

IN THE HIGH COURT OF JUSTICE: EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION; HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE E.F. IKPONMWEN-JUDGE

CHARGE NO. B/EFCC/1/2013

BETWEEN:

TUESDAY 19, APRIL, 2016

FEDERAL REPUBLIC OF NIGERIA ...

COMPLAINANT

AND

OMOIKE EMMANUEL ...

ACCUSED PERSON

J U D G E M E N T

By an amended information filed on 6/6/14 the accused was charged for offences in a fifteen count charge which this court in a ruling on a no case submission delivered on 15/1/16 discharged the accused person in counts 2, 4, 6, 8, 14 and 15 of the amended information. The accused entered upon his defence in counts 1, 3, 5, 7, 9, 10, 11, 12 and 13. The counts are as follows:-

STATEMENT OF OFFENCE – 1ST COUNT

Possession of document containing false pretence contrary to sections 6, 8, and 1(3) of the Advance Fee Fraud and other Fraud related Offences Act, No. 14 of 2006.

PARTICULARS OF OFFENCE

Omoike Emmanuel on or about the 29th day of May 2007 at Benin within the Benin Judicial Division with intent to defraud had in your possession a document containing false pretence to wit:- an e- mail dated May 29th 2007 captioned “FWD” CONGRATULATIONS YOUR E-MAIL HAS EMERGED AS ONE OF THE LUCKY WINNER” purporting the said e-mail to have been written by one Mrs. J. Benson Dr. Samuel Bent, Public relations officers, British Embassy (Lottery Coordinator).

STATEMENT OF OFFENCE 3RD COUNT

Possession of document containing false pretence contrary to sections 6, 8 and 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act No. 14 of 2006.

PARTICULARS OF OFFENCES

Omoike Emmanuel on or about the 31st day of March 2011 at Benin within the Benin Judicial Division with intent to defraud had in your possession a document containing false pretence to wit: An e-mail dated 31st March, 2011 captioned “Reply: Mrs. Elifrannic foundation @ english. t w” purporting the said e-mail to have been written by one Mrs. Eli. E. Frank whose private contract is Mrs. Eli Frank Foundation @ English . t w.

STATEMENT OF OFFENCE 5TH COUNT

Possession of document containing false pretence contrary to sections 6, 8 and 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act No. 14 of 2006.

PARTICULARS OF OFFENCE

Omoike Emmanuel on or about the 2nd day of March, 2011 at Benin within the Benin Judicial Division with intent to defraud had in your possession a document containing false pretence to wit: an email dated 2nd April 2011 captioned "God Bless You, (Read and get back to me) Purporting the said email to have been written by one Eli Frank.

STATEMENT OF OFFENCE – 7TH COUNT

Possession of document containing false pretence contrary to sections 6, 8 and 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act No. 14 of 2006.

PARTICULARS OF OFFENCE

Omoike Emmanuel on or about the 14th day of September, 2012 at Benin within the Benin Judicial Division with intent to defraud had in your possession a document containing false pretence to wit: an e-mail dated 14th September, 2012

captioned "Will Certificate" purporting the said will to have been issued by the ministry of Justice; Singapore.

STATEMENT OF OFFENCE – 9TH COUNT

Possession of document containing false pretence contrary to sections 6, 8 and 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act No. 14 of 2006.

PARTICULARS OF OFFENCE

Omoike Emmanuel on or about the 17th day of October 2012 at Benin within the Benin Judicial Division with intent to defraud had in your possession a document containing false pretence to wit: a document dated 17th October 2012 headed and captioned "Inland Revenue" Purporting the said document to have been issued by British Inland Revenue Lanchare House 7ON Wingoon Close Grand Street, London, United Kingdom.

STATEMENT OF OFFENCE – 10TH COUNT

Possession of document containing false pretence contrary to sections 6, 8 and 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act No. 14 of 2006.

PARTICULARS OF OFFENCE

Omoike Emmanuel on or about the 14th day of September 2012 at Benin within the Benin Judicial Division with intent to defraud had in your possession a document containing false pretence to wit: an email headed and captioned “dating things” Purporting the said document to have emanated from one Hollings miller.

STATEMENT OF OFFENCE – 11TH COUNT

Possession of document containing false pretence contrary to sections 6, 8 and 1(3) of the Advance Fee Fraud and other Fraud Related Act No. 14 of 2006.

PARTICULARS OF OFFENCE

Omoike Emmanuel on or about the 14th day of September 2012 at Benin within the Benin Judicial Division with intent to defraud had in your possession a document containing false pretence to wit: an email captioned “letters fnt” purporting the said email to have been written by one Mrs. Ellen .M. More and Mrs. Eli .E. Frank “ a devoted servant of God.”

STATEMENT OF OFFENCE – 12TH COUNT

Possession of document containing false pretence contrary to sections 6, 8, and 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act No. 14 of 2006.

PARTICULARS OF OFFENCE

Omoike Emmanuel on or about the 14th day of September 2012 at Benin within the Benin Judicial Division with intent to defraud had in your possession a document containing false pretence to wit: an email containing the picture of a sick white woman purporting same to be your picture which you knew to be false.

STATEMENT OF OFFENCE – 13TH COUNT

Possession of document containing false pretence and contrary to sections 6, 8 and 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act No. 14 of 2006.

PARTICULARS OF OFFENCE

Omoike Emmanuel on or about the 14th day of September 2012 at Benin within the Benin Judicial Division with intent to defraud had in your possession a document containing false pretence to wit: an email dated 10th September 2006 headed and captioned “Deposit Certificate”

Purporting the said certificate to have been issued by the Royal Box of Scotland in favour of one Mrs. Ellen .M. More.

The prosecution opened its case on 18th July 2013 calling four witnesses while the Accused testified for himself. The summary of their respective evidence is reproduced below.

PW1 Solomon Imolega an Assistant Superintendent of Police attached to the Advanced Fee Fraud section of the Economic and Financial Crimes Commission testified on 18/7/13 that the Commission received a petition from Sean Zadiq, through an email containing some attachments (Exhibits A, B, C1 – C50 involving scams that were being sent by the accused person. On analyzing the documents they gathered information relating to the accused person on which basis they visited Benin City on 24/9/12 on surveillance to verify the information. On 17/1/13 the accused person was arrested. A search was conducted on his premises and his HP Laptop and International Passport were recovered, he was then taken to the State C.I.D Benin City where he volunteered a statement to Mr. Danladi Yusuf a member of his team. On 18/1/13 the accused person and exhibits were taken to the E.F.C.C, in Lagos. On 21/1/13, the accused was taken to the head of Cyber Crime Unit Mr. Abdulkarim Chukkol who analyzed the accused person's computer in PW1's presence. Some documents were printed out of the accused person's computer in his presence and that of PW1. The accused person acknowledged each of the documents and thereafter made a statement. PW1 tendered Exhibits D, E, F and G1 – G73.

Under cross-examination by Mr. Afolabi PW1 testified that during his investigation, he did not travel outside the country and did not take statement

from Mr. Sean Zadiq. He agreed that Exhibit A did not come from Zadiq, he wrote and signed Exhibit A. He has never met Mr. Zadiq before. Exhibit F was last used on 20/1/13 when it was analyzed.

The Laptop had been in the possession of the accused. He cannot tell how long the laptop had been in use. He did not travel to Singapore. He is Computer Literate but he is not an expert. He further testified that nobody has made statement to him that Exhibits C1 – C41 were sent to him. The documents are mere scam. He did not make any statement. He is the head of the team. He did not write a report as a team leader in this case.

PW2 Danladi Yusuf an Assistant Detective Inspector attached to the Economic and Financial Crime Commission testified on 18/7/13 that on 30/6/2011 the Commission received Exhibit A, B, C1 – C50 which were assigned to his team for investigation. During the investigation they found some addresses relating to the accused person and others. They did a surveillance on the addresses and some were genuine while others were not along the line they discovered the address of the accused person in Exhibit C50. They embarked on a surveillance after which they came to Benin on 16/1/13 and effected the accused persons arrest. On 17/11/13 his residence was searched in his presence and recovered exhibits E and F and the accused person was taken to State C.I.D Benin where he

volunteered a statement. The next day, the accused person was taken to E.F.C.C Office in Lagos. Exhibit F was analyzed in his presence. Some scam documents were printed out from the Laptop in the accused person's presence which he signed. He was not present at the time the documents were printed out. PW2 tendered Exhibit H.

Under cross-examination by Mr. Afolabi PW2 testified that the person who sent the petition is Sean Zadiq. The petition is the basis for the arrest of the accused. Sean Zadiq is based in the U.S.A. and he did not take statement from him. During his investigation he did not travel outside the Country.

PW3 Pascal Ihejiako (an inspector attached to Economic and Financial Crimes Commission in the Advance Fee Fraud section) testified on 21/2/14 that on 29/6/11, a case of internet fraud was assigned to his section for investigation. The petition was written by one Sean Zadiq a special agent to the United States Department of Justice.

A team led by Supol Imolega left Lagos for Benin City to investigate the matter. The accused person was arrested and Exhibits E and F were recovered from his premises. The accused person and the exhibits were taken to E.F.C.C. Office in Lagos for further investigation. Exhibit F was taken to the Cyber Crime Unit of the Commission for analysis by Mr. Abdulkareem Chukkol. Several scam

documents were printed from the laptop in the presence of the accused person after which the accused person along with the seam documents were handed over to PW3 for Police interview. After the interview the accused person volunteered exhibit J.

Under cross examination by Mr. Afolabi PW3 testified that Zadiq is a special agent in the United States of America. He did not travel to the U.S.A. throughout the investigation and he has not met Zadiq physically. He is not a computer expert and nobody came to their office to complain but they acted on information in the correspondence. They did not verify the authenticity of the documents i.e. G1 – G73. He did not confirm from any bank in Nigeria if the accused received monies at anytime from overseas. Apart from taking accused statement they wrote letter and received replies to some of the letters but he cannot remember if they have the letters.

PW4 Abdulkarim Chukkol testified on 6/6/14 that in 2011 the Economic and Financial Crimes Commission received a complaint from Sean Zadiq a staff of the National Aeronautic and Space Administration/Agency. In the petition, he alleged that some fraudsters have broken into the Email accounts of some NASA staff and using same for Advanced Fee Fraud Scams. Following the petition were some attachments showing the accused person and some others in the act. Based on

this information they commenced their investigation which led to the arrest of the accused person in Benin City by PW1 and his team. A search warrant was executed in the house of the accused and Exhibits E and F were recovered. The accused was brought to E.F.C.C. Lagos office where he was interviewed. Exhibit F was opened in his presence and scam documents were printed out from it. The documents printed out contained false pretence with intent to defraud. The email address captured in the petition and found in the accused person's computer is "emma expensive 2002 @ Yahoo.Com" loan 17 ... @ Yahoo. Com." After the documents were printed out they were endorsed by the accused person. Analysis of the printed documents showed that the accused is into dating and romance scams, inheritance scam, loan scam and lottery scam which confirmed the allegation of the petitioner. Having analyzed the documents the accused person was further interviewed. Some of the documents printed out were found to be fictitious. Sean Zadiq works in the computer crimes section of NASA and the E.F.C.C. has worked with him in a couple of cases. PW4 has seen him a couple of times and has visited him at NASA. They also belong to a group called Digital Crimes Consortium which meets yearly on online crimes across the globe. After the first email from Sean Zadiq, he (Sean Zadiq) sent another email to the Commission in February 2012 giving more information about the case. He

identified all the exhibits and threw more light on them explaining how they relate to the accused person's nefarious acts.

Under cross examination by Mr. Afolabi PW4 testified that from Exhibit C5 – C76 (sic) the name and photograph of the accused person are not in the exhibits. He is conversant with the use of computers. He does not know when the laptop was purchased. He does not know for how long not know it has been in use, it is the accused person only that has such information. When he travelled abroad he did not take any statements from any of the victims or from Sean Zadiq. Exhibits C1 – G (sic) are the original documents printed out of Exhibit F which the accused person acknowledged. The petition was received via an email which was printed out. The victims did not complain to the Commission directly, the complaint came from a U.S.A Government Agency.

On 15/2/16, the accused person Emmanuel Ehizogie Omoike testified that on 17/1/2013 he was arrested and taken to the State C.I.D where he was interviewed by PW1. His house was also searched and Exhibit F was recovered. He testified that his email address is emmynice 3 @ Yahoo.Com, he also gave him his "Password". He has never travelled to America but he has travelled to South Africa to see his cousin Kenneth Egoro. He sees Exhibit C1 – C50, G1 – G73 but he only indentified Exhibit G 25 which is his personal picture from face book. The

other documents are not from his laptop. He also indentified Exhibits C8, C10, C11, C12, C13, C14 and C15. He was forced to sign the documents at the EFCC office Ikoyi, Lagos State and before he came to the E.F.C.C Office the E.F.C.C. official had printed some documents. He does not know their origin.

They did not open the laptop in his presence. In Court they did not open the laptop in his presence. After his arrest and before he was charged to court they did not give him his laptop it was in their custody. At the E.F.C.C. office he was asked to produce his account number which he did. Exhibit C4 is his first bank statement. He uses Exhibit F to edit pictures with photo shop. He indentified Exhibit J and state that he was forced to make it before he was granted bail. He indentified Exhibits C25, C26 – 29 and denies any connection with them as they were not in his computer. At the State C.I.D Benin and E.F.C.C. Lagos he was beaten and maltreated. His mother was maltreated in his premises when the E.F.C.C Officials came to arrest him.

Under cross – examination by Mr. Fanyanju the accused person testified that before he was arrested, he had never met any of the officers. He had never had any business with E.F.C.C. He has never worked with Yahoo or Microsoft company neither has he travelled to the United Kingdom. He indentified Exhibits

G22, G25, H and J, he testified that he was forced into signing and making the statements before he was granted bail.

At the close of evidence both counsel addressed court on 7/3/16. E.O. Afolabi Esq. of counsel to the accused person submitted that the prosecution has failed to prove its case beyond reasonable doubt as required by law citing the case of *Adisa V The State* (1991) 1 NWLR (Pt. 168) 490 at 510.

He posited that all the documents tendered by the prosecution are computer generated and for the court to properly admit them they must meet the conditions in section 84 of the Evidence Act 2011 relying on the cases of *Lawson V Afani Construction Company* (2002) 2 NWLR (Pt. 752) 585 at 614; *Kubor V Dickson* (2013) 4 NWLR (Pt.1325) 534 at 577 – 578. The prosecution fulfilled the conditions laid down in Section 84 of the Evidence Act 2011 in tendering Exhibits A and B but failed to do same for the other exhibits. The court cannot speculate See *Adisa's* case (*supra*) at page 500.

Learned Counsel submitted that the Supreme Court pronounced on section 84 of the Evidence Act 2011 in the cases of *Omisore V Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 295 and *APGA V Ohakim* (2009) 4 NWLR (Pt. 1130) 116 at 165. He maintained that even if the documents are admissible, the prosecution has still failed to prove their case beyond reasonable doubt. In count 3, the

accused person in his statement Exhibit H and testimony gave his email address as “emma nice @ Yahoo.Com” yet he was not cross-examined on it whereas in court 3 of the charge linked to Exhibit C25 the email on the document is “emma expensive 2002”. The question then is who has the email, “emma expensive 2002”. The prosecution never linked the accused with the email “emma expensive 2002” as the evidence is at variance with the charge. The same for counts 1 and 5 in that the email for Exhibits C19 and C26 bears “emma expensive 2002”. In count 7, where reference is made Exhibit C45 there is no email in the document. This document was dumped on the court without any explanation. See *Omisore V Aregbesola* (supra) at page 279 – 280. In count 9 linked to Exhibit G1, the name of the accused person is not stated therein neither is his email stated.

Mr. Afolabi submitted that count 13 referred to a picture of a sick woman purporting same to be his picture referred to in Exhibit G 26. The picture is not that of the accused person neither is his email stated there. The prosecution in a bid to prove their case tendered confessional statements of the accused. He submitted that before the court can act on the statements it must use the six tests for whether a statement is confessional citing the case of *Adewoye Aliu V The State* (2015) All FWLR (Pt. 782) 1706 at 1743. He submitted that under cross

examination PW3 stated that he did not verify the authenticity of G1 – G73. PW1 also stated that they did not know how long the laptop has been in use. The laptop was never opened in open court to demonstrate how the documents were got/retrieved. In court 10, Exhibits C7 – C14 referred to therein, the name of the accused person and his email address is not stated in any of the documents, so also in court 11 Exhibit C25 referred to therein with “emma expensive 2002.” In court 13 which referred to Exhibit C26 bearing the email “emma expensive 2002” was not extracted from the accused person. He submitted that in view of the above, there are two conflicting facts and one supports the innocence of the accused relying on the case of *Ifejirika V The State* (1999) 3 NWLR (Pt.593) 59 at 79.

In conclusion, Mr. Afolabi urged the court to discharge and acquit the accused person in all the counts.

Ayokunle Fayanju Esq. of counsel to the prosecution submitted that the prosecution brought the charge under sections 6 and 8 (b) of the Advanced Fee Fraud and other Related Offences Act 2006. There are four elements that constitute the offence of false pretence viz:-

- 1.) There must be a document

- 2.) The document must contain false pretence
- 3.) The document must have been found in the possession of the accused.
- 4.) The accused person must know that the document contains false pretences. See Harrison Odiawa V F.R.N. (2008) All FWLR (Pt.473) 436.

Learned Counsel submitted that all the documents in the 9 counts of the amended information are documents containing false pretences. The accused person admitted and attested to each of documents as documents printed from his laptop in his presence contrary to the argument that they were printed out from his email. There is a distinction between documents printed out of an email and that printed from ordinary computer. Exhibit C25 was one of the documents sent to EFCC by the Department of Justice which they got from the computer of the accused person. The accused person was in constructive and actual possession of the documents. In Exhibit C25 there is no attestation or identification on it by the accused person because it is a document which was accessed from the U.S.A as given in evidence by PW4 as one of the samples of the documents the accused person was using to scam the members of staff of NASA. PW4 cited Exhibit C25 as an inheritance scam. The document was in the constructive possession of the accused person. So also Exhibit C26 referred to in count 5. PW4 explained the documents as an FBI trained analyst.

Mr. Fayanju submitted on count 7, that it is a document in the actual possession of the accused. It was printed from the computer of the accused person in his presence. Exhibit G1 was printed from the computer of the accused person in his presence not internet. There is a name on the document and the accused claimed to be the person. It is a document that lies about itself.

On count 10 referring to Exhibit G4, learned counsel submitted that it is a document containing false pretences and asking for money. The accused acknowledged that the document was printed out of his computer in his presence. Count 11 referred to Exhibit G22 which PW4's evidence stated to be letters format in which accused person said there is an estate worth 2, 142, 728 dollars. This corresponds with the documents sent from the U.S.A. in Exhibits C25, C26 and G22.

Count 12 refers to Exhibit G26 a picture of a sick white woman; Count 13 referred to Exhibit G58, the same figure of 2, 142, 728 dollars reflects in Exhibits C25 and C26. The document contains false pretences printed from the computer of the accused person. The accused person made statements to this effect in Exhibits H and J wherein he alluded to these documents agreeing that he was using to scam people to make money. The documents were tendered with no

objection. See the case of *Sule V The State* (2009) 1 NWLR (Pt. 1169) 33 at 60. He submitted that the case has been proved beyond reasonable doubt.

Mr. Fayanju submitted on the effect of section 84 of the Evidence Act 2011 that section 84(4) of the Act relates to computer generated evidence i.e. like documents printed out from an email, or from a P.O.S. or A.T.M. machine, statements of account in a bank i.e. with records over time, which is distinguishable from a document printed out from a mere computer that is not connected to the internet. The case of the prosecution is not that the documents were found in the email of the accused but rather the documents were deposited in the accused laptop and anytime he wanted to use it, he connects it to the internet. The documents printed out from the laptop of the accused person which he attested to are primary documents. See section 86 Evidence Act 2011. PW1 testified that the certificate of identification Exhibit A was in respect of all the documents Exhibits B, C1 – G73 printed out from EFCC email trail. This bringing those exhibits under the provisions of section 84(4) of the Evidence Act 2011. This takes the foundation of the argument of Mr. Afolabi.

Learned Counsel maintained that the mere possession of the documents is the offence. The documents were found in the possession of the accused person

citing the unreported case of FRN V Hope Aroke Segun ID/03C/2013 delivered on 20/1/16 by Hon. Justice L.A. Okunnu.

In conclusion, Mr. Fayanju urged the court to hold that the prosecution has proved its case beyond reasonable doubt.

I have carefully considered the evidence and legal submissions of both learned counsel. The first issue to be considered is whether Exhibits B, C1 – C50 and G1 – G73 were properly admitted as evidence under section 84 of the Evidence Act 2011.

Section 84 of the Evidence Act 2011 deals with the admissibility of statements in documents produced by computers. Subsection 2 sets out the conditions that are to be satisfied in relation to the statement and computer in question. By subsection 4 for such a statement to be given/admitted in evidence a certificate of authentication is produced and/or with a witness giving oral evidence of the requirements stated in paragraphs a – c of the above subsection.

Documents printed from a computer/laptop are generally referred to as computer print out. All the prosecution witnesses testified that some documents were printed out of the accused person's laptop (Exhibit F) these documents were admitted in evidence and marked Exhibit G1 – G73. These documents can be termed computer print out which brings them under the provision of section 84

of the Evidence Act 2011. For such documents to be admissible in evidence under the aforementioned section there has to be a certificate of authentication accompanying them. I have looked at Exhibit G1 – G73 and observed that there is no certificate of authentication on them. Also Exhibits G1 – G73 were not among the documents printed out of the EFCC email trail authenticated by Exhibit A and so need a separate authentication to be admissible in evidence.

In his book “A Guide to Admissibility of Electronic Evidence” Hon. Justice Alaba Omolaye – Ajileye citing the case of Kubor & Anor V Dickson & Anor (2014) 4 NWLR (Pt. 1345) 534 stated that Kubor’s case has set a standard reference of compliance for admissibility of computer generated evidence under the Evidence Act 2011. It is mandatory to fulfill all the conditions in section 84. It also seems clear, from the decision that fulfillment of the conditions is cumulative. Also the conditions stated in section 84 of the Evidence Act 2011 must be proved by oral evidence. Electronic evidence generally must be authenticated or identified before it may be admitted.

From the above, it is obvious that the requisite condition as stated in section 84 of the Evidence Act 2011 for the admissibility of Exhibit G1 – G73 are lacking. It is my respectful view that the court would not attached any weight to the said Exhibits G1 – G73.

The fulfillment of the conditions in section 84 of the Evidence Act 2011 translates to the fact that the following must be proved by credible evidence: a.) relevance, (b) authentication or identification of the email, c.) integrity of the email, d.) reliability of the computer that produced it and (e) production of certificate of authentication.

In the instant case Exhibit A is the certificate of authentication accompanying Exhibits B and C1 – C50 printed out of the Economic and Financial Crimes Commission Email trail. Under section 84 of the Evidence Act 2011 Exhibits B and C1 – C50 are properly admitted in evidence because the prosecution has complied with the provisions of section 84 of the Evidence Act 2011 via exhibit A. It is my view that under the Evidence Act there is no distinction between documents printed out of an email and one printed out of a computer not connected to the internet. See Page 120 of the book “A Guide To Admissibility of Electronic Evidence” by Omolaye – Ajileye (J). I also fail to see the distinction as contended by the prosecuting counsel. For all intents and purposes documents printed out of an email and one printed out of a computer not connected to the internet are one and the same i.e. computer generated document and are subject to section 84 of the Evidence Act 2011.

Accordingly, Exhibits G1 – G73 are not admissible for the determination of this case. It is not contested that the accused person was arrested in Benin on 17/1/13 and during a search in his house his HP Laptop Exhibit F and international passport Exhibit E were taken. It was one Sean Zadiq who set up the investigation of the accused person. Exhibits C1 – C50 are documents attached to the email sent to the EFCC by Sean Zadiq which are similar to those printed out from the laptop of the accused person in his presence and he signed them. The evidence of PW4 was quite explicit and according to him the documents printed out from the accused person's laptop contained false pretence with intent to defraud. According to him the email address captured in the petition and found in accused person's computer is 'emma expensive 2002 @ Yahoo. Com". Other email address used by the accused person include "emmanice @ Yahoo.Com, "Loan 17 @ Yahoo.Com." The accused person did not deny his ownership of the laptop Exhibit F that was recovered during the search conducted in his house. He agreed his email address is emmynice O3 @ Yahoo. Com and gave his password to the investigators. He identified only Exhibits C8, C10, C11, C12, C13, C14 and C15. Exhibit C4 is his statement from First Bank.

I am satisfied that Exhibit B contains a report from an agent, Zadiq Sean from the USA reporting to the EFCC the activities of a gang of fraudsters or some

persons sending scam messages. Among the persons listed is Omiike Emmanuel the accused person. Exhibit D is the search warrant executed in the house of the accused person. The accused person made a statement on 17/1/13 Exhibit H, which is confessional in nature as he admitted that he does "Yahoo business". He gave email addresses and passwords. He made an additional statement Exhibit J stating that on 21/1/13 his laptop was opened in his presence and some documents retrieved.

This leads me to the consideration of the said Exhibits H and J in view of the retraction of same by the accused person. Confession is defined in section 28 of the Evidence Act 2011 as "an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.

Section 29 provides for when the confession is relevant and admissible. Before the trial court can rely upon a confession to convict an accused person the statement must be proved to be both voluntary and true. See Criminal Evidence in Nigeria by Jide Bodede at page 114. Only voluntary confessions are relevant and admissible and all the conditions stated in section 29 of the Act must exist before the trial court can invoke the prohibition and render the confession in admissible. The law as can be gleaned from the cases is that a voluntary confession is true if it is consistent with the other circumstances of the case. The

confession must be consistent with the evidence of the complainant. There are six tests used by a court to determine the truth of a confession as laid down in the locus classicus, *RV Sykes (1913) 8 CAR 233* viz:

- 1.) Whether there is anything outside the confession to show that it is true.
- 2.) Whether the statement is corroborated
- 3.) Whether the statement of facts made in the confessional statement so far as can be tested is true.
- 4.) Whether the accused person had the opportunity of committing the offence charged.
- 5.) Whether the confession of the accused was possible.
- 6.) Whether the confession was consistent with the other facts which have been ascertained and proved at the trial.

See *Nwachukwu V The State (2002) NWLR (Pt.782) 543 at 572*. Also

Criminal Evidence in Nigeria by Jide Bodede at page 117 – 125.

From the evidence before court the accused person made two statements exhibits H and J. It is the argument of the counsel to the accused that before the court can act on the said exhibits the court should use the six tests cited above relying on the case of *Adewoye Aliu V The State (supra)*. The prosecuting counsel on the other hand argued that the statements were made voluntarily and the

documents were tendered with no objection citing the case of Sule V The State (2009) 1 NWLR (Pt. 1169) 33 at 60.

In this case all the counts in which the accused person entered upon his defence borders on possession of document containing false pretence contrary to section 1 (3), 6 and 8 of the Advanced Fee Fraud and other Fraud Related Offences Act 2006. The sections provide as follows:

Section 1 (3)

“A person who commits an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term not more than twenty years and not less than seven years without the option of a fine”

Section 6

“A person who is in possession of a document containing a false pretence which constitutes an offence under this act commits 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 documents contains the false pretence.”

Section 8

“A person who

- a.) Conspires with, aids, abets, or counsels any other person to commit an offence ; or
- b.) Attempts to commit or is an accessory to an act or offence; or

c.) Incites, procures or induces any other person by any means whatsoever to commit an offence,

Under this Act, commits the offence and is liable on conviction to the same Punishment as is prescribed for that offence under this Act.”

In every case whether an accused person retracts his statement or not the confessional statement of an accused person must be tested to be sure that it is real. In this case outside the statements Exhibits H and J it is clear that the accused person is the owner of the laptop Exhibit F which was recovered from his house.

In Exhibit B, the name of the accused person features. He has no clear cut business that he does and he has the opportunity of committing the offence. Exhibit C1 correctly placed the accused person in South Africa at a time. Exhibit C4 links him with his first bank account, Exhibit C6 links him with his face book account, Exhibit C45 – C50 links him with his sister’s wedding invitation card. I am therefore satisfied that the statement in Exhibits H and J were made by the accused person voluntarily and they admit to the facts of this case. Exhibits C10 – C18 are downloaded pictures of accused from his email, Exhibits C22 – C24 are a run down of examples of activities in accused persons email accounts, Exhibit C19

– C21 is a message from emma expensive 2002 @ Yahoo.Com to quincorn @ hot mail . Com informing of a lottery win of 500,000 Pounds., C25 – C35 are scam mails purporting to be from Mrs. Eli Frank a sick white Woman from “emma expensive 2002”, so also C36 and C37 purporting to be Deposit Certificate with beneficiary as Mrs. Eli Frank.

For the offence of possession of document containing false pretence contrary to section 6, 8 and 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act 2006, to be proved the following ingredients must be established viz:-

- (1). The document contains false pretence
- (2). The accused person was in possession

The above ingredients to constitute the offence of possession are questions of fact to be proved by the prosecution. As held by the Court of Appeal in the unreported case of Harrison Odiawa (Alias Abu Belgore) V F.R.N. in suit No: CA/L/124/2006 delivered on the 6th of May 2008. Consequently, I have carefully examined exhibits H and J and I find that the accused person admitted his involvement in Scam business “I use my laptop to do Yahoo business.” I find from the available evidence that though the accused person in his confessional statement gave his email address as “emmynice @ ymail . com and his password

as “emmynice 03” and his second email as “loanfirm 743 @ email .Com” with the password “Jesus 2013” I am satisfied that the accused person has been positively indentified by the documents in the email trail emanating from “emma expensive 2002 @ Yahoo.Com” by his photographs and marriage invitation of his sister See exhibits C9, C10, C6, C11, C14, 12, 13, 15 and C45 – C50, which indentification the operatives used to apprehend accused as given in evidence by PW1.

The email address “emmynice @ Ymail Com” admitted by the accused person in exhibit H is found in exhibit C45 also used by the accused person in his email from “emma expensive 2002 @ Yahoo.Com.” I find therefore a link/connection between the accused person and the mails in exhibits C1 – C50. I believe the evidence of the prosecution albeit constructive possession, witnesses that the accused person had in his possession documents containing false pretence as stated in counts 1, 3, 5, 12. These are shown in exhibits C19, C20, C21 for count1. In count 3, they are shown in exhibits C25 and for count 5 is shown in exhibits C26 – 28. For count 12 as shown in exhibit C32. I find that for the other counts in the charge/information for which the accused defended in counts 7, 9, 10, 11 and 13 are based by evidence in exhibits G1 – G73 which have being adjudged inadmissible in law. Accordingly, the accused person is found not guilty

as charged in counts 7, 9, 10, 11 and 13 and is discharged and acquitted in each of those counts.

However, the prosecution has successfully linked the accused person with possession of the documents containing false pretences in that they contain unreal, imaginary matters intended to deceive and mislead the recipients as contained in counts 1, 3, 5 and 12. The accused person has no defence and actually by exhibits H and J admitted his complicity. He can be convicted on his confessional statement alone but I find that the prosecution witnesses sufficiently by their evidence link the accused person to the commission of the offence of possession through the exhibits tendered.

The ingredients for the offence of false pretence are

- (1). That there is a pretence
- (2). That the pretence emanated from the accused persons
- (3). That it is false
- (4). That accused person knew it was false or did not believe in its truth
- (5). That there is an intention to defraud
- (6). That the thing is capable of being stolen See Reg Aspinq (1) 2 QBD48; Alake V State (1991) 7 NWLR (Pt 205) 567; Nwankwo V FRN (2003) 4 NWLR(Pt. 809) 1;

In all the counts the accused person is charged that is counts 1, 3, 5 and 12 the documents found in his constructive possession in that they were got from the accused person's email, it is obvious that he knew they were false and they originated from him as generally confirmed by the accused person in his confessional statements. The prosecution has proved its case beyond reasonable doubt as required by law.

Accordingly, I have no hesitation whatsoever in finding the accused person guilty as charged in counts 1, 3, 5 and 12, and he is convicted in each of the said counts 1, 3, 5 and 12.

Record:- Nil

Allocutus:- I urged the court to temper justice with mercy and I cite the case of Tanko V The State (2009) 4 NWLR (Pt.1139) 430 at 457.

Accused is a first offender. He has two Children and he is a young man. The accused could be given an option of fine.

Sentence:- I agree that the accused is a first offender but I refuse to exercise my discretion in his favour to serve as a deterrent to others who may want to reap

where they have not sown. The accused person is sentenced in each of the counts 1, 3, 5 and 12 to seven years IHL. The terms of imprisonment are to run concurrently.

E.F. IKPONMWEN
JUDGE
19/4/16

Counsel:-

Ayokunle Fayanju Esq. for the Prosecution

E.O. Afolabi Esq. with Mrs. E.E.O. Uloho for the accused person