

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ASABA JUDICIAL DIVISION
HOLDEN AT ASABA
ON FRIDAY THE 2ND DAY OF JUNE 2023
BEFORE HIS LORDSHIP,
HONOURABLE JUSTICE F.A. OLUBANJO
JUDGE

CHARGE NO.: FHC/ASB/64C/2019

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

OBIEBI OKEOGHENE (Alias HENRY KINGSLEY)..... DEFENDANT

JUDGMENT

On the 8th day of July 2019, the Economic and Financial Crimes Commission filed a one count charge dated 3rd July 2019 against the Defendant. The charge states thus:

“That you **OBIEBI OKEOGHENE (Alias HENRY KINGSLEY)** sometime between 2018 and June 2019 in Warri Delta State within the jurisdiction of this Honourable Court did fraudulently impersonates identity of one **HENRY KINGSLEY** a White Man in your **BADOO** account by sending documents to unsuspecting ladies through the internet which documents you claim emanated from the said **HENRY KINGSLEY** with the intent to obtain money from the ladies, and you thereby committed an offence contrary to section 22(2)(b)(ii) of the Cybercrime (Prohibition Prevention etc.) Act, 2015

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FEDERAL HIGH COURT ASABA DELTA STATE
NAME: *Obadike Henry*
DESIGNATION: *Registrar*
DATE: *2/1/23* SIGN: *[Signature]*

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and punishable under section 22(2)(b)(iv) of the same Act”.

Upon being arraigned, before me on the 30th day of November 2021, the Defendant pleaded not guilty to the charge, and was allowed to continue on terms of Bail granted to him on 17th October 2019.

Hearing commenced on the 8th of March 2022 and ended on the 16th of November 2022 within which period, the prosecution called one witness and closed its case while the Defendant testified for himself and closed his case.

The prosecution's first and only witness (PW1) is **BUHARI MOHAMMED**. PW1 resides at No. 1, Court Road, GRA, Benin City, Edo State. He is an operative of Economic and Financial Crime Commission (EFCC) serving in the Benin Zonal command and attached to the cybercrime section. PW1 is a member of team B which is headed by detective **Abubakar Musa**, and other members include himself, and detective **Adeboye Adewunmi**. He investigates economic and financial crimes. He knows the Defendant. On the 21st of June 2019, EFCC Benin Zonal Command received an intelligence report on activities of some internet fraudsters operating around Udu community, Warri, Delta State. Upon receipt of the intelligence, a team of operatives was detailed to carry out surveillance on the address. In the early hours of 22nd June 2019, the residence of



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internet fraudsters was raided at Udu Community Delta State. In the process, the Defendant was arrested along with an I-phone 6, and taken to EFCC Benin Zonal command for interview and statement taking. At Benin Zonal command of EFCC, the Defendant was assigned to cybercrime section I team B for interview and investigation. The team leader, detective Abubakar Musa and PW1 interviewed the Defendant. After the interview, Defendant was asked if he could write what he had told them on EFCC statement sheet, to which he answered in the affirmative. Statement sheet was brought out. PW1 wrote cautionary words on it, read and explained these to the Defendant which he indicated that he understood. PW1 signed and dated the cautionary words. Thereafter, Defendant wrote his own statement. Analysis was done on Defendant's phone where scam documents were discovered. The scam documents were printed in Defendant's presence and he endorsed his signature on each page. PW1 printed out a certificate of compliance in accordance with **Section 84 of the Evidence Act**. Defendant was served with Bail conditions. The Defendant made and endorsed two statements. PW1's team leader, **Abubakar Musa** witnessed one of the Statements while **PW1** witnessed the other one. PW1 witnessed the first statement and his team leader witnessed the second statement.

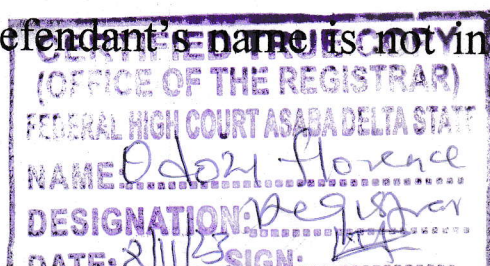
The Prosecution tendered an I-phone 6, printed documents, and certificate of compliance in evidence. The Defence objected to the



admissibility of these documents and phone. Defence Counsel argued that the phone does not belong to the Defendant. The Court however admitted them in evidence on the ground of relevancy and reserved consideration of the weight to be attached to those Exhibits till the stage of final judgment. The I-phone 6 was marked as **Exhibit P1**; the printout of 28 pages from the I-phone 6 was marked as **Exhibit P2** and the certificate of compliance marked as **Exhibit P3**. The Defendant's extra judicial statements dated 22nd June 2019 and 27th June 2019 were tendered and admitted in evidence in the absence of any objection from the defence and marked as **Exhibits P4 and P5** respectively.

While being cross examined by the Defendant's counsel, PW1 testified that he was amongst the officers who went for the raid, but could not remember the exact number of boys they saw in the house because they arrested quite a number of them, and that the Defendant was not sleeping in the room when the house was raided. He testified that the Defendant wasn't holding the phone; the phone was found in the room where the Defendant was arrested. Insisted that the phone belongs to the Defendant. The Defendant was not alone in the room and there were many other boys inside the room.

PW1 testified that **Exhibit P2** (print out) was printed from **Exhibit P1** (the phone), and apart from the writing in blue ink, the Defendant's name is not in **Exhibit P2**. That after **Exhibit P2** was

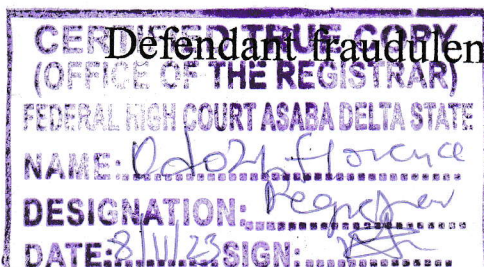


printed, the Defendant wrote and signed on it. After the documents were printed from the phone, Defendant was asked whether the documents belong to him and when he answered in the affirmative he was asked to endorse on **Exhibit P2**. PW1 testified that nobody made a complaint against the Defendant but EFCC received an intelligence report on fraudulent activities, and that the intelligence report is in the case file. PW1 testified that he does not know **Henry Kingsley** and Henry Kingsley did not make a statement to the EFCC. PW1 has an email address which is not different from his name. PW1 testified that he didn't tell the Defendant that he will release him if he admits to the crime. That he didn't present a plea bargain agreement to the Defendant. When shown a plea bargain agreement, PW1 testified that he doesn't know anything about it. That he is an investigator and he forwards his report to the legal department.

It is important to state that a plea bargain agreement was later tendered in evidence by the Defendant but was rejected and marked as such because it was not signed nor was it dated.

PW1 testified that he got the Defendant's statement of account. That nobody's money was traced to Defendant's account, that no amount of money was traced from **Henry Kingsley** to the Defendant's account. That Defendant didn't obtain money from Henry Kingsley. That nobody complained to the PW1 that the

Defendant fraudulently obtained money from him or her.



PW1 was not re-examined and the Prosecution closed its case.

The Defendant opened his case on the 16th of November 2022. He is a male, adult, Christian, affirmed, spoke English and was cautioned on **Section 206 Evidence Act 2011**. **Obiebi Okeoghene** lives at 4, Ogbiku close, Warri, Delta State. He is a University graduate who works in his father's industry as a manager.

The Defendant testified that in the early hours of 22nd of June 2019, at about 5am to 6am, he was abruptly and violently woken up from sleep by 2 to 3 young men in his room at the time. He wasn't alone in the room. There was someone else sleeping in the room with him. At that time, there was prevalent news of armed robbery and other crimes. He thought it was armed robbers or burglars who broke into the accommodation. According to the Defendant, the men were asking for his Iphone, car, and laptop. He told them, under physical assault, that he does not have any of these items in his possession. He also told them that he was on a visit to the occupant of the house who was a friend or acquaintance he knew through someone at the time, one **Okoro Timi**. He told them his only possession was his Nokia torch light phone which he was charging in the sitting room and he pointed them to a gaming console, that these are the only items he brought to that house. He was physically bundled outside. Three (3) canisters of pepper spray and tear gas were thrown into the compound. When he was brought outside, he observed that the men

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were wearing red vests bearing the acronym "EFCC". He was handcuffed and forcefully pushed inside a white bus. While in the bus, he asked who the men were. He knew they were EFCC agents but he also saw some policemen with them. He requested to call his parents but they said he couldn't do so until they arrive at their destination. There were other people inside the vehicle. They were taken to EFCC Benin office where he was classified as a "yahoo boy" or fraudster. Their photos were taken and they were sent to different offices for interrogation and analysis.

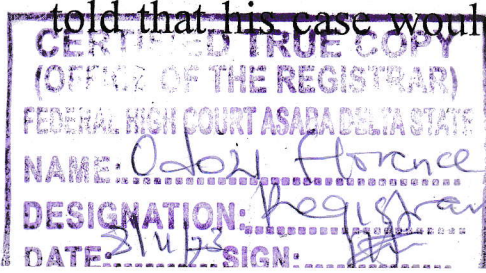
The Defendant testified that he is not Henry Kingsley. That he didn't fraudulently impersonate Henry Kingsley, and he is not the owner of the Iphone 6 (**Exhibit P1**). When he was shown Exhibit P2 he testified that after being detained in the EFCC holding cell for a few days, he was taken to the office and he saw these documents, which he was told were printed from his phone. He denied being the maker of the documents. That it is impossible to print anything from his torch light phone. Insisted that he does not have a Badoo account, and he does not use a Badoo account to disturb ladies; that he is not an internet fraudster. That he wants the court to dismiss the charge for lacking in merit.

While being cross examined by Counsel for the prosecution, the Defendant testified that he did not have any encounter with any law enforcement agent before his arrest. That he is not a fraudster so he



doesn't know why he was arrested. He was not informed of the reason for his arrest, and the EFCC officers kept asking him for phone, car and laptop. It was when he was in their vehicle that he was told why he was arrested and that he would be taken to EFCC zonal office in Benin where everything will be explained to him, Defendant testified that he was not in possession of any phone because one cannot be in possession of phone while sleeping. He admitted making a statement to the EFCC but alleged that he was not cautioned and was told that he would be allowed to go home after writing the statement. When he was arrested and put inside the bus, the first request he made was to call his parents, but he didn't want to call his father who was receiving treatment and is still being hospitalized, because he wouldn't want to cause stress to his father. He testified that he wrote a statement on 22nd June 2021, and that the investigating officers asked him questions and he wrote down answers according to what he remembered.

He stated that the investigating officer asked for his bio data; if he is a fraudster and he said no. He was however told to impute the fact that he is a fraudster and that the case would be easier for him. That the investigator asked if he has Badoo account and he said he joined Facebook in 2012. He gave the investigating officer 2012 as date for his first Facebook and first email account opening. He was told that his case would be easier if he agrees that he is a fraudster.



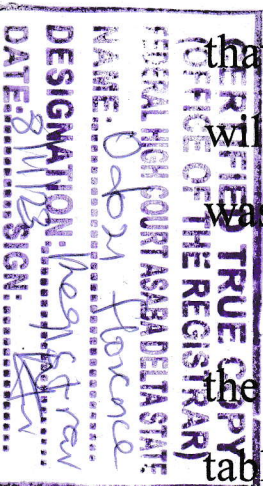

He therefore succumbed to pressure and wrote in his statement that he is a fraudster when he opened his Facebook account.

Defendant testified that he agreed to write certain things in the statement according to the questions asked. He was asked by the investigating officer if he has ever defrauded anyone or sent a scam message to anybody and he replied that in 2012, Badoo was the means by which youths communicated. He denied owning a badoo account and said he has no record of opening a Badoo account.

When shown **Exhibit P4** and told to read from line 1 to the end of the page, the Defendant testified that his first email and Badoo account were opened in 2012. That the EFCC agents convinced him that if he admits using it (the email and Badoo account) for fraud, he will go home that day. Defendant testified that he has a phone but was not arrested in possession of any phone.

When shown the documents printed from the phone (Exhibit P2) the Defendant testified that those documents were laid on the office table before he was brought in from the cell and he was told to sign and endorse on them.

Defendant testified that he disclosed that duke.optinus account was opened in 2012 but he made up the **Henry Kingsley** email because EFCC Officers asked if he was a yahoo boy. That both emails are old email addresses. Said he was told to input both of them into the statement. EFCC Officers said that he was using **Henry**

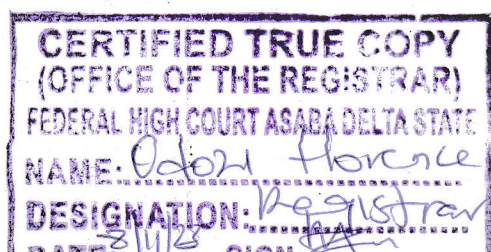


Kingsley to defraud people. His name is not Henry Kingsley. He testified that he made an additional statement. That he was following a line of questioning by the investigating officer but the information there is within his knowledge.

The Defendant was not re-examined, and Defence Counsel closed his case on 16th November 2022.

On the 1st of December 2022, the Defendant filed his Final Written Address which is dated 1/12/2022. Therein, a lone issue is formulated for the Court's determination which is: **whether the prosecution has proved his case beyond reasonable doubt against the defendant to warrant his conviction on the alleged offence?**

In the Written Address, learned counsel to the Defendant contended that the prosecution has failed to prove its case beyond reasonable doubt against the Defendant to warrant his conviction because it failed to prove the essential elements of the alleged offence beyond reasonable doubt. He relied on **STATE v. ISIAKU (2013) LPELR-20521(SC) & AWOSIKA v. STATE (2010) 9 NWLR (Pt. 1198) 49 at 72**. It was argued that the prosecution has failed to establish the ingredients of the offence of fraudulent impersonation for which the Defendant stands charged. Reliance was placed on the case of **SUINNER v. FRN (2011) LPELR-53404 (PP. 12-14, paras. D-B)** on the elements of the said offence.



G.O Otirikpen Esq argued that the totality of the prosecution's case pertains to the Iphone 6, statement of the Defendant and the documents allegedly printed from the Iphone 6. That the prosecution could however not link the Defendant with that phone and could not state how many boys were in the house when the raid was conducted even though PW1 was among the team that made the arrest.

It was argued, relying on the case of **ABDULRAHMAN v. ODUNEYE (2009) 17 NWLR (Pt. 1170) 220**, that what the prosecution has done in this case is to infer that an offence of fraudulent impersonation was committed by the Defendant but was unable to prove it. He argued that there are contradictions in the prosecution's case regarding who is the owner of the Iphone 6, and that the doubt should be resolved in favour of the Defendant. He relied on **EZE IBEH vs. THE STATE (2001) 2 ACLR Pg. 376 at 378, ratio 2**. It was argued that the BADOO account mentioned in **Exhibits P4 and P5** is alien to the **Cybercrime Act, 2005** and the prosecution was unable to prove to the court what a BADOO account is. That no actual complainant came to the court to give evidence as the person the defendant fraudulently impersonated. That the entire prosecution's case is vague because the prosecution failed to link the Defendant to the charge. Posits therefore that the prosecution has failed woefully to prove its case beyond reasonable doubt and urged the court to discharge and acquit the Defendant.

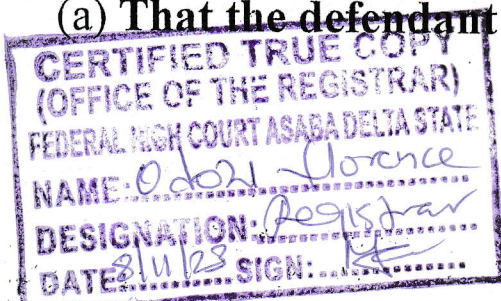


Francis A. Jirbo Esq., Learned prosecuting Counsel, filed his Final Written Address on the 15th of December 2022. It is dated 12th December 2022. A lone issue is formulated for the court's determination therein, thus: **whether the prosecution has proved its case beyond reasonable doubt against the Defendant to warrant his conviction on the alleged offence?**

Learned prosecuting counsel concedes that the burden of proof in criminal cases is proof beyond reasonable doubt, and that once all the essential elements of the offence has been proved or established by the prosecution, the charge is proved beyond reasonable doubt. Relied on **ADA v. STATE (2008) 13 NWLR (Pt. 1103) 149 at 166, paras. F-H & 167, paras. D-E & FABIAN NWATURUOCHA vs. THE STATE (2011) 6 NWLR (Pt. 1242) 170 at 175, & NASIRU v. THE STATE (1999) 2 NWLR (Pt. 589) 87 & NIGERIA AIR FORCE v. OBIOSA (2003) 4 NWLR (Pt. 810) 233 at 275**. It was submitted that this case may be proved either by direct evidence, circumstantial evidence or by Defendant's confessional statement.

Prosecuting Counsel relied on **Section 22(2)(b)(ii) of the Cybercrimes (Prohibition Prevention etc) Act, 2015**, and submitted that the elements of fraudulent impersonation under the Cybercrime Act are that:

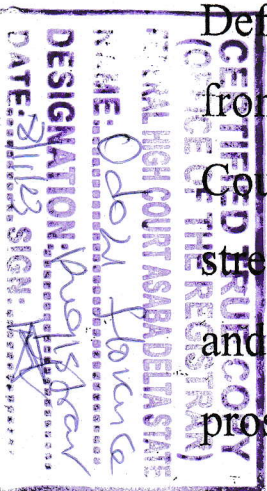
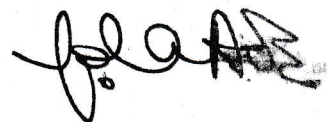
(a) That the defendant held out himself to be someone he is not



- (b) That the person so impersonated by the defendant may be living or dead
- (c) That the impersonation or misrepresentation of identity was with a view to obtaining property or an interest in the property.

Mr. Jirbo argued that the prosecution called PW1 in proof of the elements of the charge and that there are different pictures of Henry Kingsley who the Defendant pretended to be and as such impersonating the identity of Henry Kingsley to demand for the sum of 185 USD from an unsuspecting woman abroad. That the Defendant confirmed the printout by endorsing that they were printed from his Iphone 6, signed and dated all of them. He referred the Court to the Statements of the Defendant and argued that on the strength of the confessional statements of the Defendant, the printout and the phone from which the documents were printed, that the prosecution has established the ingredients of the offence charged.

It is also his submission that the defendant's confessional statements and the print out were admitted in evidence without an objection together with the Iphone 6. That a free and voluntary confession by a person if direct and positive duly made and satisfactorily proved is sufficient to ground a conviction. Relied on **EMEKA v. THE STATE (2001) 14 NWLR (Pt. 734) 666;** **NWACHUKWU v. THE STATE (2002) 12 NWLR (Pt. 782)**



EFFIONG v. THE STATE (1998) 5 SC (Pt. II). That once a confession is not objected to and is supported by other evidence, either documentary or oral, the Court can conveniently convict on it. He urged the Court to convict the Defendant on the strength of the confession and other evidence before the Court.

Learned Prosecutor further submitted that the prosecution has proved its case against the Defendant substantially on his confession as well as on exhibits on record. That a Defendant who gives evidence in his defence contrary to his Statement obtained during investigation and admitted in evidence in the trial (without objection) cannot and should not be believed. That his evidence at the trial is an afterthought. That address of counsel no matter how brilliant cannot substitute for evidence. He concluded that the prosecution has proved its case beyond all reasonable doubt and urged the Court to convict the Defendant. On 13th February 2023, **M.O. Okoro Esq** for the Defendant, and **K.Y. Bello Esq** who appeared with **A. Ahmed Esq** for the Prosecution adopted their final written addresses. This Judgment could not delivered within the 90 day period stipulated by the 1999 Constitution due to the fact that there were many pre-election cases to be heard and disposed of and Judex travelled outside the Division to attend a conference and workshop.

No injustice is however occasioned to the parties, as I have the benefit of my handwritten notes as well as the Record of proceedings



prepared by the Court Recorder; as such, I have a competent grasp of the evidence adduced by the parties.

I have carefully considered the entire evidence presented before this Court. I have also considered the Final Written Addresses (issues formulated therein and arguments) of the parties.

The facts of this case reveal that the defendant was arrested by the EFCC on the basis of an intelligence report after conducting surveillance upon the belief that Defendant committed the offences of fraudulent impersonation and fraud.

It is trite that in criminal cases the prosecution has the burden to prove its case beyond reasonable doubt. The prosecution is expected to establish or prove all the elements of the offence for which the Defendant is charged. Where the prosecution fails to establish or prove any or all the elements of the offence, the charge must be resolved in favour of the Defendant. Similarly, where a doubt arises in the case of the prosecution, it must be resolved in favour of the Defendant. See **AMAH v. STATE(2023) 3 NWLR (Pt. 1871) 301 at 323, paras. C-D& 324 - 325**, wherein the Supreme Court held thus:

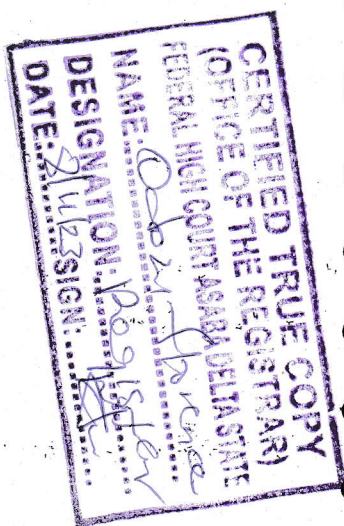
“In all criminal proceedings, the prosecution has a duty to prove the guilt of the accused person standing trial beyond reasonable doubt. Before a trial court can safely convict an accused, it must be convinced that the prosecution has



satisfied this duty by establishing all the ingredients set by law for such offence. Where a reasonable doubt exists, such doubt must be resolved in favour of the accused. See *State v. Usman* (2021) LPELR-55202 (SC) Pp. 27-28, paras. D-E; (2021) 16 NWLR (Pt.1801) 73, see also *Yongo v. C.O.P.*(1992) 8 NWLR (Pt.257) 36; *Idi v. State* (2017) LPELR-42587(SC), (2018) 4 NWLR (Pt. 1610) 359; *State v. Gwangwan* (2015)LPELR-24837 (SC), (2015) 13 NWLR (Pt.1477) 600....

I must quickly add here that the duty on the prosecution to prove the guilt of an accused person beyond reasonable doubt does not amount to prove beyond all shadow of doubt. In *Jua v. State* (2010) LPELR-1637 (SC) PP. 20-21, paras. E-A, (2010) 4 NWLR(Pt. 1184) 217, this court per Niki Tobi, JSC (of blessed memory) stated the law as follows:

“While our adjectival law places on the prosecution the duty to prove a criminal case beyond all reasonable doubt, the prosecution has not the duty to prove the case beyond all shadow of doubt. Shadows of doubt could be reflected in the case of the prosecution but that cannot in law stop or inhibit conviction. The court can convict an accused person the moment the prosecution proves its case beyond reasonable doubt. And here, the

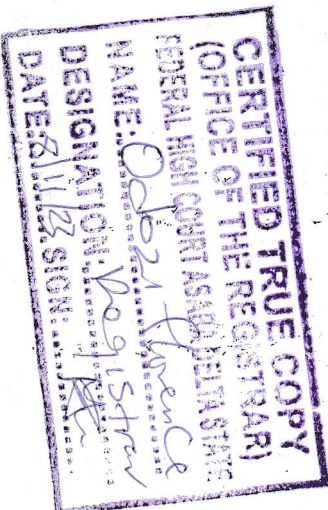
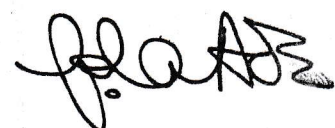


proof beyond all shadow of doubt do not mean the same thing. The latter places a heavier burden on the prosecution, a burden which is not known to our adjectival law.”

See also *Dobie & ors. v. State* (2007) LPELR-941 (SC), (2007) 9NWLR (Pt.1038) 30.

If at the conclusion of the whole case a reasonable doubt is created in the mind of the trial Judge from the evidence presented by the prosecution against the accused person, then the accused person is entitled to an acquittal, as such doubt must be resolved in his favour. See the case of *Ekpe v. State* (1994) LPELR-1088 (SC) PP. 9-9, paras. B-D; (1994) 9 NWLR (Pt.368) 263, where this court stated the law as follows:

“In considering the standard of proof required in criminal prosecution, the golden rule enunciated by the House of Lords in *Woolmington v. The Director of Public Prosecutions* (1935) AC 462; (1935) 25Criminal Appeal Reports 72, should always be the guide. If at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether the offence



was committed by him, the prosecution has not made out the case and the prisoner is entitled to an acquittal.”

See also *Oteki v. Attorney General Bendel* (1986) 2 NWLR (Pt.24)648 at 657, paras. C-D”.

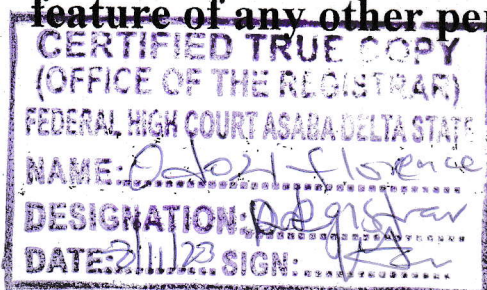
In the instant case, the charge against the defendant is for fraudulent impersonation contrary to Section 22(2)(b)(ii) of the Cybercrime (Prohibition Prevention etc) Act, 2015.

It is pertinent to reproduce the entire Section 22 of the Cybercrimes (prohibition, prevention etc) Act 2015. It states as follows:

(22).- (1) A person who is engaged in the services of any financial institution and, as a result of his special knowledge, commits identity theft of its employer, staff, service providers and consultants with the intent to defraud commits an offence and is liable on conviction to imprisonment for a term of 7 years or a fine of N5,000,000.00 or both.

(2) A person who-

(a) fraudulent or dishonestly makes use of the electronic signature, password or any other unique identification feature of any other person; or



(b) fraudulently impersonates another entity or person, living or dead, with intent to-

- (i) gain advantage for himself or another person,**
- (ii) obtain any property or an interest in any property,**
- (iii) cause disadvantage to the entity or person being impersonated or another person, or**
- (iv) avoid arrest or prosecution or to obstruct, pervert or defeat the course of justice, commits an offence and is liable on conviction to imprisonment for a term of 5 years or a fine of not more than N7,000,000.00 or both.**

From the above, the elements or ingredients of the offence which the prosecution is expected by law to establish are as follows:

- (a) there is an entity or person that is living or dead;
- (b) the Defendant impersonated such entity or person that is either living or dead;
- (c) the impersonation was done fraudulently;
- (d) the impersonation was done with the intent to (i) gain advantage for Defendant or another person; or (ii) to obtain any property or an interest in any property; or (iii) to cause disadvantage to the entity or person being impersonated or another person; or (iv) to avoid arrest or prosecution or obstruct , prevent or defeat the course of justice.

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The prosecution called only one witness who testified that an Iphone 6 was found in the room where Defendant and others were arrested but it was not found on the person of or with the Defendant. That the Defendant was not the only person in that room. He testified that the defendant impersonated Henry Kingsley but he does not know Henry Kingsley. No one lodged a complaint with the EFCC that the defendant has defrauded them or attempted to do so, fraudulent funds were not traced to the defendant's account. See testimony of PW1 of 20th September 2022 under cross-examination:

The prosecution placed heavy reliance on the Defendant's extra judicial statements which were tendered in evidence without objection from the Defence (i.e **Exhibits P4** and **P5**). I have carefully read and examined them. Therein Defendant stated that he used two email accounts to defraud namely Duke.optimus@yahoo.com and henrykingsley122@yahoo.com, and that he has a badoo account which he uses to defraud. Prosecution also placed heavy reliance on **Exhibit P2** which is 28 pages of documents purportedly printed from the Iphone 6 which was recovered in the room where the Defendant was arrested in company of other boys/young men. I have carefully examined **Exhibit P2**. Therein, absolutely no mention is made of any one named Henry Kingsley. Foreign names stated therein are Charles Adams and David Robins with email address as davidrobins403@gmail.com. There is nothing in **Exhibit P2** to show

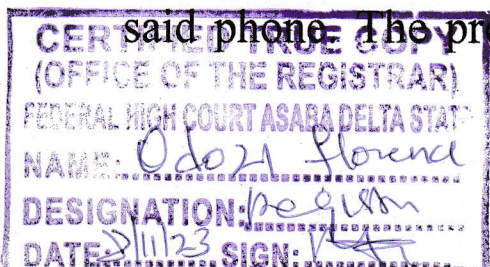
CELESTINE
(OFFICE OF THE REGISTRAR)
FEDERAL HIGH COURT ASABA DELTA STATE
NAME: Odori Florence
DESIGNATION: Registrar
DATE: 3/4/22 SIGN: [Signature]

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that the documents were printed from any of the email addresses stated in **Exhibits P4** and **P5**, or through a Badoo account. Therefore, despite the contents of **Exhibits P4** and **P5**, there is no link or nexus between **Exhibits P4 & P5** and **Exhibit P2**. The confessions in **Exhibits P4** and **P5** lack proof or corroboration and there is no relationship between **Exhibits P4** and **P5** on one hand and **Exhibit P2** on the other hand. The sole prosecution witness has stated that he does not know Henry Kingsley. There is nothing to suggest that Henry Kingsley is a person living or dead. The prosecution has thus failed to prove that any impersonation of Henry Kingsley was done by the Defendant fraudulently or with intent to commit fraud. The prosecution has failed to prove that the Defendant intended to fraudulently obtain the property or interest in the property of any person who is alive or dead or in particular of Henry Kingsley. Fraud is a serious criminal allegation which must be proved strictly by the prosecution. The prosecution has failed to do this.

It is trite that for the prosecution to succeed in proving the elements of an offence, it must prove the *mens rea* and *actus reus*. The charge before this court is personal to the Defendant and does not include conspiracy. There is no conclusive evidence before this Court that the phone belongs to the Defendant (it was not found in his possession) or that the printed documents were printed from that

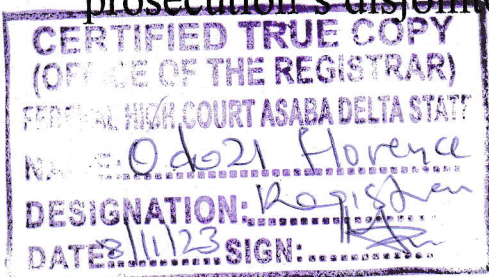
said phone. The prosecution failed to link the phone directly to the



Defendant and did not demonstrate in court that the documents printed were actually found inside the phone. Thus a doubt arises in the case of the prosecution regarding ownership of the phone which must be resolved in favour of the Defendant. See **EZE IBEH V. THE STATE** (Supra).

The prosecution witness also testified that the arrest was made on the bases of intelligence report which is in the case file. I have searched through the court's file but cannot find any intelligence report therein neither was any such Intelligence Report tendered in evidence. The prosecution has also failed to prove that the Defendant actually received any sum of money into his bank accounts which are proceeds of fraud. PW1 conclusively stated this during cross examination. The Prosecution has failed to provide evidence of Defendants intention to commit the offence and of actually committing the offence.

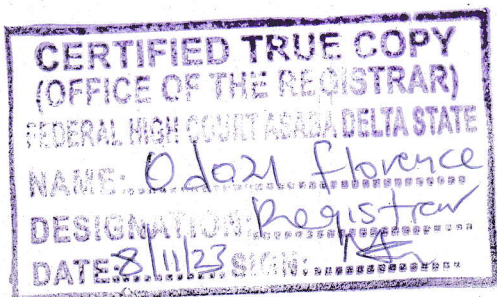
The testimony of the Defendant during his defence therefore appears credible. That is, that he was woken up from sleep and bundled into the EFCC vehicle in the early hours of 22nd June 2019, where he was told that he was arrested for being a "Yahoo boy." That he did not commit the offence for which he stands charged. The credibility of Defendant's testimony is highlighted by the prosecution's disjointed and unconnected evidence.



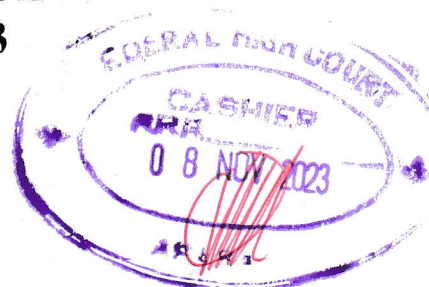
The prosecution has failed to prove that the Defendant fraudulently impersonated any one who is living or dead, in particular that there is anyone living or dead named Henry Kingsley and that the Defendant impersonated him. The prosecution has also failed to prove that the Defendant gained any advantage for himself or another person, or that he obtained any property or interest in any property by impersonating anyone living or dead. I so hold.

The prosecution has therefore failed to prove any of the elements/ingredients of the offence charged beyond reasonable doubt. The issues submitted for determination are resolved in favour of the Defendant against the prosecution. The Defendant is found NOT GUILTY and is discharged and acquitted on the charge dated and filed 3rd July 2019.

That is the Judgment of this Honourable Court.



F. A. OLUBANJO
PRESIDING JUDGE
2ND JUNE, 2023



Appearances:

Defendant is present

No Legal representation for Prosecution.

M.O. Okoro Esq for Defendant.

MAL-3209-3245-4225