

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE BENIN DIVISION
HOLDEN AT COURT 2, IKPOBA HILL, BENIN
ON THE 30TH DAY OF MAY, 2019

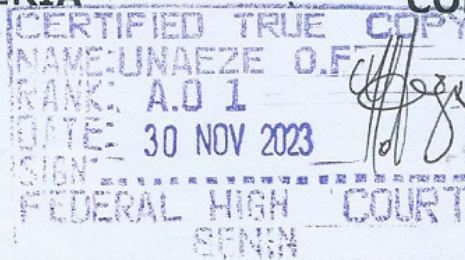
BEFORE HIS LORDSHIP HONOURABLE JUSTICE A. A. DEMI-AJAYI - JUDGE

CHARGE NO: FHC/B/26C/2019

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

V



OMOJOWO SAMUEL (ALIAS ADEMOLA

DEFENDANT

FAITH, ADEMOLA JOY & ADEMOLA BLESSING)

JUDGEMENT



Upon an amended one Count charge of *in* offence of with intent to defraud fraudulently impersonating yourself as Ademola Blessing a marketing officer with the Nigeria Customs Service and that you studied at Plateau State University, Bokokos in order to gain financial advantage for yourself thereby committed an offence contrary to **Section 22(2) of the Cybercrimes (Prohibition Prevention etc) Act 2015** and punishable under **Section 22(1)** of the same Act the Defendant was brought before this Honourable Court.

The charge was read to him in English language and he pleaded guilty to the said one count charge.

The prosecution was able to put forward the facts of this matter through PW1 Sani Zahradeen an operative of the EFCC Economic and Financial Crimes Commission attached to the Benin Zonal Office of the EFCC in Edo State. He told the Court that he got to know the Defendant sometime in November 2018 when a petition was brought to the Commission Benin Office for a case of impersonation and obtaining money under false

pretence against the Defendant. PW1 said that the petition was thereafter assigned to the advance fee fraud section for investigation and report.

He continued that upon a study of the petition a call was put across to the complainant to report to the office and adopt his petition.

He said that the petition and subsequent statement of the complainant which he alleged that on the 8th day of November 2018 he came across an on line advertisement placed on a Facebook page of Ademola Blessing who is a custom officer for auctioning of cars at Badagry Custom office Lagos State.

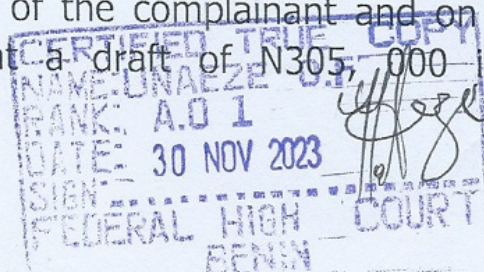
He said that the complainant further alleged that he put a call to one of the numbers placed on the said advert for inquiries and thereafter another number was sent to him for communication via whatsapp after discussing his choice of car, the Defendant sent an account number to the complainant to pay the sum of N705, 000 thereafter he made the payment a payment document was sent to the complainant titled "Nigeria customs service request form and custom duty".

PW1 told the Court that in the course of their investigation a letter of investigation activity was written to First Bank Plc and GT bank Guarantee Trust Bank and also to the Nigeria Customs service to authenticate the document furnished by the Defendant to the Complainant.

PW1 testified further that on 21st of December 2018 a response was received from First Bank Plc and the team was able to analyse the financial statement where the complainant paid money into and the team was able to establish that the complainant paid a total sum of N705, 000 only.

He said that thereafter the Defendant was arrested on the 6th of February 2019 and brought to their office on the 7th of February 2019. He said that the Defendant's statement was taken under caution and was read to him. PW1 said that it was one of the team members who helped the Defendant to record his statement due to his inability to write in English language.

PW1 said that on 8th of February 2019 the Defendant made additional statement under word of caution and authorized him to record the statement when he made a confessional statement as to the petition against him. He testified further that on the 21st of February 2018 the Defendant brought a draft of N300, 000 in favour of the complainant and on the 7th of March 2019 the Defendant brought a draft of N305, 000 in favour of the



complainant. In addition PW1 said that the Defendant brought another draft on the 1st of March 2019 in the sum of N100, 000 in favour of the complainant.

PW1 tendered the following documents in exhibit:

Exhibit A: Petition against the Defendant

Exhibits B1-7: 7 Statements of the Defendant

Exhibits C1-5: Print outs from Ademola Blessing's profile

Exhibits D1-9: Customs duty forms sent by the Defendant

Exhibits E1-9: Bank Account Documents of the Defendant from GT Bank and First Bank together with BVN document.

Exhibit F1-3: Evidence that the Defendant paid back to the victim the money

Exhibit G1-4: Evidence of Complainant receiving the money back on bond.

The Court inquired from the Defendant if he heard and understood the facts put forward by the prosecution and whether the facts were true upon which he answered in the affirmative and the learned prosecutor urged the Court to convict the Defendant as charged.

The Court has studied this charge very carefully together with all the exhibits tendered before it and has listened very attentively to the testimony of the only witness for the Prosecution PW1 which was an undisputed evidence.

In the Defendant's statement in Exhibit B1-7 the Defendant admitted all the allegations put forward against him.

There is only one question for determination which is whether the Prosecution has proved the offence of with intent to defraud fraudulently impersonating yourself as Ademola Blessing a marketing officer with the Nigeria Customs Service and that you studied at Plateau State University, Bokokos in order to gain financial advantage for yourself thereby committed an offence contrary to **Section 22(2) of the Cybercrimes (Prohibition Prevention etc) Act 2015** and punishable under **Section 22(1)** of the same Act the Defendant was brought before this Honourable Court.



In criminal matters such as this it is the duty of the prosecution to prove the offence charged beyond reasonable doubt as was stated in the cases of **MUSA V THE STATE 2009 7 MJSC PT 1 P52, AKINBISADE V THE STATE 2006 12 MJSC 80, IGIRI V STATE 2012 6-7 MJSC PT III 107**

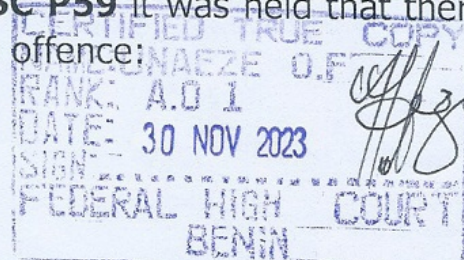
In addition in the case of **ADAMU V THE STATE 2014 4 MJSC PT II 141** it was held that the onus is on the prosecution to prove the criminal case beyond reasonable doubt and also in the case of **OKOH V THE STATE 2014 3-4 MJSC 104** it was held that it is trite that the burden of proof in criminal matters is static and always rests on the prosecution.

Even where the Defendant has pleaded guilty as in the instant case the prosecution must still prove the case beyond reasonable doubt.

In the case of **NAVY V LAMBERT 2007 11 MJSC 3** it was held that the guilt of an accused can be proved through confessional statement and in the instant case the Defendant has pleaded guilty and has gone on to admit his statement in exhibit A1 & 2 documents tendered in exhibit B1-13 and the oral testimony of the prosecution witness.

In **OKESHETU V THE STATE 2016 6-7 MJSC P59** it was held that there are 3 methods of proving the ingredients of an offence:

1. By Direct evidence
2. By Circumstantial evidence
3. By Confessional statement



In the case of **OMOJU V FRN 2008 11 MJSC 159** it was held that "confession is the strongest evidence against an accused person as it determines his guilt in most cases and where no objection is raised to the admissibility of a confessional statement and it is admitted in evidence it is for the trial judge to determine at the end of hearing whether the contents of the statement are true as part of his determination of the truth or otherwise of the whole case as presented by the prosecution."

In the instant case there is no objection by the defence to the admissibility of the Defendant's statement in exhibit B1-7 which are confessional statements. The other exhibits in which are documents printed from the Defendant's profile, bank account documents and the oral evidence of the prosecution witness compliment the said confessional statement and point to the direction that the confessional statement is true and was taken freely and voluntarily. In the case of **AROGUNDARE V THE STATE 2009 2**

MJSC PT 1 P3 it was stated that "a free and voluntary confession which is direct and positive and properly proved is sufficient to sustain a conviction.

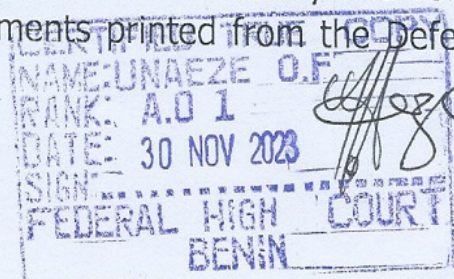
However, in the case of **IDRIS RABIU V THE STATE 2005 NCC 578** it was stated that the Court must warn itself of the danger of convicting the Defendant solely on his plea of guilty. In that case under reference **IDRIS V RABIU SUPRA** the Supreme Court decision of **NWAEBONYI V THE STATE 1994 5NWLR 138** was followed where Guide lines to be considered in such a situation are prescribed as follows:

1. Is there anything outside the Confession which shows that it may be true?
2. Is it corroborated in any way?
3. Are the relevant statements of facts made in it most likely true as far as they can be tested?
4. Did the accused have the opportunity of committing the offence?
5. Is the confession possible?
6. Is the alleged confession consistent with other facts which have been ascertained and established?

It was held further that there must be distinctly admitted facts other than the accused's plea of guilty before the Court can convict such an accused. The accused must affirm all the facts put before the Court before conviction. In this case the answer to all the questions from the Supreme Courts' guide lines stated above is in the affirmative and the Defendant was able to affirm to the Honourable Court that he indeed did all what the Prosecution witness PW1 stated that he did in his evidence in Chief and the Defendant also admitted committing the offence and that the statement in exhibit A1-2 are his which he made freely and voluntarily.

On the other hand in the case of **OKESHETU V THE STATE 2016 6-7 MJSC 61** it was held that there is no evidence stronger than a person's own admission or confession and this was supported by a plethora of cases. It was also said in that case that a free and voluntary confessional statement of an accused person alone is sufficient to sustain a conviction where such voluntary confession of guilt is proved to be direct and positive and the Court is satisfied of its truth.

In view of this the Court is satisfied that the said statement in exhibit B1-7 are the statement of the Defendant which were made freely and voluntarily by him and exhibits C1-5 are the documents printed from the Defendant's profile.



The offence the Defendant is charged of under **Section 22 (2) (b) of the Cybercrime (Prohibition Prevention etc) Act 2015** provides as follows: Any person who fraudulently makes use of the electronic signature, password or any other unique identification feature of any other person; or
(b) Obtains any property or an interest in any property.

Such person is liable is liable on conviction to 5 years imprisonment or N7 Million or both.

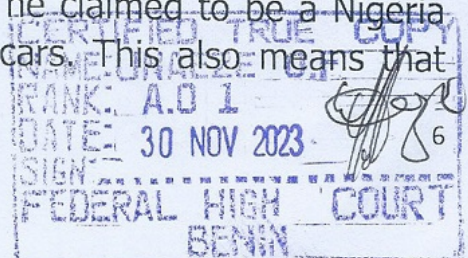
The question then is whether the prosecution has proven beyond reason doubt the offence of to **Section 22 (2) (b) (ii) of the Cybercrime (Prohibition Prevention etc) Act 2015**

In the instant case the evidence of the prosecution was undisputed and uncontroverted by the Defence who apart from the plea of guilty of the Defendant admitted all the allegations before the Court and the Court has a duty to act on such undisputed evidence as per the case of **INEGBEDION V SELE OJEMEN 2013 1 MJSC PT 150 & ARABAMBI V ABI LTD 2006 3 MJSC 61** where it was held that the Court has the duty to act on uncontroverted and un-contradicted evidence in coming to a conclusion in a matter.

In the instant case the prosecution evidence showed and the defence admitted that there was a person deceived by the Defendant who delivered money to the Defendant through his various bank accounts. In addition the uncontroverted and un-contradicted evidence of the prosecution witness showed that the said ^{person} who was deceived was actually induced by the Defendant's on line advertisement that he had cars to auction when he really did not have any cars to auction in order for the complainant to part with the sum of N705, 000 which was his property.

The evidence is clear that the said complainant acted upon the on line advertisement which was the inducement of the Defendant by transferring the sum of money into his account as shown in all the bundle of exhibit E1-9 the bank statements which the Defendant has admitted are his.

Finally, it is evident that the Defendant acted dishonestly in his on line advertisement on his Facebook profile when he dealt with unsuspecting members of the public by using a fake identity in the name of Ademola Blessing which obviously was not his name and he claimed to be a Nigeria Customs service personnel auctioning the said cars. This also means that



the Defendant portrayed himself as being authorised by the Nigeria Customs Service to auction those ^{cars} and induced the complainant to part with the sum of N705, 000 which he succeeded in doing when the complainant paid the money to his account.

In view of this the Honourable Court finds and holds that the prosecution has indeed proved beyond reasonable doubts the charge of with intent to defraud fraudulently impersonating yourself as Ademola Blessing a marketing officer with the Nigeria Customs Service and that you studied at Plateau State University, Bokokos in order to gain financial advantage for yourself thereby committed an offence contrary to **Section 22(2) of the Cybercrimes (Prohibition Prevention etc) Act 2015** and punishable under **Section 22(1)** of the same Act against the Defendant.

The Defendant is hereby found guilty as charged he therefore stands convicted.

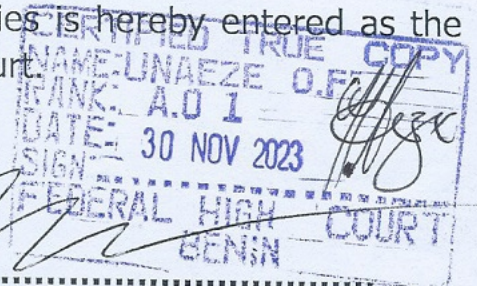
The Defendant has already admitted the charge and all the evidence adduced against him and has entered into a plea bargain agreement dated 11th of April 2019 between himself and the prosecution.

The Court finds that the Defendant was able to plead guilty timeously and also cooperated very quickly with the prosecution in entering into the said plea bargain agreement thereby not wasting the precious time and resources of the Honourable Court and tax payers.

The Court finds the said plea bargain agreement to be reasonable and just and hereby adopts the said plea bargain agreement dated 11th of April 2019 as the sentence of this Defendant/convict in this criminal case.

The plea bargain agreement between the parties is hereby entered as the sentence and judgement of this Honourable Court.

Defendant Present
F. O. Dabang for Pro
w/ KU Udus.
Mrs I. E. Onazowanlan
for Def.
Jmt Head
30/5/19



A. A. DEMI-AJAYI
JUDGE
30/5/2019

