your account and thereby committed an offence contrary to Section 1(1)(b) of the Dishonoured Cheques Offences Act, Cap D11, Laws of the Federation of Nigeria, 2004 and punishable under Section 1(1)(b)(i) of the same Act.
4. That you John Joshua Uloh, being the managing director of Integrated Business Network International Limited, a company incorporated in Nigeria, and you Integrated Business Network International Limited, on or about the 6th day of April, 2014 in Abuja within the jurisdiction of this Honourable Court, with knowledge that you had insufficient fund in your Zenith Bank account, issued to one Bena Franco Nigeria Limited, Zenith Bank Cheque No. 89007790 dated 6th April, 2014 for the sum of Five Million Naira (N5,000,000.00) which when presented for payment within three months of issuance was dishonoured due to insufficient fund in your account and

thereby committed an offence contrary to Section 1(1)(b) of the Dishonoured Cheques Offences Act, Cap D11, Laws of the Federation of Nigeria, 2004 and punishable under Section 1(1)(b)(i) of the same Act.

The Defendants pleaded not guilty to the charge preferred against them. At trial the prosecution presented four witnesses in proof of the charge against the Defendants.

One Kenneth Amaben testified as PW1. He told the Court in his evidence in chief that he was the person that introduced the nominal complainant, Francisca Sambo to the Defendants in respect of a land transaction at Wuye. He stated that the 1st Defendant took Francisca Sambo and himself to Wuye and showed them the land, and an amount between N17m and N19m was agreed upon for the sale of the land, for which Francisca made a part payment of N5m. According to the PW1, the allocation paper did not come out, but after about two – three months later, the 1st Defendant called him and said that he was unable to reach Francisca Sambo on phone and then told him that he had gotten land for her and that she needed to show up and pay the balance.

He stated that when Francisca Sambo came back from her trip abroad, the 1st Defendant told her that because of her absence, the land she paid for had been sold and that after much argument, the Defendant came up with another land at Asokoro Extension and demanded that Francisca Sambo pay another N5m. That on Francisca's demand to see the land, the Defendant sent a staff to show them the land and when they got there, they discovered that there was an existing structure on the land. That it was at that point that Francisca demanded for the refund of her N10m, saying she would no longer go on with the transaction.

Testifying further, the PW1 told the Court that after a year, the 1st Defendant called a meeting and issued two post-dated cheques of N5m each.

Under cross examination by the defence counsel, the PW1 stated that he had known the 1st Defendant for 10 years and that they are members of the same church. He stated that the Defendants were into contracts and Information Technology (IT) business and facilitation of land acquisition and that was why he introduced Defendant to the Claimant.

The nominal complainant, Francisca Sambo testified as PW2. In her evidence in chief, she said that the 1st Defendant was introduced to her by the PW1 as a land speculating agent who knows the authorities in the Federal Capital Territory. That the 1st Defendant informed her of a land at Wuye and demanded a deposit for the land. That, she paid N5m to the 1st Defendant and that she would pay the balance when the land is ready. The PW2 stated that the 1st Defendant gave her a time frame of about 6 weeks within which the land would be made available to her, and that when at the expiration of 6 weeks, the land was not ready, she demanded for the refund of her money, whereupon the 1st Defendant told her that he had sold the land, but that he had another allocation for her at Asokoro. She stated that the 1st Defendant demanded that she should pay another N5m, which she obliged and paid. That when she eventually went to see the land in company of the PW1 and a Surveyor sent to them by the 1st Defendant, they discovered that there was a structure on the land; in consequence of which she demanded for the refund of her money as she wanted a fresh allocation.

She informed the Court that the Defendants gave her two cheques of N5m each, dated 6th March, 2014 and 7th April, 2014 respectively, which when she presented in the bank for

payment on two different occasions, they were both returned unpaid because of insufficient funds.

The PW2 further stated that the Defendants only refunded N3m.

Her petition to the EFCC was tendered and admitted in evidence as Exhibit PW2A while the two cheques issued by the Defendants were admitted as Exhibits PW2B-B1.

Under cross examination, the PW2 told the Court that there was an understanding between her and that 1st Defendant in respect of the land at Asokoro, that the land would be sold and the proceeds shared between them but that such understanding did not exist in respect of the land at Wuye.

One ASP Lawal Mainasara, a staff of the Economic and Financial Crimes Commission testified as PW3. He told the Court that in 2014, a petition written by the PW2 was referred to his table. That in the petition, the PW2 alleged that she gave N10m to the 1st Defendant to secure her a plot of land within Abuja since 2012, but that the 1st Defendant failed to procure the land and when she demanded for the refund of her money, the Defendants issued her two Zenith Bank Cheques which upon presentation for payment, were dishonoured and returned unpaid. He stated that upon receipt of the petition, they invited the nominal complainant who came and adopted her petition and that thereafter, the 1st Defendant was arrested and when he was shown the petition, he volunteered to state his side of the story in writing.

According to the PW3, he administered the words of caution to the 1st Defendant and that after signing same, the 1st Defendant made a written statement to the Commission (Economic and Financial Crimes Commission) on 5th December, 2014 and

subsequent statements on 20th January, 2015 and 18th March, 2015 respectively.

The PW3 told the Court that from their investigation, it was discovered that the 1st Defendant was introduced to PW2 by PW1. That the 1st Defendant represented to the PW2 that he was very close to the FCT Minister and the Chief of Staff – Yau Mohammed, and therefore, that he could help to procure land for the PW2. He stated further, that in the course of the investigation, the 1st Defendant claimed to have given the sum of N5m and X5 BMW Jeep to the Chief of Staff to the Minister, Yau Mohammed and that when Yau Mohammed was invited for face-to-face interview with the 1st Defendant, he denied ever knowing the 1st Defendant.

The PW3 stated further that in the course of investigation, they discovered that the 1st Defendant used his company to issue two Zenith Bank Cheques to the PW2, knowing fully well that there was no sufficient fund in the account.

The prosecution tendered the following exhibits through the PW3, to wit;

1. Exhibit PW3A – Incorporation documents of the 2nd Defendant.
2. Exhibit PW3B – Account opening documents and statement of account of 2nd Defendant.
3. Exhibit PW3C – Written statements of 1st Defendant.
4. Exhibit PW3D – Written statement of one Yau Mohammed.

The PW3 was duly cross examined by the defence counsel in the course of which the PW3 told the Court that his evidence before the Court was based on his investigation.

One Remigius Ugwu, a staff of Zenith Bank PLC also gave evidence for the prosecution as PW4. In his evidence in chief,

he confirmed that the 2nd Defendant maintains an account with Zenith Bank PLC; that he received a letter from the Economic and Financial Crimes Commission and that in response to the said letter, they produced and forwarded to the Economic and Financial Crimes Commission the account opening package and statement of account of the 2nd Defendant. He also confirmed that Exhibit PW2B-B1 were the Bank's cheques issued by the 2nd Defendant.

He stated that one of the cheques valued at N5m was presented on 10th March, 2014 and was returned because of insufficient fund, the balance of the account was N33,309.25.

Also, the second cheque valued at N5m was presented on 29th April, 2014 and was equally returned because of insufficient which was N7,475.84 as at that date.

On the 19th day of November, 2018, after the Court had delivered a ruling dismissing the no case submission filed by the defence, the Defendants entered their defence. Testifying as DW1, the 1st Defendant on behalf of 2nd Defendant a corporate body told the Court that the nominal complainant, Francisca Sambo (PW2) was introduced to him by one Ken Amabem (PW1) who is his friend and church member. That having helped his church members through his real estate business to acquire landed property in Abuja, the PW1, Kenneth Amabem, brought the PW2, Francisca Sambo to his office and the PW2 told him that she was interested in going into property business. That PW2 said she wanted to partner with him by getting land, selling same, making profit and then acquiring more.

He stated that they finally agreed to find a plot that would not cost more than N20m for a start.

The Defendant stated that he thereafter discussed with “people in FCDA” and he was told, among other places, that it would cost him N20m to process and acquire a plot of land in Wuye. That he communicated his findings to the PW2 and they both agreed that the PW2, Francisca Sambo would contribute N15m while the Defendant would contribute N5m, being the facilitator, and that they would share the profit.

He stated that the PW2 eventually contributed N5m and then he commenced the process. That within 2-3 weeks, there was need to pay more money and he called the PW1, Kenneth Amabem, who appologized that PW2 was not in town. That weeks later the PW2 came back and made available another N3.5m.

He stated that as at that time, he had already expended N9.5m and subsequently he was able to pay a total of N15m, leaving a balance of N5m.

He told the Court that, 3 weeks after that time, he received a call from FCDA informing him that the property was ready and that he pleaded with them and they handed the original documents to him as opposed to their initial understanding that he would make full payment before the original documents would be handed to him.

The Defendant stated that after collecting the original documents, he connected to PW1 who was the link between him and the PW2, for the balance, but he was informed that the PW2 was not in Abuja. The PW2 showed up three weeks after and issued a three day post dated cheque of N5m, as her account was not funded. That on the 3rd day, the PW2 Francisca Sambo asked that he shoud not pay the cheque but wait for a few more days. That at this stage the owners of the Plot were getting frustrated and that it took two more months before the PW2 came back and by then the owners of the plot

had reported the matter to everyone that knew him (the Defendant). He stated that he thus decided with the consent of PW1 to give the title document back to the owners with the understanding that the balance would be paid within seven days, failing which the property would be forfeited. Testifying further, the Defendant DW1 said that it took PW2 another one month to show up to process the Asokoro Plot which goes for N35m. The PW2 then paid N5m and promised to pay N10m in three weeks time.

Two weeks later, the PW2, Francisca Sambo requested to see the location of the property and he directed his staff to take her and PW1 to the location in company of one FCDA staff. The PW2 called him later to decline an interest in the land at Asokoro because she saw an old fence thereon.

He stated that the PW2 insisted on being issued cheques as evidence of what she had invested in the business and he issued her two cheques of N5m each in his company's name, and a week thereafter, he was arrested by the Economic and Financial Crime Commission.

Under cross examination, the DW1, claimed not to have the understanding that cheque is an evidence of payment. Further more, under cross examination, he stated that his assertion in Exhibit PW1C, to the effect that he submitted the acknowledgment in respect of the land application to his contact one Yau Mohammed, the Chief of Staff to the Minister of Federal Capital Territory, was a mistake, but on the contrary that the said acknowlegdement was given to the PW2.

At the close of evidence the learned counsel adopted their filed and exchanged final written addresses.

Learned defence counsel, J.M. Jai, Esq., raised two issues for determination in his final written address dated 1st March, 2019 and filed on 5th March, 2019, thus;

1. Whether the prosecution has established satisfactorily the essential ingredients of the offences of obtaining money under false pretence on counts 1 and 2 as laid on the charge, beyond reasonable doubt to secure a conviction?
2. Whether the Defendant obtained credit for himself on account of the cheques issued to the complainant to be laible to a conviction?

On issue one, learned counsel for defence relied on **Olakunle v. State (2014) LPELR-22510 (CA)** and **Ugochukwu v. FRN (2016) LPELR-40785 (CA)** to posit that the court must satisfy itself that the essestial elements or ingredients of the offence(s) charged have been duly established by cogent and credible evidence before a defendant can be convicted. He argued that the prosecution in the instant case, failed to establish the ingredients of the offence of obtaining money under false pretence having failed to established that the properties in both counts were non-existent.

He further contended that the prosecution could not establish intent to defruad in the Defendant. Also that the prosecution failed to establish that the Defendant knew of the falsity of the pretence or that he did not believe in its truth or that the pretence was false. He referred to **Oshun v. DPP (1965) NMLR 357 at 358.**

Learned counsel while referring to **Olabode v. The State (2007) ALL FWLR (PT 339) 1301 at 1323,** posited that where any of the ingredients of the offence is not proved beyond reasonable doubt, the prosecution's case must fail.

He urged the court to discharge and acquit the Defendants on counts 1 and 2, the prosecution having failed to establish the ingredients of the offences charged in both counts.

In arguing issue 2, learned counsel argued that conviction of a defendant for the issuance of a dud cheque is not automatic. That the critical question to be asked is whether there was an inducement on the part of one person in an enforceable contract?

That for a Defendant to be liable to conviction under the provisions of the Advance Fee Fraud and Other Fraud Related Offences Act, (sic) the cheque drawn has to be issued as settlement under an enforceable contract entered into between the issuer of the cheque and the drawer.

He argued that the "epicentre" for a conviction under the issuance of dud cheque is the satisfaction of the major ingredient that the Defendant did obtain credit for himself under an enforceable contract by inducing the nominal complainant to part with property. He referred to **Chukwuma v. FRN (2011) 13 NWLR (Pt 1264) 391 at 408; State v. Oladotun (2011) 10 NWLR (Pt 1256) 542 at 567.**

He urged the Court to discharge and acquit the Defendants on each of the four counts for which they were charged, while arguing that;

a) The essential ingredients of all the four counts of the offences for which the Defendants were charged, were not proved.
b) Counts 1 and 2 were intrinsically a breach of agreement for failure to provide property within a particular time frame;
c) Absence of inducement by means of a cheque under an enforceable contract ship-wrecks counts 3 and 4.

Learned counsel in his reply on points of law to the prosecution's final written address, posited that the crux of the prosecution's final written address is largely misleading on the principles guiding the offence of obtaining by false pretence. He referred to the case of **Lagos State v. Mohammed Umaru** on page 7 of the prosecution's final written address to submit the misleading effects on these grounds;

(i) The document in question in the said case, was in the custody of the prosecution and not the defendant.

(ii) The burden of proof in criminal cases is on the prosecution and never shifts except in a few limited cases – **Okoh v. State (2014) 8 NWLR (Pt 1410) 522.**

(iii) By Section 36(5) of the constitution of the Federal Republic of Nigeria, the burden to establish a guilt is on the prosecution and not the defendant.

(iv) It is not the duty of the defendant to prove his innocence as suggested by the prosecution – **Chianugo v. The State (2002) 2 NWLR (Pt 750) 225.**

Secondly, the learned counsel urged the court to discountenance Exhibit PW3D which was made by a person not called as a witness - **Utie v. The State (1992) 2 SCNJ (Pt 1) 183.**

He contended that the Defendant having stated that he gave money to one Yau Mohammed, that it was for the prosecution to call the said Yau Mohammed as a witness to establish the ingredient of intention to defraud and that it is not the duty of the Defendant to prove his innocence. He referred to **Ikechukwu Okoh v. The State (2014) LPELR-22589 (SC).**

He urged the court to discountenance the submissions of the prosecution and to discharge and acquit the defendants.

Learned prosecution counsel, Samuel A. Ugwuegbulam, Esq., in his final written address dated 11th February, 2019 and filed on 12th February, 2019, contended that before lands are revoked, revocation notices are served on the allottees of the lands. He argued that the Defendant herein, who claimed that the lands he got for the nominal complainant were taken away from him, did not produce any notice of revocation of the land before the court. He referred to **People of Lagos State v. Mohammed Umaru, Suit No. SC 455/2012; 2014 legalpedia SC 43 LX.**

He further argued that the claim of the defendant that he gave the money he collected from PW2 to one Yau Mohammed was rebutted by the said Yau Mohammed in his statement to the Economic and Financial Crime Commission which was tendered and admitted in evidence as Exhibit PW3D. He posited that the said Exhibit PW3D lends credence to the false pretence made by the Defendant to PW2, as it shows to the contrary his representation to the PW2, he had no connection in FCDA that he could leverage on to secure land for PW2.

On the contention of the defendant that the two cheques he issued to the PW2, Francisca Sambo were means of documenting the transaction between him and the PW2 rather than a means of repayment of the money given to him by PW2, learned counsel for prosecution argued that, a cheque cannot be used as a collateral or as a means of documenting a transaction, but as a means of payment for goods obtained or services rendered.

He referred to **Bolanle v. The State NSCQR Vol 29, 2007, page 1269** and Section 2 of the Dishonoured Cheques Offences Act.

Learned counsel further contended that the evidence of the Defendant before the court and his statement to the Economic

and Financial Crime Commission, Exhibit PW3C, are substantially different, unrelated and contradictory. That while in Exhibit PW3C, the defendant stated that he could not secure the Asokoro Plot because of disappointment from his contacts, which made the PW2 to demand for a refund of her money. In his evidence before the Court, the defendant stated that the PW2 opted out of the deal because she saw fence erected on the land. He posited that the law is that where the defendant's testimony in Court is inconsistent with his previous statement, neither the oral evidence nor the previous statement will be regarded as reliable, and both cannot constitute evidence upon which the court can act. He referred to **Ojo v. FRN (2008) 11 NWLR (Pt 1099) 524; Nwokeanu v. The State (2010) 15 NWLR (Pt 1215) 27** and **Egboghonone v. The State (1993) 7 NWLR (Pt 306).**

On the essential elements of the offence of obtaining goods by false pretences, learned counsel posited that the said essential elements which the prosecution must prove, were outlined in the case of **Alake v. State (1991) 7 NWLR (Pt 205) at 592,** to wit;

a. That there is a pretence;
b. That the pretence emanated from the defendant;
c. That it is false.
d. That the defendant knew of its falsity or did not believe in its truth.
e. That there is an intention to defraud.
f. That the thing is capable of being stolen.
g. That the defendant induced the owner to transfer his whole interest in the property.

He contended that the above ingredients have been sufficently proved by the prosecution to warrant the conviction of the defendants.

He concluded, that the prosecution has proved the offence beyond reasonable doubt as required by law, and urged the court to find the defendants guilty as charged.

In the determination of this case, the court will consider the question of whether the prosecution has established the guilt of the defendants beyond reasonable doubt?

The Defendants were arraigned on a four counts charge. Counts 1 and 2 bother on obtaining money by false pretence contrary to Section 1(2) of the Advance Fee and Other Fraud Related Offences Act, 2006, while counts 3 and 4 bother on issuance of dud cheques contrary to Section 1(1) (b) of the Dishonoured Cheques Offences Act, Cap D11, LFN 2004.

The duty of the prosecution is to establish by cogent and credible evidence, the essential ingredients of the offences charged and thereby prove the charge(s) against the Defendant beyond reasonable doubt. See **State v. Gwangwan 92015) LPELR-24837 (SC).**

In the instant case and with reference to counts 1 and 2, the essential ingredients of the offence of obtaining by false pretence were listed by the Court of Appeal per Saulawa, JCA, in **Aguba v. FRN (2014) LPELR-23211 (CA)** thus;

"a. That there is a pretence;

b. That the pretence emanated from the accused person;

c. That the pretence was false.

d. That the accused person knew of the falsity of the pretence, or did not believe in its truth.

e. That there is an intention to defraud.

f. That the property or thing is capable of being stolen.

g. That the accused person induced the owner to transfer his whole interest in the property."

The Defendants were charged with having obtained by false pretences; specifically, the sum of N5m in counts 1 and 2 respectively. The capability of it being stolen is out of the question.

In **Onwudiwe v. FRN (2006) ALL FWLR (Pt 319) 774 at 812,** the Supreme Court, per Niki Tobi, JSC, held thus;

> ***"For the offence of obtaining by false pretence to be committed, the prosecution must prove that the accused had an intention to defraud and the thing is capable of being stolen. An inducement on the part of the accused to make his victim part with a thing capable of being stolen or to make the victim deliver a thing capable of being stolen would expose the accused to imprisonment for the offence."***

The evidence adduced before this Court by the prosecution is that the 1st Defendant in representation of the 2nd Defendant represented to the nominal complainant, Francisca Sambo (PW2) that he could procure allocation of plots of land for her in Abuja, first at Wuye and later at Asokoro, and consequent upon this representation, the PW2 parted with a total sum of N10m. Within a space of two years, the 1st Defendant neither procured the allocation nor showed any evidence of having applied to the relevant authority for land allocation. Rather, the 1st Defendant was demanding for more money. The PW2 insisted on seeing the land, whereupon the 1st Defendant sent his staff to show her a plot of land which turned out to have a structure already on it. This made the PW2, Francisca Sambo, to resile from the transaction and demanded for a refund of her money.

The 1st Defendant could not subtantiate his claim that he applied for plots of land for the PW2. There are two sides to his statement story and evidence in Court that both PW2 and himself entered into a contract to buy and sell land to make

profit. In his statement to the Economic and Financial Crimes Commission, Exhibit PW1C, he claimed to have bought the land on behalf of PW2 and gave the acknowledged copy of the application for land to the Minister to one Yau Mohammed. Under cross examination, he retracted the said claim, saying it was a mistake. He then claimed the alleged acknowledgement copy was given to the nominal complainant (PW2). Which of these claims is the court therefore, to believe? The inconsistencies are glaring in the statement and oral evidence of Defendant. Placing reliance on the case of **Nwokearu v. The State (supra)** cited by learned prosecution counsel which is very apt here. There the Court of Appeal held that;

> ***"Where there is an obvious material inconsistency between the evidence of a witness before the Police and the evidence he gave on oath before the court, the trial court will be right to apply the inconsistency rule and to reject the evidence of the witness as worthless for consideration during adjudication. The effect of the rejection of the evidence of the witness would be that both his extra judicial statement to the police and his evidence on oath would be disregarded as worthless since the court cannot pick and choose between the two inconsistent statement."***

In view of the inconsistency in the evidence of the Defendant as highlighted above, and drawing strength from the above judicial authority, the attitude of the Court towards such inconsistency is that the credibility and truthfulness of the witness is unrelaible. I therefore reject and disregard the evidence of the Defendants as to the existence of any alleged land application to Honourable Minister FCT on behalf of PW2 and subsequent acknowledgment. It follows therefore, that there is not in existence any such acknowledgement as there is none before

this Court. Thus in Supreme Court in **Uchechi Orisa v. The State (2018) LPELR 43896 (SC)** – The law is settled that a witness inconsistency in extra judicial statement and sworn testimony without any reasonable excuse renders his evidence unreliable.

In the absence of any evidence to the contrary, this court is bound to accept the evidence of the prosecution to the effect that the 1st Defendant obtained a cumulative sum of N10m from Francisca Sambo under the pretence of procuring land allocations at Wuye and Asokoro for her, which pretence is false as no application was made and no allocation was procured by the 1st Defendant and the PW2 believed on the falsehood and parted with her money to that effect.

I am convinced by evidence adduced at trial that the 1st defendant not only knew of the falsity of the pretence, but also had intention to defraud the PW2. It is also evidentially clear that the 1st Defendant induced the PW2, Francisca Sambo to transfer her whole interest in the money to him by making demands of money from her after disappointing her on the first land transaction for Wuye. I have no doubt from both the documentary and oral evidence that the offence of false pretence is proved beyond reasonable doubt.

It is therefore, my finding, and I so hold, that the prosecution has established all the essential ingredients of the offence of obtaining by false pretence and has thus proved counts 1 and 2 of the charge against the 1st Defendant beyond reasonable doubt.

In counts 3 and 4, the 1st and 2nd Defendants were jointly charged with the offence of issuing dud cheques (dishonoured cheque) under Section 1(1)(b) of the Dishonoured Cheques (Offences) Act, 2004. The said section provides thus;

"(1) Any person who –

.....

(b) 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 funds were standing to the credit of the drawer of the cheque in the bank on which the cheques was drawn, shall be guilty of an offence-"

The case of the prosecution is that the 1st Defendant which by his evidence and Exh PW3A is one of the directors, known as John J. Uloh-Edumoh in the company of 2nd Defendant, 'Integrated Business Network (IBN) Int'l Ltd'. He issued two post-dated cheques, Exhibits PW2B-B1 respectively dated 6th April, 2014 and 7th March, 2014 to the nominal complainant, Francisca Sambo (PW2) in settlement of his obligation to the PW2 in respect of the sum of N10m obtained from her. That the said cheques when presented for payment within three months of issuance, were dishonoured due to insufficient funds in their account. The said cheques were documents of the 2nd Defendant and the 1st Defendant is the alter ego. 1st Defendant never denied that. Also the Account Name on Exh PW3A – Account mandate from his bank (Zenith Bank) reveals that the 1st Defendant is the alter ego of the 2nd Defendant.

To prove this charge, the prosecution called one Remigius Ugwu, a staff of Zenith Bank PLC who in his evidence as PW4, told the court that the first cheque was presented for payment on 10th March, 2014 while the second cheque was presented on 29th April, 2014 and both cheques were returned unpaid as a result of insufficeint fund at the time of presentation.

In his defence, the 1st Defendant told the court in his evidence in chief that he issued the cheques based on PW2's insistence on having cheques as evidence of what she had invested in the business. Under cross examination, the 1st Defendant stated that he does not have the understanding that cheques are evidence of payment. He however, admitted that when he issued the cheques, exhibits PW2B-B1, he knew they were meant to refund the PW2 her money. He further admitted that his account was not funded on the dates the cheques were due for payment. His defence was that the cheques were not meant to be cashed. Cheques are legal tenders which represent cash to my knowledge.

The 1st Defendant had told the court under cross examination, that he is a graduate, holding a HND in Real Estate and BSC Certificate. It is inconceivable that a person of the educational calibre 1st Defendant would not understand that cheques are legal tenders and as such are evidence of payment in this sort of transaction. Again, it is unimaginable and unbelievable that the post-dated cheques at the time of issuance, were not issued as evidence of PW2's payment on the investment with the Defendants and that they were not meant to be cashed.

In **Abeke v. The State (2007) LPELR-31 (SC),** the Supreme Court, per Tobi, JSC, held that;

> ***"A cheque is a written order to a bank to pay a certain sum of money from one's bank account to oneself or to another person. It is for all intents and purposes an instrument for payment. It metamorphoses into physical cash on due presentation at the bank and that makes it legal tender."***

Learned defence counsel in his final written address contended that the Defendants did not obtain credit by the issuance of the cheques, Exhibits PW2B-B1, and that as such, the Defendants

have not committed any offence under Section 1(1)(b) of the Dishonoured Cheques (Offences) Act.

The said learned Defendants counsel's contention cannot be subsumed in the true position of the law.

Section 1(2)(b) of the said Act provides thus;

> ***"(2)(b) a person who draws a cheque which is dishonoured on the ground stated in the subsection and which was issued in settlement or purported settlement of any obligation under an enforceable contract entered into between the drawer of the cheque and the person to whom the cheque was issued, shall be deemed to have obtained credit for himself by means of the cheque, notwithstanding that at the time when the contract was entered into, the manner in which the obligation would be settled was not specified."***

I have no iota of doubt in my mind that the Defendants are caught by the above provision of the law in the circumsatnces of this case. The cheques were issued as a refund of the money received from PW2 and were supposed to be cashed. It is therefore, my finding that the prosecution has proved counts 3 and 4 of the charge beyond reasonble doubt, and I so hold.

I need not go further than recapitulating the decision in **Hannah Abraham v. FRN (2018) LPELR 44136 CA** per Otisi, JCA that ***"Issuance of a dud cheque is a criminal offence by virtue of the Dishonoured cheques (offences) Act, 2004..."*** the learned JCA concluded by saying that issuance of Exh B&C in settlement of an existing obligation arose from a contract, and the presentation of the cheques within three months was dishonoured therefore, she said ***"The elements of the offence***

were proved". This case is on all fours with the present case before this Court.

From the foregoing, the prosecution having established its case against the Defendants beyond reasonable doubt, the Court therefore, finds the Defendants quilty as charged.

The 1st Defendant is found guilty as charged in Counts 1 and 2 - 10 years each no option of fine, Counts 3 and 4 – 2 years no option of fine respectively. The 2nd Defendant as a corporate body is found guilty in Counts 3 – fine only, and 4 respectively.

ALLOCUTUS:

Defence counsel:

We wish to call evidence as regards the character of this Defendant. The witness is not present in Court and we ask for adjournment.

Court:

In this regard the bail of the Defendant is revoked/cancelled and Defendant is to be remanded in prison custody.

In view of the application of Defence counsel for adjournment to produce witnesses, case is adjourned to 20th June, 2019 for sentencing.

20TH DAY OF JUNE, 2019.

Samuel Ugwuegbulam for the Prosecution.
Ayo Akam with Obinna Agu for the 1st and 2nd Defendants.

Prosecution:

The business of today is for sentencing.

Court:

The Defendant was found guilty on 3rd June, 2019 and his counsel applied for a date to comply with Section 310 and 311 of the Administration of Criminal Juctice Act before sentencing.

Defence counsel:

We have two witnesses.

SW1:

Affirms and states in English. My name is Ezekiel Joshua Uloh. I reside at Calabar, Cross River state. I am a clergy and educationist.

Defence counsel:

Do you know the Defendant?

SW1:

Yes I do, he is my brother the same parents.

Defence counsel:

Being your brother can you tell the Court about his character.

SW1:

We grew up from a disciplined family our father was a bishop founder of an indiginous Church and it is still existing. We grew up under him and we were strict Christians. We have three Pastors in the family and the Defendant is an elder in the Church.

The Defendant is a man of good character. I have never heard of any criminal case against him for 30 years he lived in Abuja.

He is a compassionate person. A responsible father of five children and all of them are in school. He loves people. Am aware that he helped his Church to acquire in Abuja. I would not be here for him if he was of a dubious character knowing what I am doing in the Kingdom of God. I know he would not put his hand in any slotful thing.

SW2:

Affirms and states in English.

My name is Amb. Yahaya Mohammed. I reside at No. 16 Thame Street Maitama, Abuja. I am a businessman by profession.

Defence counsel:

Do you know the 1st Defendant and how?

SW2:

Yes I do, I happen to know John Uloh Edumoh. He has no questionable character. He has never presented any information that is criminal or is misleading and I know him to his house and he is a loving and caring father of the family.

As far as I am concerned I can say he has never had any criminal conviction. He has never cheated me nor do I know of any one that has complained against him for cheating.

Defence counsel:

Part of the money received by the convict has been refunded and the sum of N7m is still outstanding which the Defendant is willing to refund. Under the circumstance the sentencing should be such that would take into consideration the ability of the Defendant to source for the money and pay. The punishment as prescribed by the law will not be useful again if the money is not refunded. I rely on Section 321(a) Administration of Criminal

Juctice Act, the Court has discretion to order for restitution in lieu of sentencing. If Defendant is sentenced, the Defendant cannot raise the money for the refund and this could best serve the interest of justice.

From the evidence 1st Defendant is a father of five children. We plead that the Court tempers justice with mercy. If in the wisdom of the Court and the Court feels that prison is the appropriate order we appeal to the Court to temper justice with mercy.

Response by Prosecutor.

Prosecution:

The prosecution does not have evidence of previous conviction of the convict.

The law does not give the Court any option to order for fine because it has a minimum of 7 years and not more than 10 years for convict Counts 1 and 2.

Counts 3 and 4, the punishment for the offence in Section 1(1)(b) that has no option of fine but leaves the Court without any option to impose 2 years without option of fine.

Out of the N10m only N3m was refunded. N7m is still outstanding.

The nominal complainant is a single mother whose capital has been depleted. She has no capital for her business since 2012 she was duped. I have personally approached the convict to pay the outstanding money and he refused to pay.

We apply under Section 321(a) for restitution, that the sum of N7m be restituted to the Francisca Sambo the nominal complainant.

In as much as the Court is to draw equilibrum between the right of convict and nominal complainant but the Court is to adhere srictly.

SENTENCING:

Having complied with Section 310(1) and Section 311(1) Administration of Criminal Juctice Act of 2015.

Having also heard the plea of allocutus from the Defence counsel the Court is faced with sentencing of the convict. Reference is made to the punishment Section of the Section 1(3) of the Advance Fee and Other Related Offences Act 2006 which gave this Court no room for option of fine and strictly confines the sentence to not less than 7 years for Counts 1 and 2.

For Counts 3 and 4 the sentencing is also strict with not less than 2 years imprisonment.

The Court is bound to act within the law and not outside of it, Section 321(a) Administration of Criminal Juctice Act is a procedural Act and it is drafted to assist the Court in sentencing procedure and not to be read to override the sentencing section of the offence under Advance Fee Fraud.

The Section 321(a) is to be read conjunctively with the sentencing provision.

Therefore, the Court has no discretion to give an option of fine in place of a sentence. The convict having been found guilty in all the Counts is sentence as follows;

Count I.

The convict John Joshua Uloh sentence to 7 years imprisonment without option of fine.

Count II.

The convict John Joshua Uloh sentence to 7 years imprisonment without option of fine.

Count III.

The convict is sentence to 2 years without option of fine.

Count IV.

The convict is sentence to a term of 2 years without option of fine.

Sentencings are to run concurrently.

The convict is also ordered to pay for the restitution on N7,000,000.00 (Seven Milllion Naira) to the nominal complainant – Francisca Sambo.

HON. JUSTICE A. O. OTALUKA
20/6/2019