IN THE CIRCUIT COURT OF JUSTICE HELD IN HO, VOLTA REGION ON WEDNESDAY, THE 22ND DAY OF NOVEMBER 2023 BEFORE HIS HONOUR FELIX DATSOMOR, ESQUIRE, CIRCUIT COURT JUDGE

COURT CASE NO. D21/30/2019

THE REPUBLIC

VRS

REV. DR. PRINCE DUGAH

J U D G M E N T

INTRODUCTION:

Section 313A of the Criminal Offences Act, 1960 (Act 29) (hereinafter referred to simply as "Act 29") criminalizes *issue of false cheques* and provides thus:

"Section 313A—Issue of false cheques.

(1) Any person who—

(a) without reasonable excuse proof of which shall be on him issues any cheques drawn on any bank with which he has no account; or

(b) issues any cheque in respect of any account with any bank when he has no reasonable ground (proof of which shall be on him) to believe

that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal course of banking business; or

(c) *with intent to defraud stops or countermands any cheque previously issued by him, shall be guilty of an offence and liable on first offence to a fine not exceeding ¢5 million or twelve months imprisonment or both and in the case of any subsequent offence to a fine not exceeding ¢20 million or to a term of imprisonment not exceeding five years."*

The essential elements (or ingredients) of the offence charged pursuant to section 313A(1)(b) of Act 29 are stated as follows:

i. *That the accused person issued a cheque;*
ii. *That the cheque was issued in respect of a bank account;*
iii. *That a specific amount is stated on the cheque;*
iv. *That the cheque was dishonoured upon presentation at the bank on account of no or insufficient funds in the account; and*
v. *That the cheque was presented at the bank for payment not later than three months after the date specified on the cheque.*

The accused person, Rev. Dr. Prince Dugah, was charged with the offence of issue of false cheque contrary to the above quoted section 313A(1)(b) of Act 29. He was alleged, per the particulars of offence charged, to have issued Agricultural Development Bank (hereinafter referred to as "ADB") cheque number NAT FISH FARMERS BRI 1000039274101 with face value GH¢40,000 on 15 May 2012 at Juapong to be drawn by Stella Aku Seshie at the Juapong Branch of the ADB when he had no grounds to believe that there were adequate funds in the account to pay the amount specified on cheque.

PLEA OF THE ACCUSED AND THE EFFECT THEREOF

The accused person pleaded *"not guilty"* to the charge preferred against him when his plea was taken by the court on 4 June 2019. The effect of this plea is that he has joined issues with prosecution not only by the mere denial of the charge as framed, but also a denial of all the ingredients of the said offence, and that means the prosecution must lead evidence to prove every element of the offence represented in the charge. This is because the accused person, by virtue of their plea, is deemed to have put himself upon his trial. See ***Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J. 32***, per Tanko Amadu, JA (as he then was).

BURDEN OF PROOF IMPOSED ON THE PROSECUTION

This being a criminal trial, the onus was heavily on the prosecution to prove beyond reasonable doubt that the accused person has indeed committed the offence charged. However, "proof beyond reasonable doubt" does not mean "proof beyond a shadow of doubt". The prosecution is only under obligation to produce sufficient evidence so that on the totality of the evidence, a reasonable mind could find the existence of the fact beyond a reasonable doubt. See the dictum of Dennis Adjei, JA in ***Philip Assibit Akpeena v. The Republic*** cited *supra*. The prosecution can discharge this burden if only they proffer enough evidence to convince the court that the accused is guilty of all the ingredients of the offence charged, and this is the highest burden the law can impose, and it is in contra distinction to the burden a plaintiff has in a civil case which is proof on a preponderance of the evidence. What "beyond a reasonable doubt" means is that the prosecution must overcome all reasonable inferences favouring innocence of the accused. It must however be noted that the prosecution is not to disprove all imaginary explanations that establish

the innocence of the accused. See: ***Osei Adjei & Another v. The Republic [2010-2012] 2 GLR 754 at 764*** as well as ***Richard Banousin v. The Republic [2016] 94 GMJ 1.***

Significantly, whereas the prosecution carries the burden to prove the guilt of the accused person beyond reasonable doubt, there is no such burden on the accused person to prove his innocence. At best, all that the accused person is required by law to do is to raise a reasonable doubt in the case of the prosecution. See ***Bruce-Konuah v. The Republic [1967] GLR 611*** and ***Section 11(2) and (3) of NRCD 323***. This is because the accused person is presumed to be innocent until otherwise proven guilty pursuant to ***Article 19(2)(c) of the Constitution, 1992***. And, where the prosecution successfully makes out a *prima facie* case against the accused person, the doubt which the accused person is required to create in the case of the prosecution must be real and not fanciful. ***Miller v. Minister of Pensions [1947] 1 All ER 372 at 373*** per Denning J (as he then was) applies.

I am therefore enjoined by law to determine the fortunes of this case in the light of the foregoing principles of law.

<u>THE ALLEGED FACTS IN SUPPORT OF THE CHARGE</u>:

The facts as presented by the prosecution in support of the charge are that sometime in the year 2010, the complainant, Stella Aku Seshie, a retired nurse, saw and heard the accused on GTV and some radio stations running advertisements on tilapia farming investment. The complainant subsequently attended seminars organized by the accused in Accra in his capacity as the Chief Executive Officer of Fish Farmers Brigade Ghana Limited. The complainant obviously becoming convinced about the viability of the project and also that any amount of money any person invests in the said company will yield 100% dividend, paid various sums of money to the tune of GH¢51,000 to accused's firm. When the investment reached its maturity, the complainant was issued with ADB

Bank cheque number NAT FISH FARMERS BRI 100039274101 with face value of GH¢40,000 on 15 May 2012. On 4 June 2012, the complainant went to ADB, Independence Avenue Branch in Accra with the intent to cashing out her investment but to her dismay, she was told that the cheque is dud. All efforts made thereafter by the complainant to collect her money proved abortive. As a result, the complainant reported the case to the police and that led to the arrest of the accused. The accused stated in his investigation caution statement that he only appended his signature to the cheque and not that he issued a personal cheque to the complainant. After thorough police investigations, the accused was charged with the offence and arraigned before this court to stand trial.

PROSECUTION WITNESSES CALLED AT THE TRIAL:

At the trial, the prosecution called two witnesses to testify in support of its case against the accused person. The said witnesses were the complainant (Stella Aku Seshie) and the case investigator (No. 37542 Detective Sergeant Sulley Sylvester).

I shall hereafter refer to the said prosecution witnesses as PWs 1 and 2 respectively for the sake of convenience, brevity, simplicity of description and ease of reference.

In this delivery, I will endeavour to distil the salient facts contained in the testimonies variously presented to the court by the prosecution witnesses as constituting the case of the prosecution against the accused person. This is because this court is enjoined by case law to consider only relevant and material evidence that goes to establish the issues based on what is required by law to prove same. The case of ***Buildaf Ltd & Others v. Catholic Church (2017-2020) 1 SCGLR 1143*** is apposite here.

CASE FOR THE PROSECUTION:

As already indicated, the case of the prosecution was composed by the testimonies of the two witnesses called. Both witnesses filed their witness statements embodying their respective testimonies to the court on 4 June 2019.

The gist of PW1's testimony is essentially that she saw the accused on GTV and also heard the accused running commercials on radio stations in respect of Fish Farmers Brigade Ghana Limited as the Executive Director. According to her, the advert informed the general public that the said company was into tilapia farming at Juapong in the Volta Region and that any amount invested into the fish farming project will yield 100% dividend annually. PW1 said she attended seminars organized by the accused in Accra and consequently became convinced about the project. She then invested various sums of money totaling GH¢51,000 into the company. She said she was issued with certificates of investment anytime she made payment. She also said that upon maturity of her first investment, the accused issued her with ADB cheque dated 15 May 2012 with face value of GH¢40,000 as part payment for the investment. PW1 testified further that on 4 June 2012, she went to ADB Independence Avenue Branch to cash the cheque but she was told that there was no money in the account upon which the cheque was to be drawn and that the cheque is dud. She made several efforts thereafter to collect the money but all to no avail. She said she even tried using the National Security Council Secretariat to retrieve her money but that step too did not yield any dividend. As a result, she reported the case to the police and had the accused arrested and arraigned before court.

PW2 is a police officer stationed at Peki District Criminal Investigations Department (CID). He testified that on 21 February 2018, he received an extract from Kpeshie Divisional CID on a complaint that PW1 had made against the accused alleging that the accused had issued a false cheque with face value of GH¢40,000 as part-payment of her investment in accused person's company in the year 2010 at Juapong. PW2 said he took a statement from PW1 as complainant and later accompanied her to Juapong where he

arrested the accused. PW2 tendered the said statement of the complainant in evidence as Exhibit "A". He added that he received from the complainant ADB Cheque No. 1000039274101 dated 15 May 2012 with face value of GH¢40,000, the very cheque that the accused issued to her, as well as the certificates of investment issued to her by accused. PW2 also tendered in evidence that cheque and the certificates of investment as Exhibit "D" series. PW2 told the court that he conducted a search on the company, *id est,* Fish Farmers Brigade Ghana Limited at the Registrar-General's Department in Accra. He swiftly tendered into evidence the search result as Exhibit "E". PW2 disclosed that the accused submitted his investigation and charge caution statements to him during investigations. The said caution statements are in evidence as Exhibits "B" and "C" respectively.

EVALUATION OF THE RECORD, DISCUSSION OF THE LAW AND OBSERVATIONS MADE:

I have painstakingly evaluated all the exhibits tendered by the prosecution through PW2 and I find that they attest to the facts for which they were tendered to established. I will further comment on them as and when the need arises before drawing down the curtains on this matter. But let me pause here and observe that the serial number of the ADB Cheque in issue is "501047" and not "NAT FISH FARMERS BRI 1000039274101" as indicated by the prosecution. The numbers "1000039274101" represent the account number of the company upon which the cheque was to be drawn by PW1, and the inscription "NAT FISH FARMERS BRI" is simply the name of the account with some of the words shortened. For example, "NAT" represents the short form of "NATIONAL" whereas "BRI" represents "BRIGADE". This clarification is quite pertinent in order to straighten up the records and not to make them clumsy. By this exercise, one will then

come into terms with the fact that the name of the account is "NATIONAL FISH FARMERS BRIGADE" though the official registered name of the company is FISH FARMERS BRIGADE GHANA LIMITED. The certificates of investment issued to PW1 when she invested those sums of money in the company bear the name NATIONAL FISH FARMERS BRIGADE. But all these findings notwithstanding, there is no gainsaying the fact that "NATIONAL FISH FARMERS BRIGADE" and "FISH FARMERS BRIGADE GHANA LIMITED" refer to one and the same entity, the company the accused was Executive Director of. After all, there was no issue raised about that in the proceedings and that settles it.

Now, having heard the testimonies of the prosecution witnesses as recounted *supra*, the court took the view that the prosecution has successfully established a *prima facie* case against the accused in respect of the charge preferred against him to warrant that he be called upon to answer. That view of the court was taken on 16 July 2020 pursuant to ***sections 173 and 174(1) of the Criminal and Other Offences Act, 1960 (Act 30).*** That view of the court was taken primarily because in the court's considered opinion, the prosecution had led sufficient evidence to establish all the essential elements of the offence charged, and therefore, necessitating that the accused offers his defence to the charge to the court. The prosecuting officer, in his written address filed on 13 September 2023, commendably distilled from the record of proceedings the material pieces of evidence led to establish the ingredients of the offence charged. As was held in the case of ***Gligah & Atiso v. The Republic [2010] SCGLR 870; [2010-2012] 1 GLR 39, SC; [2010] 25 GMJ 1, SC:***

> *"…it is only after a prima facie case has been established by the prosecution that the accused person is called upon to give his side of the story."*

See also ***Michael Asamoah & Another v. The Republic [2017-2018] 1 SCLRG 486***.

The effect of the finding that a *prima facie* case exists against the accused to answer is that the constitutional presumption of innocence that worked in favour of the accused at the time he was charged with the offence is rebutted and therefore he assumes the burden of raising a reasonable doubt as to his guilt. In ***Philip Assibit Akpeena v. The Republic*** *supra,* the Court of Appeal speaking through Dennis Adjei, JA held thus:

> *"The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt."*

In such circumstances, the burden shifts onto the accused to adduce sufficient evidence to avoid a ruling against him on the particular issue as stake pursuant to ***section 11(1) of the Evidence Act, 1975 (NRCD 323).*** The nature and extent of the onus on the accused person was articulated in the case of ***Woolmington v. Director of Public Prosecutions (1935) AC 462 at 481***, where HL Sankey LC stated that:

> *"...while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence".*

This position of the law has been given statutory backing in sections 11(3) and 13(2) of NRCD 323. The Supreme Court has given an outline of how a court of law ought to examine the case of the defence (or accused) in the event where the court forms the opinion that a *prima facie* case has been made against the accused and thereby proceeds to call upon him to make a defence to the charge(s) levelled against him. For the avoidance of doubt, that authoritative pronouncement was made in the case of ***Lutterodt***

v. Commissioner of Police (1963) 2 GLR 429, and the following is what the Supreme Court said as captured in the law report (per holding 3 thereof):

> *"(3) In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:*
>
> *(a) if the explanation of the defence is acceptable, then the accused should be acquitted;*
>
> *(b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;*
>
> *(c) if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict…"*

See also: ***The Republic v. Aku Kedevi @ Mansanor & Michael Boti*** *(Suit No. MIC/02/2018 dated 13th July, 2020) per Eric Baah, J (as he then was).*

I intend to begin with the evaluation of the case of the accused by recounting the testimony which he offered to the court.

EVIDENCE OF THE ACCUSED AND EVALUATION THEREOF:

The accused testified that he is a Director and the Chief Executive Officer of Farmers Brigade Ghana Limited (hereinafter referred to simply as "the company") which was

generally into fish farming. He was also part of the Board of Directors and Management of the company. The accused also testified that he is the wrong person who has been charged and brought to this court to stand trial. His reasons were quite concise. He claimed the cheque was the company's cheque and not his personal cheque, a fact he seems to have anchored his case on right from the time of his arrest by the police through to the trial. His investigation and charge caution statements attest to that. He also said that during one of the Board meetings of the company, it was decided that there should be two signatories to the company account. The company has a Finance Department, which according to the accused, was responsible for the issuance of cheques. However, when the cheques are issued, they are brought to him for endorsement. The accused testified further that he is one of the two signatories who signed the cheque in issue which is in respect of the company's account. He was however unable to tell the whereabouts of the other signatory who he claimed to be the Marketing Manager of the company. The accused lamented that the company has even collapsed since 2015 and that it is this same cheque issue that caused the company to collapse. Narrating how the company collapsed, the accused said that sometime in 2015, Stella Aku Seshie (PW1) came to him at church one Sunday to complain that when she took the cheque to the bank, it could not clear. He then told PW1 that since Sunday was not a working day, the Finance Department which issued the cheque will not be at work so she should come later for them to resolve the problem for her. He subsequently drew the attention of the Finance Department to the issue but PW1 did not bring the cheque to the company for the problem to be rectified until sometime in September 2015. The accused added that he had to suffer detention in the grips of the Bureau of National Investigations (BNI) ostensibly due to this same issue because the BNI told him that until he pays PW1 her money, they were not going to release him. According to him, that BNI action brought fear and panic into the staff of the company, compelling them all to leave and that led to the collapse of the company. The

accused testified further that when the company collapsed, they had meetings with their clients and investors, the last being in January 2013, because they were indebted to them. He posited that there were other officers of the company involved in the issuance of the cheque in issue.

Whiles under cross-examination, the accused disclosed that the company was incorporated on 25 January 2011 and commenced business on 26 January 2011. He reiterated that he is a director of the said company and the sole shareholder of the company.

What is important to me is that there is no dispute about the fact that accused signed the company's cheque in issue on 15 May 2012. It is therefore surprising that after having signed the cheque, the accused would maintain that he did not "issue" the cheque. Does he mean that "signing" of a cheque is conceptually different from "issuing" a cheque? I admit that he was not the only who signed the said cheque. There was another signatory who the accused claims was the Marketing Manager. The company was in operation when the cheque was issued. As the CEO of the company, the accused oversaw every operation of the company. He himself admitted under cross-examination that when the cheque was prepared and he appended his signature, it was done in accordance with procedure. What baffles my mind is how the accused appended his signature on the cheque without making any background checks to be certain that there were sufficient funds in the company account to pay the face value of the cheque to PW1. The cheque was presented to the bank on 4 June 2012, just three weeks after same was issued, but same was dishonoured. The accused would have been excused by the law if the cheque was presented at the bank by PW1 three months after the date it was issued. Section 313A (2) of Act 29 exemplifies that fact. For ease of reference, the said provision of the law states as follows:

> *"No person shall be guilty of an offence by virtue of subsection (1) (b) of this section* ***in respect of a cheque which is presented for payment later than three months after the date specified on the cheque for payment."***

But in the instant case, PW1 did not present the cheque three months or more after same had been issued. So, for the accused to be left of the hook, he must be able to demonstrate to the court that he had reasonable ground to believe that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal course of banking business. The fact that the cheque was not his personal cheque is, with global respect to him, not an acceptable explanation or defence to the charge. The cheque was indubitably the company's cheque which was issued by him and one other. I recall that PW2 testified that his investigations revealed that the company was not registered as a limited liability company but I find no conceivable reason to agree with him. The search conducted at the Office of the Registrar-General clearly showed that the company was registered as a limited liability company thereby making it an artificial legal person. This means that a company, after its registration, has all the powers of a natural person of full capacity to pursue its authorised business. In that capacity, the company is regarded as a corporate being which may do everything that a natural person might do. A company is, thus, a legal entity with a capacity separate, independent and distinct from the persons constituting it or employed by it. See the celebrated Supreme Court case of ***Morkor v. Kuma (No. 1) [1999-2000] 1 GLR 721.*** But as far as the company is an artificial person means that it cannot act on its own except through human hands. To that end, I subscribe to the views of the prosecuting officer when he submitted at page 19 of his written address (paragraph 52 thereof) that:

> *"Admittedly, by its very nature, a company, being a mere creature of the law, needs to work through human beings; they direct its affairs, take decisions for it, collect*

money and make payments on its behalf. As has already being stated, these human beings are, normally, deemed separate from the corporate identity."

However, it is observed that the fact that the company is a distinct legal entity separate from the owner(s) of it (or its incorporators) does not always mean that its owners, officers or agents must be shielded from all acts performed by the company, particularly when the said acts involve some criminality of a sort. In ***Dalex Finance & Leasing Company Ltd Vs. Ebenezer Denzel Amanor & 2 Ors [Civil Appeal No. J4/02/2020 dated 14 April 2021],*** Pwamang, JSC speaking for the Supreme Court with his usual characteristic dazzling brilliance laid the law bare in these terms:

"… it is a self-evident postulate of law that a limited liability company, being an artificial legal person, can only act through the instrumentality of human beings who stand in certain legal relationships with the company. But the law is very careful in setting the conditions under which the acts of those persons who stand in legal relationships with a company qualify as acts of the company itself or are otherwise binding on it. Secondly, the law distinguishes acts of the company from acts of its officers and agents that may be binding on the company but are not deemed acts of the company. Stated differently, it is not the acts of any person with a relationship to a company that are considered acts of the company and even for those whose relationship warrants their acts to be deemed acts of the company, it is not every act of theirs that the law treats as acts of the company."

After shedding considerable illumination on the categories of persons whose acts amount to acts of the company in the light of the existing legal regime that pertained to Ghana, His Lordship held that:

"Officers and agents have no general authority for their acts to be turned into acts of the company even if they are carrying out the business of the company in the

> *usual manner. Secondly, even if an act of an officer qualifies as an act of the company,* ***the liability of the company arises only in respect of civil claims and does not cover criminal liability...***"

In the instant case, what makes the accused criminally liable for issuing the cheque in issue is the fact that the law is settled that the notion of legal entity cannot be used to justify wrong or defend crime, among others. The Supreme Court held that view in ***Akoto v. Akoto [2011] 1 SCGLR 533*** of the Law Report, when it quoted with approval the views of Sanborn J in ***United States v. Milwaukee Refrigeration Transit Co, 142 Fed 247 at 255*** in the following terms:

> *"A corporation will be looked upon as a legal entity as a general rule… but when the notion of legal entity had been used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons."*

On the accused person's own showing, it was at one of the Board meetings of the company that it was decided he and one another should be the signatories to the company account. That explains why whenever the Finance Department of the company writes the company cheques, they are brought to him for endorsement by way of appending his signature to them. Without his endorsement, the company cheques would be as good as nothing. Clearly, the accused had the authority to act for the company, and this fact was suggested to PW2 whilst under cross-examination by the defence counsel. Gladly, PW2 did not dispute that fact. He confirmed it in unequivocal terms. This is why it beats my imagination when the accused claimed that he is the wrong person who has been charged and brought to this court to stand trial. Who was he expecting to be charged for an act done by him which involves some element of criminality? Was the accused expecting the accountants at the Finance Department of the company to be charged instead of him?

What offence did those accountants commit? If I should agree to any extent with the accused that some other person should be charged at all, it would be the other signatory. Even that, the other signatory could not have been charged *in lieu* of the accused, so to speak, but either in addition to him or separately from him. In my considered view, I do not find any reasonable ground advanced by the accused to warrant that he be left off the hook. He has not demonstrated convincingly to this court that at the time he issued the cheque in issue on 15 May 2012, he had reasonable ground to believe that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal course of banking business to PW1. I say so because when he was quizzed by the case prosecutor (in cross-examination) that:

> *"Q: At the time the cheque was issued and your signature on same was presented to the bank, you were satisfied that* ***all procedures had been followed and that the money would be made available or paid****?"*

he answered that:

> *"A: The Accountant who wrote the cheque knew that it will be cleared that is why he came for my signature.* ***I believed in the Accounts Department that whatever they wrote on the cheque was after their due diligence. So, I believed it would clear.****"*

Whose duty was it to conduct due diligence to be sure that there were sufficient funds in the company account and that the amount written on the face of the cheque in issue would be paid to the bearer of it? In my candid view, since it is the signature of the accused [and one other] that would give life to the cheque for it to be honoured when presented at the bank and not that of the accountant[s] at the Finance Department of the company, it is the accused who should conduct the said due diligence. Besides, how did he know that the accountant who wrote the cheque knew that it will be cleared that is

why the said accountant came for his signature? There is no evidence on record, not even a scintilla, to show that the accused, *ex abundante cautella*, even cursorily asked the said accountant who wrote the cheque when he (accountant) came for his signature whether there were sufficient funds in the company account to pay off the value of the cheque. He only assumed (or to use his own word "believed") that the Accounts Department had done that due diligence prior to bringing the cheque to him to sign. He clearly shirked his responsibility in the circumstance, and that is what has landed him in this trouble. I recall that when defence counsel was cross-examining PW1, he suggested to her that between 15 May 2012 and the time she presented the cheque at the bank on 4 June, 2012, there had been a lot of transactions that made it impossible for her to draw the cheque. The response that defence counsel eventually elicited was quite interesting, but even without considering the said response from PW1, I think that the said suggestion made to PW1 only begged the question. But for the avoidance of doubt, this how PW1 responded to the said suggestion:

> *"I know [one] can hold on a cheque for a number of months so… if I did not present the cheque within that time, [then] I would be at fault, but this one, I did not go beyond six months so the account should be able to pay me."*

I think I share in the view of PW1 in the light of the provision of section 313A(2) which I have quoted *supra.* I do not therefore intend to constipate the parties with too much diction on this suggestion made by the defence counsel. I only consider it to be a sentimental reaction to the charge laid.

Before drawing down the curtains on this case, let me refer a striking comment that the prosecuting officer made in his concluding remarks at page 22 of his written address specifically in paragraphs 65 and 66 in which he opined as follows:

"65. My lord, it is the case of the prosecution that accused person issuing a cheque in the name of the company that ends up being declared dud and the accused person failing to provide a reasonable reason and assuming responsibility to cleanse the overt false representation in the circumstance of this case can only lead to the conclusion that the accused is hiding behind the corporate shield to avoid contractual responsibility.

66. Respectfully, [I] submit that the accused person has failed to provide reasonable grounds for any reasonable mind to believe that at the time the cheque was issued there was adequate funds to pay the amount specified on the cheque."

The above quoted view of the prosecuting officer aptly sums up the instant delivery, and I cannot, but to adopt same as my own since in my considered view, it flows implacably from the totality of the evidence led at the trial, particularly when the offence charged is one of strict liability.

CONCLUSION:

Based on all the foregoing discussions, I am constrained to, and hereby, find the accused guilty of the offence charged, *id est*, "issue of false cheque" contrary to section 313A(1)(b) of Act 29. He is consequently convicted of same.

SENTENCING:

In sentencing the accused, I have taken into account the plea for mitigation of sentence ably put forth by counsel for the accused as well as the submissions put forth by the prosecuting officer. I have also taken into account the fact that the accused is a first-time

offender. It is not lost on me that the offence which the accused has been convicted of is punishable, in the case of a first offender, by a fine not exceeding ¢5 million (now redenominated as GH¢500) or twelve months imprisonment or both. However, being a first-time offender coupled with the fact that a custodial sentence will definitely not be in the interest of the complainant whose hope, desire or wish, from the records, is to get her investment sum recovered, and in the light of the concept of victimology which is concerned principally with how the criminal justice system accommodates and assists victims of crimes, and above all, in consideration of the general circumstances of this case, I am minded to, and hereby, make the following orders:

(a) The accused is sentenced to pay a fine of GH¢500 or in default, serve three months imprisonment with hard labour.

(b) The accused is also ordered to pay to the complainant, Stella Aku Seshie, the sum of GH¢40,000, being the face value of the cheque in issue, within one month from today.

(SGD) H/H FELIX DATSOMOR
(CIRCUIT COURT JUDGE)
22-11-2023

LEGAL REPRESENTATION:

ANTHONY GHATTIE, ASA APPEARS FOR PROSECUTION

DANIEL AKUTSAH, ESQUIRE, APPEARS FOR ACCUSED