IN THE COURT OF APPEAL
HOLDEN AT ENUGU

ON WEDNESDAY, THE 25TH DAY OF MARCH, 2015
BEFORE THEIR LORDSHIPS

AMIRU SANUSI (OFR)	**JUSTICE, COURT OF APPEAL**
MASSOUD ABDULRAHMAN OREDOLA	**JUSTICE, COURT OF APPEAL**
TOM SHAIBU YAKUBU	**JUSTICE, COURT OF APPEAL**

CA/E/19/2014

BETWEEN

ONYIE IFEANYI .... APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

JUDGMENT
(DELIVERED BY TOM SHAIBU YAKUBU, (JCA)

The appellant, a graduate of Sociology from the Nnamdi Azikiwe University, Awka; was alleged to have represented himself as a British businessman with the name David Gary, as a motor spare parts dealer, intending to have business partnership with one Pakawan Samneang, a woman from Thailand. The appellant was able to obtain the sum of $45,000.00 twice and another $60,000.00 from Pakawan Samneang, upon the false pretence and presentation of himself as a British businessman. He had operated through e-mail messages which he originated from his e-mail address – "Shewuga@yahoo.com" to some unsuspecting persons,

whom he had given the impression that he was into motor spare parts business. His operational base was Malaysia.

There was a petition against the appellant, to the Economic and Financial Crimes Commission (EFCC), Enugu Zonal Office which swung into action and got the appellant arrested when he visited Nigeria from Malaysia. The computer laptop of the appellant which was his operational instrument was recovered from his residence at No. 16, Co-operative Boulevard, Trans-Ekulu, Enugu on 20th April, 2012. At the Economic and Financial Crimes Commission Office, Enugu, the appellant's computer laptop was connected to a printer and from the e-mail box of the appellant, some messages were downloaded and printed. It was discovered that the said e-mail messages were the means through which the appellant defrauded Pakaman Samneang of a total sum of $150,000.00. There were other e-mail messages to some other persons by the appellant, which were printed from his e-mail box, however he did not succeed with them as he did with Pakaman Samneang.

The appellant was arraigned and prosecuted at the Federal High Court, Enugu (hereinafter to be called the court below), upon an Amended 11 Count Charge. The prosecution called two witnesses and tendered into evidence, some documentary exhibits. The appellant testified for himself in his defence. Learned counsel at the court below, filed and exchanged written addresses. In his judgment, the learned trial Judge, M. L. Shuaibu, J., (as he then was) on 28th November, 2013 convicted the appellant on all the eleven counts punishable under Section 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act Cap. A6, 2006 and sentenced him to

seven years imprisonment, on each count, but that the sentences were to run concurrently.

This appeal is against the judgment of 28th November, 2013 aforementioned. The appeal was anchored on four grounds as contained in the amended notice of appeal dated 4th April, 2014 and filed on 8th April, 2014 but deemed as properly filed and served on 21st May, 2014. For ease of reference and comprehension, the four grounds of appeal are reproduced, shorn of their particulars, to wit:

"**GROUND ONE – ERROR IN LAW**

The court below erred in law when it convicted the Appellant in the three (3) count charge of advance fee fraud solely on the extra judicial confessional statement when same was neither direct nor positive and without corroborative evidence as required by law.

GROUND TWO – ERROR IN LAW

The court below erred when it convicted the Appellant on each of the eight (8) counts of possession of scam documents when there was no proof of receipt of the scam documents by persons to whom they were directed at.

GROUND THREE – ERROR IN LAW

The learned trial judge erred in law when he remanded, tried, convicted & sentenced the appellant in an incompetent charge and which offences did not confer jurisdiction on the trial court to entertain same.

GROUND FOUR – MISDIRECTION OF LAW & FACTS

The court below misdirected itself in law and fact when it failed to properly evaluate the evidence and held that "the confessional statement of the Accused is direct and positive and same sufficiently corroborated by facts which fortified the statement."

The appellant, in prosecuting the appeal was armed with the appellant's amended brief of argument dated 27th October, 2014 and filed on 28th October, 2014, but deemed as properly filed and served on 3rd December, 2014. Three issues were distilled for determination, by the appellant as follows:-

"1. Whether the conviction and sentence of the Appellant on the basis of his extra judicial confession was validly made out?
(GROUNDS ONE & FOUR)

2. Whether the prosecution proved beyond all reasonable doubt the ingredients of offence of possession of scam documents in counts 4 – 11 of the Charge upon which the Appellant was convicted?
(GROUND TWO)

3. Whether the trial judge was right to have tried, convicted and sentenced the Appellant to a (sic) seven years imprisonment in an incompetent charge?
(GROUND THREE)

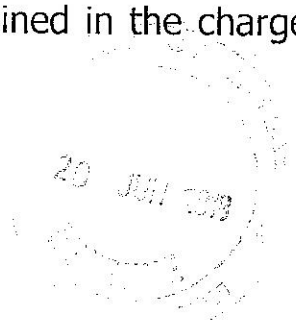
The respondent's brief of argument was dated and filed on 31st December, 2014. The respondent adopted the issues formulated by the appellant in his brief of argument. I adopt the same issues, in my consideration and determination of this appeal. I shall start from the rear, that is, issue three, first.

This was argued by appellant's learned counsel at paragraphs 3.3.1 of the appellant's amended brief of argument. He contended that the charges preferred against the appellant were unknown to law, that the prosecution in drafting the charges did not follow the provisions of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006; (hereinafter referred to as the Act, for short), secondly that counts 4-11 of the charge which alleged "possession of scam documents" though cognizable under the Act, is not an offence known to law. He placed reliance on Section 36(8) & (12) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

He contended that the offence created vide Section 6 of the Advance Fee Fraud and other Related Offences Act, is being in possession of a document containing false pretence. And that there is no punishment prescribed by the Act aforementioned, with respect to the 11 counts in the charge against the appellant. He insisted that Section 1(3) of the Act is not the punishment section for the 11 counts against the appellant. He referred to Asaka V. Nigeria Army Council (2007) All FWLR (pt. 1246) 314; Attor. Gen. Federation V. Isong (1986) 1QLRN 75; Aoko V. Fagbemi (1961) 1 All NLR 400; Federal Republic of Nigeria V. Ifegwu (2003) FWLR (pt. 167) 703.

Furthermore, it is the submission of learned appellant's counsel that whereas the phrase "false pretence" is defined under Section 20 of the Act, the phrase "Scam document" has no definition anywhere in the Act, therefore the phrase "Scam document" cannot be used interchangeably with the phrase "false pretence". Therefore, according to him, the prosecution ought to have used the specific words used by the drafters of the Act in drafting the counts against the appellant, instead of importing extraneous matters which are unknown to the Act, into the counts against the appellant. He placed reliance on Asuquo V. The State (1967) 1 All NLR 123; Ofuani V. Nigerian Navy (2007) 6 NWLR (pt. 1037) 470.

In his response, the learned counsel to the respondent, submitted that the counts framed in the Charge against the appellant was competent and that since the particulars as to the time, place and the person against whom the crime is committed are stated in the counts, the appellant had enough and sufficient notice of the allegations against him, in order for him to meet the case of the prosecution. He referred to Shehu V. The State LPELR – CA/A/205c/07 (?); Section 152(1) & (3) of the Criminal Procedure Act. And that the word "may" used in Section 151(1) of the Criminal Procedure Act, should be read as being permissive and discretionary and not mandatory. For this, he relied on Ohanaka V. Achugwo (1998) 9 NWLR (pt. 564) 37 at 66; Oko V. Igweshi (1997) 4 NWLR (pt 497) 46 at 60 (CA). Furthermore, it is his contention that the appellant was not in any way misled with respect to the counts contained in the charge against him and that although the phrase "document containing false pretence" was not employed in the counts contained in the charge against the appellant



as specified vide Section 6 of the Act, the offences with which he was charged, are cognizable under the said Section 6 of the Act. Therefore, according to him, the appellant knew the essence of the counts against him and they are offences capable of being known.

Resolution of issue three:

I think it is appropriate to reproduce the counts as contained in the amended charge against the appellant at pages 63-65 of the record of appeal. They each say:

> "**COUNT ONE**
>
> That you Onyie Ifeanyi sometime in September, 2011, at Enugu within the Judicial Division of the Federal High Court of Nigeria with intent to defraud, obtained the sum of $45,000.00 (Forty-Five Thousand United States Dollars) from one Pakawan Samneang when you represented yourself as a British business man and wanted her to partner with you in your business, which representation you knew to be false and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.
>
> **COUNT TWO**
>
> That you Onyie Ifeanyi sometime in September 2011, at Enugu within the Judicial Division of the Federal High Court of Nigeria with intent to defraud, obtained the sum of $45,000.00 (forty-five thousand United States Dollars) from one Pakawan Samneang when your represented yourself as a British business

man and wanted her to partner with you in your business, which representation you knew to be false and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT THREE

That you Onyie Ifeanyi sometime in September 2011, at Enugu within the Judicial Division of the Federal High Court of Nigeria with intent to defraud, obtained the sum of $60,000.00 (Sixty Thousand United States Dollars) from one Pakawan Samneang when you represented yourself as a British business man and wanted her to partner with you in your business, which representation you knew to be false and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT FOUR

That you Onyie Ifeanyi on or about the 20th April, 2012 at No. 16 Co-operative Boulevard, Trans Ekulu, Enugu within the Judicial Division of the Federal High Court of Nigeria with intent to defraud, had in your possession (e-mail) shewuga@yahoo.com a scam document titled "**SEND TO WOMAN**" dated September 20th 2011 which was addressed to David Gary and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related

Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT FIVE

Onyie Ifeanyi on or about the 20th April, 2012 at No. 16 Co-operative Boulevard Trans Ekulu, Enugu within the Judicial Division of the Federal High Court of Nigeria with intent to defraud, had in your possession (e-mail) shewuga@yahoo.com a scam document titled "**RE: INFOR FROM WALTER**" dated November 8th 2011 which was addressed to Ani Uchenna and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT SIX

Onyie Ifeanyi on or about the 20th April, 2012, at No. 16 Co-operative Boulevard Trans Ekulu, Enugu within the Judicial Division of the Federal High Court of Nigeria with intent to defraud, had in your possession (e-mail) shewuga@yahoo.com a scam document titled "**RE: INFO**" dated November 15th, 2011 which was addressed to David Gary and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT SEVEN

Onyie Ifeanyi on or about the 20th April, 2012, at No. 16 Boulevard, Trans Ekulu, Enugu within the Judicial Division of the Federal High court of Nigeria with intent to defraud, had in your possession (e-mail) shewuga@yahoo.com a scam document titled "**RE: INFO FROM WALTER**" dated November 8th 2011 which was addressed to Ani Uchenna and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT EIGHT

Onyie Ifeanyi on or about the 20th April, 2012 at No. 16 Co-operative Boulevard, Trans Ekulu, Enugu within the Judicial Division of the Federal High Court of Nigeria with intent to defraud, had in your possession (e-mail) shewuga@yahoo.com a scam document titled "**RE: INFO**" dated November 8th 2011 which was addressed to David Gary and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT NINE

Onyie Ifeanyi on or about the 20th April, 2012 at No. 16 Co-operative Boulevard, Trans Ekulu, Enugu within the Judicial Division of the Federal High Court of Nigeria with intent to defraud, had in your possession (e-mail) shewuga@yahoo.com

a scam document titled "**RE: INFO**" dated November 14th 2011 which was addressed to David Gary and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT TEN

Onyie Ifeanyi on or about the 20th April, 2012 at No. 16 Co-operative Boulevard, Trans Ekulu, Enugu within the Judicial Division of the Federal High court of Nigeria with intent to defraud, had in your possession (e-mail) shewuga@yahoo.com a scam document titled "**RE: INFO**" dated December 6th, 2011 which was addressed to David Gary and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT ELEVEN

Onyie Ifeanyi on or about the 20th April, 2012 at No. 16 Co-operative Boulevard, Trans Ekulu, Enugu within the Judicial Division of the Federal high Court of Nigeria with intent to defraud, had in your possession (e-mail) shewuga@yahoo.com a scam document titled "**RE: INFO**" dated November 22nd 2011 which was addressed to David Gary and thereby committed an offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act."

CERTIFIED TRUE COPY
N.M. Ugwu (Principal Registrar)
COURT OF APPEAL
Sign.....Date.....

Now, Section 6 of the Act provides, inter alia:

> "A person who is in possession of a document containing a false pretence which constitutes an offence under this Act commits an offence of an attempt to commit an offence under this Act if he knows or ought to know, having regard to the circumstances of the case, that the document contains false pretence."

The phrase "false pretence" is defined under Section 20 of the Act to the effect that it:-

> "means a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true."

Furthermore in Section 1(2) of the Act, it is provided that:

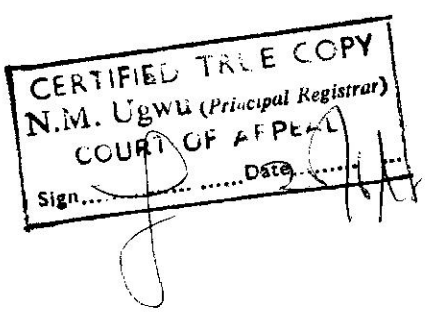
> "(2) A person who by false pretence and with intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for commits an offence under this Act."

It is a community reading of Sections 1(2); 6 and 20 of the Act, that brings to the fore the essence of the offences laid in counts 1 – 11 in the amended Charge against the appellant. The catchword in each of the section aforesaid, is the phrase – "false pretence." Thus, where a

representation is made by an accused deliberately or recklessly, in word, in writing or by conduct which representation is known to the accused, the maker thereof, to be false and he does not believe in its truth but nevertheless armed with a document which contains the false pretence and representation and uses it to induce another person to confer some benefit to himself, the offence of obtaining property by false pretence is constituted. The punishment for such an offence is clearly provided for in Section 1(3) of the Act, to wit:

> "3. A person who commits an offence under subsection (1) or (2) of this Section is liable on conviction to imprisonment for a term of not more than 7 years without the option of a fine."

I tried in vain to fathom the merit in the submission of appellant's learned counsel to the effect that all the counts 1 – 11 in the amended charge against the appellant are unknown to law. The offences are created or constituted in Sections 1(2) and 6 of the Act whilst the punishment for each of them is stipulated at Section 1(3) of the Act. Thus, the constituent elements of the offences in counts 1 – 3 of the amended charge such as making false pretences or false representations; the appellant knew that the false pretences were indeed false; they were intended to deceive/defraud another person; they were intended to be acted upon by the unsuspecting victim and they were actually acted upon by Pakaman Samneang who parted with her $150,000.00 to the appellant, were clearly present.



I am firm and certainly of the considered opinion that counts 1 – 3 of the amended charge herein, are apt. They are as clear as crystal. They are known offences and the punishment for each of them is provided for under section 1(3) of the Act.

With respect to counts 4 – 11 of the amended charge, the main grouse of the appellant's learned counsel against them is that the use of the phrase being in possession of "Scam documents" is not an offence known to Section 6 of the Act which created the offence of being in possession of "document containing false pretence." This according to him, damnifies counts 4 – 11 as they are an infringement of Section 36(12) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Section 36(12) of the aforesaid Constitution says, inter alia:

> "12. Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a law of a State, any subsidiary legislation or instrument under the provisions of a law."

Unarguably, the employment or use of the phrase being in possession of "scam documents" in the drafting of counts 4 – 11 in the amended charge is inelegant because that phrase was not used in Section 6 of the Act. However, whether or not the use of that phrase makes the counts in question, unconstitutional is another thing altogether and this shall be discussed now. Let us first see the meaning of the word "scam".

It is defined in Oxford Advanced Learner's Dictionary, 6th Edition at page 1048 to mean:-

"Clever and dishonest plan for making money."

The word document is defined under section 20 of the Act inter alia:

"document" in this Act includes letters, maps, plans, drawings, photographs and also includes any matter expressed or described upon any substance by means of letter, figures or marks or by more than one of these means, intended to be used for the purpose of recording that matter and further includes a document transmitted through fax or telex machine or any other electronic or electrical device and a computer print out."

For our purposes in the instant case, the allegation contained in counts 4 – 11 of the amended Charge is that the appellant in order to cleverly and dishonestly make money, sent out e-mail messages to some persons, making them to believe (which he knew was false) that he is a British businessman engaged in motor spare parts business and wishing them to partner with him in that business, with the intent to defraud them and to his own gainful advantage. And the e-mail messages were originated from an electronic device called a computer laptop, owned by the appellant. If a person got engaged in that sort of illegal and fraudulent activity that is, being involved in a dubious and criminal business scam, by using scam documents, intended to deceive and defraud unsuspecting victims, is said not to be involved in an offence cognizable under Section 6 of the Act, I am afraid, then no one else will ever answer to such charges.

Happily though, learned appellant's counsel conceded that the offence of being in possession of scam documents, though "not defined in any written law, albeit (is) cognizable under Section 6 of the Advance Fee Fraud and Other Related Offences Act, 2006". I am therefore of the considered opinion that since being in possession of scam documents is cognizable under Section 6 of the Act, the use of that phrase in Counts 4 – 11 of the amended Charge, does not make those counts unconstitutional and an infringement of Section 36(12) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

In Federal Republic of Nigeria V. Lord Chief Udensi Ifegwu (2003) 15 NWLR (pt. 842) 113, the respondent was charged in count 1 thereof to have "conspired to commit a felony, to wit fraudulently granting credit facilities to Dubic Industries Limited without lawful authority ...." However, the offence created under section 19(1)(c) of Decree No. 18 of 1994 upon which the respondent was arraigned, tried and convicted did not use the word "fraudulently" but says any director etc of a bank who "knowingly, recklessly, negligently, willfully or otherwise grants ...." On appeal to this court, it was held that

> "A conviction for fraudulently granting credit facilities as was passed in the court below is a violation of the provisions of Section 33(12) of the Constitution as that offence is not defined under the law on which the count was laid."

It is the above position of this court, that to my mind, informed the contention of the appellant's learned counsel that the use of the phrase being in possession of scam documents in counts 4 – 11 of the amended

Charge, damnified the said counts, hence he labeled them as being unconstitutional by virtue of Section 36(12) of the 1999 Constitution. However, on appeal to the apex court, that position was overturned. The apex court at pages 195 – 197 said,

"I think Ogbomor V. The State (supra) (1985) 1 NWLR (pt. 2) 223; is applicable to the extent only that it cited and applied the provision of Section 166 of Cap. 80, Law of the Federation (The Criminal Procedure Act) which says:

> "No error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any time of the case material unless the accused was in fact misled by such error or omission."

"I need to add that Sections 167 and 168 make further provisions in regard of how and when such error should be pointed out. They read:

> "167. Any objection to a charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later.
>
> 168. no judgment shall be stayed or reversed on the ground of any objection which if stated after the charge was read over to the accused or during the progress of the trial might have been amended by the court."

Besides, the use of the word "fraudulently" can, in my view, be accommodated under the ejusdem generis rule to stand in for the word "otherwise" as used in Section 19(1)(a) of Decree No. 18 of 1994. In

effect, ejusdem generis (or sometimes noscuitur a sociis) rule helps to confine the construction of general words within the genus of special words which they follow in a statutory provision or in a document: see Fawehinmi V. Inspector-General of Police (2002) 7 NWLR (pt. 767) 606 at 683. It means that where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified. It is said to be a question of the assumed intention of the statute: see Scales V. Pickering (1828) 4 Bing, 448 at 452 – 453; (1828) 130 ER 840 at 841 – 842. In a New Zealand case of Cooney V. Covell (1901) 21 NZLE 106 at 108, Williams, J. stated thus:

> "There is a very well known rule of construction that if a general word follows a particular and specific word of the same nature as itself, it takes its meaning from that word, and is presumed to be restricted to the same genus as that word. No doubt that rule is one which has to be followed with care; but if not to follow it leads to absurd results, then I am of opinion that it ought to be followed."

In this particular case, the assumed intention is to punish based on the mental element of an accused in granting irregular facilities etc. Not to follow the ejusdem generis rule to accept that "fraudulently" comes within that mental element of "knowingly, recklessly, negligently, willfully" used in Section 19(1)(a) is to create an absurd result if the evidence actually shows fraud. If it does not show fraud but any of the other elements, there is no reason why an amendment to the charge made at the appropriate time cannot be allowed. I am

satisfied that the respondent was not misled and that the charge as framed is not defective. As a matter of fact, the burden on the appellants somehow initially became higher on the face of the charge to prove that particular aspect of the charge beyond mere knowingly, recklessly, negligently or willfully but that the act of the respondent was fraudulent although proof of any of those other elements would ultimately suffice, in my view. The use of the word "fraudulently" in the charge does not, it would appear to me, make the offence unknown to law. All that might need to be done would be an appropriate amendment followed by compliance with due procedure. That leads me to say that what I have discussed under this issue would be relevant in an appeal proceeding from the decision of the Failed Bank Tribunal or on further appeal from the Special Appeal Tribunal if it were available. But that is not the focus in the present case as it completely misses the constitutional point in issue. What this court is concerned with is whether there had been an infraction of the relevant provisions of Section 33 of the 1979 Constitution. I can hardly see how the use of the word "fraudulently" in the charge in question could have brought that about. The elements that constituted a contravention of the respondent's fundamental right have already been discussed in this judgment and I hope the issue is reasonably clear. I think the court below erred in its view that the charge as framed contravened section 33(12) of the 1979 Constitution in that it was in respect of an offence not defined under the law."- per Uwaifo, JSC (as he then was).

And if I may add this, that the appellate court will loathe setting aside a conviction passed by a trial court, even on an offence charged under a wrong section of an existing law or under a law which has been repealed or has ceased to exist, more so where both the accused person and his counsel are not misled and no miscarriage of justice is proved to have occurred at the trial because of the defective charge. Yabugbe V. Commissioner of Police (1992) LPELR – 3505 (SC); (1992) 4 NWLR (pt. 232) 153 at 172 & 176.

In the instant case, it has not been demonstrated by the appellant that he and his counsel were misled by the use of the phrase – being in possession of scam documents in counts 4 - 11 of the amended charge. Furthermore, the appellant has not shown that the use of the phrase – being in possession of scam documents in the said counts 4 – 11 of the amended charge, led to a miscarriage of justice, at his trial.

On the above premises, I resolve issue three against the appellant.

I shall take and consider issues one and two together. It is the contention of appellant's learned counsel that the conviction and sentence of the appellant premised on his extra judicial confession was not validly made out. He referred to the finding of the learned trial judge at page 229 of the record of appeal to the effect the confessional statement of the appellant is direct and positive as it was sufficiently corroborated by the facts which fortified the confessional statements. He submitted that generally, confessional statements without more will suffice to ground a conviction in criminal trials, referring to Edamine V. The State (1996) 3 NWLR (pt. 438) 530; Ikemson V. The State (1989) 3 NWLR (pt. 110) 445.

He contended however, that where the confessional statement was retracted at the trial, the court has a duty to test the said confessional statement in order to determine its truthfulness and reliability. He placed reliance on The State V. Isah (2012) 16 NWLR (PT. 1327) 613; Kabin V. Attor. Gen Ogun State (2009) 5 NWLR (pt. 1134) 209; Haruna V. Attor. Gen. Federation (2012) 9 NWLR (pt. 1306) 419 – all to the effect that the trial court must look out for evidence of corroboration outside the confessional statements, before convicting an accused person on a retracted confessional statement.

Referring to Exhibit A series of the appellant's confessional statements, he submitted that although counts one, two and three of the amended charge mentioned the sums of $45,000; $45,000 and $60,000 as having been obtained from Pakawan Samneang, Exhibit A never mentioned the said Pakawan Samneang, but only referred to the woman. And that the prosecution ought to have called Pakawan Samneang as a witness to testify as to how she was defrauded by the appellant of the total sum of $150,000. He insisted that Exhibits C and D are not independent corroborative evidence against the appellant.

With respect to issue two, learned appellant's counsel submitted that by virtue of Section 5 of the Act, the prosecution ought to have proved that the document containing the false pretence "was received by the person to whom the false document was directed." He submitted that none of the persons listed in counts 4 – 11 of the amended charge, as being the person to whom the false documents were directed, gave evidence of the receipt of the alleged documents. Therefore, according to him, the

prosecution's failure to prove the receipt of the scam documents by the persons to whom they were directed is tantamount to a failure to prove the ingredients of the offence of being in possession of scam documents, against the appellant beyond all reasonable doubt.

Learned respondent's counsel arguing issue one, submitted that a conviction can be sustained or grounded on a confessional statement alone. He referred to the decision of the apex court in Dare Jimoh V. The State Suit No. SC.372/2011 delivered on Friday, the 14th March, 2014. He referred to page 192 of the record of appeal where the appellant acknowledged authority of Exhibit C series which contained false pretences and also Exhibit D series where one of the victims confirmed that she indeed sent the sum of $870 through Western Union to the appellant upon the receipt of the appellant's e-mail and that, that fact was confirmed by Western Union and the appellant. He therefore submitted that apart from the confessional statements in Exhibits A and B, there were Exhibits C and D which constituted some other evidence, making the confessional statements in Exhibits A and B true, hence the conviction of the appellant was properly grounded on his confessional statements.

With respect to issue two, the respondent's learned counsel submitted that Section 6 of the Act provides that a person who is in possession of a document containing false pretence which constitutes an offence under the Act commits an offence of an attempt to commit an offence under the Act and the punishment for the offence is provided for under Section 1(3) of the Act. He referred to FRN V. Amadi (2006) 1 EFCLR 14 at 19. He submitted furthermore, that Exhibit D series and the

PW2's evidence are clear as to the receipt of the scam documents originated from appellant's laptop computer, by the victims of the appellant's fraudulent e-mails and that the prosecution needed not to have called those victims as witnesses. He placed reliance on Nwankwo V. FRN (2003) 4 NWLR (pt. 809)1; FRN V. Amadi (2006) 1 EFCLR 14 at 20.

Resolution of issues one and two:

The law is well settled on a strong wicket that once a confession of guilt by an accused person is shown to have been freely and voluntarily made and the court is satisfied as to its truth, such an accused person, can be convicted on the confessional statement. Osuagwu V. The State (2013) SCNJ 33 at 36 – 57; Osetola V. The State (2012) 17 NWLR (pt. 1329) 251 at 279 (SC); Arogundade V. The State (2009) 2 SCNJ 44 at 49 – 50; Omoju V. The Federal Republic of Nigeria (2008) 2 SCNJ 197; Usman Kasa V. The State (2008) 2 SCNJ 375 at 423; Akpan V. The State (2001) 15 NWLR (pt. 737) 745.

Indeed, there is no evidence stronger against an accused person than his own admission or confession. Thus, a confessional statement by an accused person is the strongest evidence against him as the maker thereof and he can be convicted upon it and where he retracts it at the trial, it is prudent that some bit of corroborative evidence outside the confessional statement be found by the trial judge before convicting the accused person on his confessional statement. Abdullahi V. The State (2013) 5 SCNJ (pt. II) 453; Golden Dibie & Ors V. The State (2007) 3 SCNJ 160 at 171 – 172 & 183; (2007) 9 NWLR (pt. 1038) 30; Emmanuel Nwaegbonyi V. The State (1994) 5 NWLR (pt. 343) 138; Akinfe V. The

State (1988) 3 NWLR (pt. 85) 729; Aremu V. The State (1991) 7 SCNJ (pt. II) 296 at 305.

In the instant case, there is no doubt that Exhibits A and B series are the extra judicial statements made by the appellant himself and undoubtedly they are all confessional in nature. PW2's evidence at pages 207 – 208 of the record of appeal indicates that some other documents were found from the appellant's e-mail box and those that the PW2 generated. Those documents were endorsed by the appellant. They were admitted into evidence without objection by learned appellant's counsel. They were marked as Exhibit "C" Series and Exhibit "g" (sic) Series.

In his judgment at page 230 of the record of appeal, the learned trial judge found that:

> "Aside from the confessional statement, there are other corroborative facts showing the fraudulent activities of the Accused with his collaborators at Malaysia as evident in the printed out scam documents Exhibits C and D Series which were duly acknowledged and endorsed by the Accused person. Thus, the confessional statement of the Accused is direct and positive and same are sufficiently corroborated by facts which fortified the statements."

I understand the learned trial judge as saying that outside Exhibits A and B, the confessional statements of the appellant, there are other facts contained in Exhibits C and D Series, which support or corroborate the making of Exhibits A and B by the appellant. A piece of evidence is said to

be corroborative, if it strengthens and confirms another piece of evidence and makes the latter more certain.

This was judicially explained in Iko v. The State (2001) 14 NWLR (pt. 732) 221 at 240 – 241 by his Lordship, Kalgo, JSC, (as he then was) thus:

> "Corroboration in my understanding simply means "confirming or giving support" to either a person, statement of faith. What then constitute corroboration in law? In R. V. Baskerville (1916 – 17) All ER Reprint 38 at 43, Lord Reading C.J defined what evidence constitutes corroborative evidence for the purpose of statutory and common law rules when he said:-
>
> "We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within the class of offence for which corroboration is required by the statute."

For our purpose here, the requirement for corroboration is not a requirement of any statute, but a rule of practice at common law. It is indeed a rule of prudence that before a conviction is grounded on a retracted confessional statement, some bit of other evidence outside the confessional statement, be found by the trial judge, in order to ground a

conviction. I am of the considered opinion and on the same page with the learned trial judge that Exhibits C and D Series provided the additional evidence against the appellant and they clearly supported the fact that he positively and directly made the confessional statements in Exhibits A and B Series. Undeniably Exhibit C, particularly was discovered as a material fact by the PW2 against the appellant who endorsed it and so it was rightly admitted into evidence against him. See Fatilewa V. The State (2008) 4 – 5 S. C. (pt. 1) 191. I am therefore of the considered and firm opinion that the appellant was rightly convicted by the learned trial judge, on the former's confessional statement.

The ingredients of the offences laid in the amended charge against the appellant are that:

(i) The representation made by him to unsuspecting victims are false : Okoro V. Attorney General of Western Nigeria (1966) NMLR 13;

(ii) The false representation operated in the minds of the unsuspecting victims or persons from whom money was obtained/extorted by the appellant : Oshun V. Director of Public Prosecutions (DPP) (1965) NMLR 357;

(iii) The false pretence or representation was false to the knowledge of the appellant : Nwokedi V. Commissioner of Police (1977) 3 SC 35 at 39;

(iv) The false pretences were made to the victims by the appellant with the intent to defraud them : Awobutu V. The State (1976) 5 SC 49 at 80 – 81; Dennis Ede V. Federal

Republic of Nigeria (2000) 18 WRN 13 (CA), which was decided under the Advance Fee Fraud & Other Related Offences Decree No. 13 of 1995 contrary to Section 8(a) &1(a) and punishable under Section 1(3) of the said Decree.

The pieces of evidence by the PW1 and PW2 against the appellant remain unimpeached, to the effect that the false pretences of the appellant, consists of the operation of false e-mail messages to his unsuspecting victims;

- The appellant knew that the said e-mail messages were false;
- The appellant wanted the addressees or representees to believe his false e-mail messages and to act upon them.

I am satisfied that the appellant's e-mail was accessed by the PW2, who used the password "Sunshine" which was provided by the appellant. The evidence of PW2 that the "Sent" folder of the appellant's e-mail "Shewuga@yahoo.com" was accessed by PW2 and it is from the said "Sent" folder that the recipients of the appellant's e-mail messages vide Exhibit D, were known. The law is settled that the recipients of the false e-mail messages need not be called as witnesses by the prosecution. Nwankwo V. Federal Republic of Nigeria (2003) 4 NWLR (pt. 809) 1.

In sum, I am satisfied that the prosecution proved all the offences laid against the appellant in the amended charge, beyond reasonable doubt. Therefore issues one and two are resolved against the appellant.

Having resolved all the issues in the appeal against the appellant, I find the appeal as lacking in merits and it is dismissed.

The conviction and sentence passed on the appellant by the Federal High Court in Charge No FHC/EN/CR/40/12 on 28th November, 2013 is accordingly affirmed.

Indeed, the conviction and sentence imposed on the appellant is a typical demonstration of poetic justice and he rightly deserved it. For, as the Holy Script says, no one who is in haste to get rich can be innocent. The appellant, playing a "smart alec", fraudulently through false pretences, obtained/extorted money from Pakawan Samneang, a woman, and was bent on obtaining more money from other unsuspecting victims until the law stopped him. The conduct and fraudulent activities of the appellant of obtaining money by false pretences, popularly known as 419 which has now metamorphosed/graduated to cyber crime vide the internet, is symptomatic of the "get rich very quickly" syndrome, which has engulfed the Nigerian youth. It is a pity indeed that the appellant, a graduate of Sociology, would find nothing more profitable to do and earn a living righteously, than engaging in a morally depraved trade/business of obtaining money by false pretences. What a sad commentary on the impatience of the Nigerian Youths who are on the fast lane of life: of greed and "making it very fast" so to say. Of course, making it very fast to doom and gloom!

TOM SHAIBU YAKUBU
JUSTICE, COURT OF APPEAL

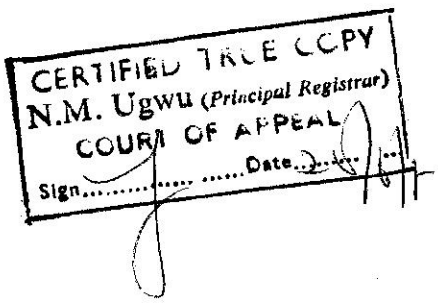
CERTIFIED TRUE COPY
N.M. Ugwu (Principal Registrar)
COURT OF APPEAL
Sign..... Date.....

20 JAN 2017

Counsel Representation:

Chief Tagbo Ike (with Mrs. Ifeoma Ezeodereke; P. Nnamani, Esq; M. O. Chukwudi, Esq.,) for Appellant.

S. M. H. Ibekwute, Esq., Principal Detective Superintendent, (Economic & Financial Crimes Commission – EFCC) for Respondent.



CA/E/19/2014
(DELIVERED BY AMIRU SANUSI, OFR)

My Lord **Tom Yakubu JCA** obliged me with a draft copy of this judgment just rendered by him now. On perusing same, I noticed that he painstakingly and ably considered all the salient points canvassed by parties' learned counsel before he arrived at the inevitable conclusion that this appeal is devoid of any merit. I am at one with his reasoning and conclusion that the appeal is meritless.

While dismissing the appeal, I also affirm the decision of the lower court and confirm the conviction and sentence imposed on the appellant.

AMIRU SANUSI, OFR
JUSTICE, COURT OF APPEAL

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N.M. Ugwu (Principal Registrar)
COURT OF APPEAL
Sign..... Date.2...

CA/E/19/2014
(MASSOUD ABDULRAHMAN OREDOLA, JCA.)

I have read in draft the lead judgment prepared and delivered by my learned brother, **Tom Shaibu Yakubu, JCA.** I agree entirely with His Lordship's reasoning and conclusion which I humbly and respectfully adopt as mine. In this regard, I also hold that the appeal lacks merit and the same is accordingly dismissed by me. The conviction and sentence by the lower court are thereby affirmed by me.

MASSOUD ABDULRAHMAN OREDOLA,
JUSTICE, COURT OF APPEAL.

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N.M. Ugwu (Principal Registrar)
COURT OF APPEAL
Sign..... Date.....

20 JUN 2019