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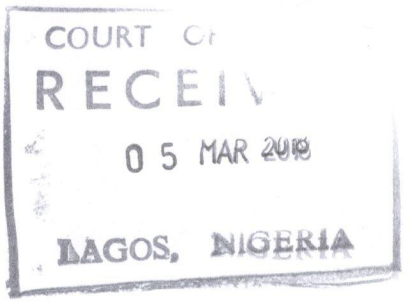
IN THE COURT OF APPEAL

HOLDEN AT LAGOS



CA/L/174/18

FHC/L/CS/937/2017

BETWEEN

SOLOMON OKEDARA — APPELLANT

AND

ATTORNEY GENERAL OF THE FEDERATION — RESPONDENT

APPELLANT'S BRIEF OF ARGUMENT

Dated this 1st day of March 2018

IN THE COURT OF APPEAL

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ATTORNEY GENERAL OF THE FEDERATION — RESPONDENT

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1.0. INTRODUCTION

1.1. The Applicant/Appellant commenced this action on 14th June, 2017 against the Respondent/Respondent by Originating Summons and the following issues were raised:

WHETHER in view of the provision of Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria, Section 24 (1) of the Cybercrime Act, 2015 meets the requirement of definition of criminal offence.

***WHETHER** the lack of requirement of "definition" of criminal offence by section 24 (1) of the Cybercrime Act, 2015 renders the section inconsistent with the provision of section 36 (12) of the 1999 Constitution (as amended).*

***WHETHER** the words used in Section 24 (1) of the Cybercrime Act, 2015 are vague, ambiguous and overbroad and do not meet the requirements of legality of a criminal offence.*

***WHETHER** the vague and overbroad wording of section 24 (1) of the Cybercrime Act, 2015 constitutes an interference to section 39 of the 1999 constitution (as amended) and is inconsistent thereto.*

***WHETHER** section 24 (1) of the Cybercrime Act, 2015 is likely going to infringe upon the Right to Freedom of Expression and Fair Hearing of the applicant and other Nigerians as provided in sections 39 and 36 (12) of the 1999 Constitution (as amended) respectively.*

***WHETHER** the provisions of section 24 (1) of the Cybercrime Act, 2015 are within the permissible restrictions stipulated in section 45 of the 1999 Constitution or **ALTERNATIVELY WHETHER** section 45 of the 1999 Constitution (as amended)can save section 24 (1) of the Cybercrime Act, 2015.*

***WHETHER** section 24 (1) of the Cybercrime Act should be declared unconstitutional and null and void if it is held to be inconsistent with the provisions of the 1999 Constitution (as amended).*

And the following reliefs were sought:

1. ***A DECLARATION*** *that section 24 (1) of the Cybercrime Act, 2015 is inconsistent with sections 36 (12) and section 39 of the 1999 Constitution (as amended).*

2. ***A DECLARATION*** *that section 24 (1) of the Cybercrime Act, 2015 is likely going to infringe upon the right to fair hearing and right to freedom of expression of the applicant as provided in sections 36 and 39 of the 1999 Constitution(as amended) respectively.*

3. ***A DECLARATION*** *that in view of the inconsistency of section 24 (1) of the Cybercrime Act with section 36 (12), Section 39 of the 1999 constitution and the application of the provision of section 1 (3) of the 1999 Constitution (as amended), Section 24 of the Cybercrime Act is unconstitutional, null and void.*

1.2. Upon being served with the Originating process (Pages 2 – 29 of the Record), the Respondent filed a 7 paragraph Counter-Affidavit and a Written Address both dated 22nd, June, 2017 (Pages 30 – 37 of the Record) and same were served on the Applicant/Appellant accordingly. On 7th July, 2017 the Applicant/Appellant filed a Reply on Point of Law (Pages 38 – 52 of the Record) and served same on the Respondent.

2.0. **THE PLEADINGS**

2.1. The Applicant/Appellant (hereinafter called the Appellant) and Respondent/Respondent (hereinafter called the Respondent) contested this suit on the pleadings listed below:

(a) The Appellant's Originating Summons and Written Address dated 14th June, 2017 (**pages 2 – 29 of the Record**).

(b) The Counter-Affidavit and Written Address of the Respondent dated 22nd June, 2017 (**Pages 30 – 37 of the Record**)

(c) The Appellant's Reply on Point of Law dated 7th July, 2017 (**Pages 38 – 52 of the Record**)

2.2. The Appellant's written address in support of Originating Summons dated 14th June, 2017 (Pages 7-29), Reply on Point of Law dated 7th July, 2017 and filed on 10th July, 2017(Pages 38-52) and Respondent's Written Address in support of Counter-Affidavit (Pages 32-37) were adopted on

9th October, 2017. On 7th December, 2017, the learned trial judge delivered judgment dismissing the Appellant's reliefs as set out in his Originating Summons. This appeal is against the judgment. The Appellant has filed a Notice of Appeal dated 5th February, 2018 consisting of six (6) grounds on which issues for determination will be formulated.

3.0. ISSUES IN THE SUIT

3.1. The Appellant's six (6) grounds of appeal are against the findings and judgment of the learned trial judge out of which the following issues for determination are formulated.

4.0. ISSUES FOR DETERMINATION

4.1. Whether the learned trial judge was right when he held that the offence as contained in Section 24 (1) of the Cybercrime Act is quite clear and defined (GROUND 1).

4.2. Whether the learned trial judge was right when he held that Section 24 (1) of the Cybercrime Act does not in any way conflict with Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria (GROUND 3).

4.3. Whether the learned trial judge was right when he held that cybercrime is incapable of direct definition and dwelt on same to determine the appellant's case (GROUND 2).

4.4. Whether the learned trial judge was right when he did not make a finding on the appellant's issue raised as to vagueness, ambiguity and over-breadth of Section 24 (1) of the Cybercrime Act but rather on issues not submitted to him for determination. (GROUND 4).

4.5. Whether the vague and overbroad wording of section 24 (1) of the Cybercrime Act, 2015 constitutes an interference to section 39 of the 1999 constitution (as amended) and is inconsistent thereto (GROUND 4).

4.6. Whether the learned trial judge was right when he held that Section 24 (1) of the Cybercrime Act is in the best interest of the generality of the public (GROUND 5).

4.7. Whether the learned trial judge was right when he failed to rule on the issue as to whether provisions of Section 24 (1) of the Cybercrime Act are within the permissible restrictions stipulated in Section 45 of the 1999 Constitution or whether Section 45 of the 1999 Constitution can save Section 24 (1) of the Cybercrime Act, 2015 (GROUND 6).

5.0. **ISSUE NO. 1**

5.1. The learned trial judge in his judgment held thus:

> *"The offences as contained in Section 24 (1) Cybercrime Act is quite clear and defined and penalty prescribed in the law creating same"* (Page 89, Lines 2-3 of the Record)

5.2. With the greatest respect to the learned trial judge, this was a serious error. For clarity and emphasis, **Section 24 (1) of the Cybercrimes Act, 2015** in providing for a criminal offence is worded as follows:

> *"Any person who, knowingly or intentionally sends a message or other matter by means of computer systems or network that*
>
> *(a) Is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be so sent; or*
>
> *(b) He knows to be false, for the purpose of causing annoyance, inconvenience danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent: commits an offence under this Act and shall be liable on conviction to a fine of not more than N7,000, 000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment"*

5.3. While it is true that Section 24 (1) prescribes a penalty of "*a fine of not more than N7,000, 000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment*" the offences contained in Section 24 (1) of the Cybercrime Act, 2015 are not defined. As robustly

argued in the written address to the Appellant's Originating Summons before the lower court, mere usage or "dumping" of words in an enactment like in the case of Section 24 (1) of the Cybercrime Act, 2015 does not and cannot amount to "definition". According to the **BLACK'S LAW DICTIONARY (EIGHT EDITION)** the word "**Define**" means:

1. To state or explain explicitly
2. To fix or establish (boundaries or limits)
3. To set forth the meaning (of a word or phrase)

5.4. To define a crime therefore means to state or explain the offence clearly and fix or establish limits of actions and (or) omissions that constitute a crime. Clearly, defining a criminal offence takes away ambiguity or vagueness and citizens are properly guided on what conducts constitute crimes and which ones do not. For instance, when a criminal offence is provided as follows *"Anyone who enters and extensively relaxes in a public place in the night without authorization has committed an offence under this Act"*: it leaves the citizens and the court to wonder as to what constitutes "*extensive relaxation*", what time frame is "*night*" according to the law and will verbal approval of "entry and relaxation" amount to *authorization* or it has to be in writing? It is therefore trite that for a provision of a criminal offence to be valid it must be **defined** (being made explicit or precise with limits)to give a citizen direction on knowing what conducts or omissions constitute offences and which ones do not. See **GRAYNED V CITY OF ROCKFORD (1972) 408 US 104, BLACK-CLAWSON INTERNATIONAL LTD V PAPIERWERE WALDHOF ASCHAFFENBERG AG (1975) 2 WLR 513, (1975) 1 ALL ER 810, UKHL 2, 638.**

5.5. A careful look at the wording of section **24 (1) of the Cybercrime Act 2015** shows that no offence is clearly explained nor any limits of actions or omissions are set in the said subsection. For instance, at what degree does a message or matter become "grossly offensive"? What is the yardstick for what is "Menacing character"? What type of message or matter would amount to "insult"? What constitutes "needless anxiety"? What impact must have the messages or matters that allegedly led to "needless anxiety" made and on whom must the impact be made? These

questions and many more stand unanswered by this sub-section or any other part of the said Cybercrime Act, 2015 at that.

5.6. Worse still, the Interpretation or Definition Section of the Cybercrimes Act, 2015 which would have helped in the definition of this sub-section and the words used therein does NOT in any manner howsoever define the words used in section 24 (1) of the Cybercrime Act, 2015.

5.7. Section 36 (12) of the 1999 Constitution with which Section 24 (1) of the Cybercrime Act is being analyzed provides that:

> *"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 therefor 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." (Emphasis supplied)*

5.8. The position in this section 36 (12) of the 1999 Constitution is that for a person to be arrested, detained or prosecuted for a criminal offence: (i) There must be a written law, (ii) **The offence must be defined** in the written law and; (iii) A penalty therefor must be prescribed and **they must all co-exist**. It is also clear that the use of the word "**unless**" makes the said Section 36 (12) of the 1999 Constitution (as amended) a tripartite mandatory requirement. In **AOKO V FAGBEMI (1961) 1 All NLR 400**, where the first and basic constituent of the tripartite requirement (written law) was not present, the conviction was quashed. It is upon satisfaction of the first and basic constituent of "written law" that the court can proceed to investigate the second constituent which is determining whether a criminal offence is defined therein or not. Unfortunately, **AOKO V FAGBEMI (supra)** could not pass the hurdle of even the first constituent.

5.9. It must be emphasized that a written law and a defined criminal offence are **NOT** same or interchangeable. The wording of the provision of section 36 (12) that "*unless that offence is defined... in a written law*" (which can be paraphrased as *"a defined offence contained in a written law"*) shows that meeting the requirement of section 36 (12) of the 1999

Constitution must start from the first, basic and general constituent of a "**written law**", to a second constituent of a "**defined offence**" which is rather specific as opposed to the first constituent which is general. That there is a written law does not necessarily mean an offence is defined in it. **While there can be a written law without a clear offence**, defining an offence therefore means **writing an offence down in a clear and precise manner**.

5.10. It is therefore respectfully submitted that the use of the word "defined" in Section 36 (12) of the 1999 Constitution by the drafters of our constitution is deliberate and it is meant to avoid having and enforcing statutes with unclear and ambiguous provisions. In **IFEAGWU V FEDERAL REPUBLIC OF NIGERIA (2004) 47 WRN 86 CA**, this court held that:

> *"It is sacrosanct that no person shall be liable to be tried or punished in any court of this land except under the clear and unambiguous provisions of a written law"*
> (underlining supplied)

5.11. The import of the holding of this honourable court in **IFEAGWU V FEDERAL REPUBLIC OF NIGERIA (Supra)** therefore is that before provisions of a law could be valid to try or punish a person, there must be a written law containing clear and unambiguous provisions, and the arrest, trial and penalties must be based on the clear and unambiguous provisions.

5.12. My lords, the words used in Section 24 (1) of the Cybercrime Act, 2015 are not only unclear and ambiguous but are even capable of subjective interpretation and indeed misinterpretation. The import of the subjectivity of the words used in Section 24 (1) is that what may appear "grossly offensive" to one judge, may "not be grossly offensive" to another judge. It is therefore clear that, If judicially trained minds can therefore come to diametrically opposite conclusions on the same set of facts, it is obvious that expressions such as "grossly offensive" or "menacing character" are so undefined that there is no manageable standard by which a person can be said to have committed an offence or not to have committed an offence. See **CHAMBERS V. DIRECTOR OF PUBLIC PROSECUTIONS, [2013] 1 W.L.R. 1833**.

5.13. On the strength of examination of Section 24 (1) of the Cybercrime Act as done above, with a robust analysis of Section 36 (12) of the 1999 Constitution with profound judicial authorities cited above, particularly **IFEAGWU V FEDERAL REPUBLIC OF NIGERIA (Supra), GRAYNED V CITY OF ROCKFORD (Supra), BLACK-CLAWSON INTERNATIONAL LTD V PAPIERWERE WALDHOF ASCHAFFENBERG AG (Supra) CHAMBERS V. DIRECTOR OF PUBLIC PROSECUTIONS [Supra]** it is respectfully submitted that the offences contained in Section 24 (1) of the Cybercrime Act, 2015 are neither clear nor defined.

This Honourable court is hereby urged to resolve ISSUE 1 in favour of the Appellant.

6.0. **ISSUE NO. 2**

6.1. The learned trial judge held that Section 24 (1) of the Cybercrime Act does not in any way conflict with Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria (Pages 88-89 of the Record). My Lords, the position of ISSUE 2 naturally flows from ISSUE 1. It is respectfully submitted that if this honourable court holds that the offence contained in 24 (1) of the Cybercrime Act is not defined as the words used in Section 24 (1) of the Cybercrime Act, particularly words/phrases like "grossly offensive", "menacing character" "needless anxiety" "inconvenience" are capable of subjective interpretation and misinterpretation, it therefore means that Section 24 (1) of the Cybercrime Act **conflicts with** Section 36 (12) of the 1999 Constitution (as amended).

6.2. To "*conflict with*" means to "*be inconsistent with*". If Section 24 (1) of the Cybercrime Act, 2015 does not have criminal offences defined in it as required by Section 36 (12), it is therefore clearly inconsistent with Section 36 (12) of the 1999 Constitution and is submitted to conflict with same. It is therefore respectfully submitted that Section 24 (1) of the Cybercrime Act, 2015 conflicts with Section 36 (12) of the 1999 Constitution (as amended). This Honourable court is hereby urged to resolve **ISSUE 2** in favour of the Appellant.

7.0. **ISSUE NO. 3**

7.1. We now arrive at the "deep waters" of this appeal which concern, with respect, the painful error made by the learned trial judge by misconceiving the issue of Section 24 (1) of the Cybercrimes Act, 2015 failing to meet the requirement of being defined as required by Section 36 (12) of the 1999 Constitution to be alleging that the word "cybercrime" is not defined.

7.2. It must be put on record that after the learned trial judge, having adopted the three issues raised by the respondent for adjudication of the suit, went ahead to dismiss the first two issues raised by the respondent and then proceeded to answer the question contained in the third issue as raised by the respondent. The said third issue is:

> *"Whether Section 24 (1) of the Cybercrime Act, 2015 is inconsistent with Section 36 (12) and Section 39 of the 1999 Constitution of the Federal Republic"*

7.3. Clearly what the issue stated above seeks to find out is "If Section 24 (1) of the Cybercrime Act, 2015 conflicts with Section 36 (12) and Section 39 of the 1999 Constitution or not"

7.4. The learned trial judge, with due respect however, did not seek that finding but instead proceeded to seek an unsolicited finding on **If the word *cybercrime* is capable of direct definition**. The learned trial judge, with greatest respect, committed a serious error in this regard as he proceeded to hold in his judgment that cybercrime is incapable of direct definition and dwelt on same to determine the appellant's case as if that was an issue submitted before the court. The learned trial judge simply adopted the issue of definition of the generic word "cybercrime" for the parties. The learned trial judge specifically in his judgment as contained in page 89 of the Record of Appeal expressly stated that:

> *"Indeed Cybercrime itself has not or has never had a single acceptable definition"*

7.5. The learned trial judge therefore further went ahead to give a very elaborate definition of the word "cybercrime" which dotted the entire page 90 of the Record and formed most part of page 91.

7.6. My lords, the position of the learned trial judge in this regard, with greatest respect, was misconceived and unfortunate. Firstly, the issue of definition of the word "cybercrime" was not part of the issues formulated by either of the parties for determination of the suit. In **CHIEF AMODU TIJANI DADA & 2 ORS V MR JACOB BANKOLE & 2 ORS (2008) 1 SCNJ 244**, the apex court held that parties and the court alike must confine themselves to the issues formulated by the parties for determination in the matter before the court. In **IROM V OKIMBA (1998) 2 SCNJ 5,** Supreme Court held that:

> *"The primary duty of the court is to hear parties on their complaints and confine them to the battleground they have chosen. The court must as much as possible avoid a situation whereby new battle grounds would be opened to the parties..."*

7.7. My lords, it is clear that the "battleground" between the parties bother on constitutionality of **Section 24 (1) of the Cybercrime Act** specifically on its consistency with **Sections 36 (12), 39 and 45 of the 1999 Constitution** and **principle of legality** that a criminal provision must not be vague, ambiguous and overbroad. There was no time the definition of the word "cybercrime" was chosen as a "battleground" by virtue of the issues formulated by parties in the suit.

7.8. The parties in the suit leading to this appeal are aware that the Cybercrimes Act, 2015 itself contains numerous cybcercrimes just like Economic and Financial Crimes Commission (EFCC) Act for instance, contains several Economic and Financial Crimes and as such parties herein could not have raised an issue on the fact that the generic word "cybercrime" is not defined. It was therefore strange when the issue of definition of the word "cybercrime" was raised and addressed by the court itself **in the judgment**.

7.9. If a party for instance challenges the constitutionality of a section in EFCC Act alleging that the said section is not defined as required by section 36 (12) of the 1999 Constitution, it would be misplaced and greatly erroneous for the court to hold that the argument of such party is that the words "Economic and Financial Crimes" are not defined. In fact, it is the indeed the court choosing a new, strange and needless

battleground for the parties. It is therefore respectfully submitted that the learned trial judge was wrong to have chosen the issue of definition of the generic word "cybercrime" as battleground for the parties as same was new, strange and needless to the cases of the parties.

7.10. In **J. A. ADERIBIGBE & ANOR V TIAMIYU ABIDOYE (2009) 4-5 SC (PT III) 123**, the apex court held that:

> *"When issue is not placed before a court, such a court has no business whatsoever to deal with it, as the decisions of a court of law must not be founded on any ground in respect of which it has neither read argument from or on behalf of the parties before it nor even raised by or for the parties or either of them"*

7.11. The appellant, placing reliance on **ADERIBIGBE**'s case cited above, respectfully submits that since no argument was raised before the court by any of the parties on the definition of "cybercrime" it is with greatest respect, wrong for the learned trial judge to have founded its decision on same by which he dismissed the appellant's case.

7.12. In **VICTINO FIXED ODDS LTD V JOSEPH OJO & ORS (2010) 3SC (PT.I) 1**, the Supreme Court held that:

> *"The court has a duty to limit itself to the issues raised by the parties and which alone qualify as issue before the court. It is by confining itself to the issues before it that the court maintains its impartiality"*

7.13. The import of this golden holding of the apex court therefore is that when a court fails to confine itself to the issues raised before it, it exposes its impartiality to questioning. The very need for court to confine itself to only the issues raised by the parties and resist temptation whatsoever that may question a court's impartiality was echoed in the holding of the Supreme Court in **PETER C. OJOH V OWUALA KAMALU & ORS (2005) 12 SCM 332** when the ape court held that:

> *"The courts do not have jurisdiction to go outside the issues formulated by the parties gallivanting for issues that will be favourable to one of the parties"*

7.14. Finally, my lords, the appellant herein respectfully submits that the learned trial judge was, with greatest respect, wrong when he held that cybercrime is incapable of direct definition and dwelt on same to determine the appellant's case. The appellant urges this honourable court to resolve **ISSUE 3** in favour of the Appellant.

8.0. **ISSUE 4**

8.1. My lords, it is the duty of a court to deal with, consider and pronounce on all material issues before it. **JOHN AGBO V THE STATE (2006) 1 SCNJ 332.** It therefore means that a court is duty-bound to address all issues placed by the parties before it. In **AEROFLOT SOVIENT AIRLINES V UBA LTD (1986) NSCC 698** the Supreme Court held that:

> *"It is the duty of the court to consider all relevant issues raised in the pleadings, and in all cases of appeal, all the grounds properly before the court. For parties are entitled to the decision of the court on all issues raised and argued before it, save where such ground was abandoned"*

8.2. It has indeed been held that all courts, including the Supreme Court, must never leave any issue or issues raised by the party or parties to suit without hearing and determining same before concluding the case. **MOJEED SUARA YUSUF V MADAM IDIATU ADEGOKE & ANOR (2007) 4 SCNJ 77**

8.3. In fact, the Supreme Court in **ETERNAL SACRED ORDER OF CHERUBIM V ADEWUMI & ORS (1969) NSCC 114** went from the general requirement of addressing all the issues submitted to the court to the specific requirement of how the issues are to be addressed. In its holding the Supreme Court declared that:

> *"It is the duty of the court of law to which a duty is referred to consider dispassionately all issues properly raised by the pleadings and to apply the law of the land to the situation thus created and the problems raised before it" (Emphasis supplied)*

8.4. The learned trial judge, with greatest respect, committed a fatal error when he failed to consider, deal with and pronounce on all material issues placed before it. This error was committed in respect of most issues in the Application of the appellant as the trial court failed to consider, deal with and pronounce on most of the issues including the issue of vagueness, ambiguity and overbreadth of Section 24 (1) of the Cybercrime Act. It is therefore respectfully submitted that the learned trial judge was wrong by failing to pronounce on the issue raised as to vagueness, ambiguity and overbreadth of Section 24 (1) of the Cybercrime Act.

8.5. **VAGUENESS AND AMBIGUITY**

A basic principle of legality is that law, particularly one that limits fundamental rights and freedoms, must be precise and clear enough to cover only activities connected to the law. When the wording of enactment is vague and ambiguous, such an enactment is not only capable of subjective interpretation but also misinterpretation. This is why this court held in **IFEAGWU V FEDERAL REPUBLIC OF NIGERIA (Supra)** that no person shall be tried or punished in any court except under clear and unambiguous provisions of a written law.

8.6. In the American case of **FEDERAL COMMUNICATIONS COMMISSION V. FOX TELEVISION STATIONS, 132 S.CT. 2307**, it was held that:

> *"A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. See Connally v. General Constr. Co., 269 U. S. 385, 391 (1926) ("[A] statute which either forbids requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law"); Papachristou v. Jacksonville, 405 U. S. 156, 16 (1972) ("Living under a rule of law entails various suppositions, one of which is that '[all persons] are entitled to be informed as to what the State commands or forbids'" (quoting Lanzetta v. New Jersey, 306 U. S. 451,*

453 (1939) (alteration in original). This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment. See United States v. Williams, 553 U. S. 285, 304 (2008). It requires the invalidation of laws that are impermissibly vague. A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standard less that it authorizes or encourages seriously discriminatory enforcement." Ibid. As this Court has explained, a regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved. See id., at 306. Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. See Grayned v. City of Rockford, 408 U. S. 104, 108–109 (1972). When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech."(at page 2317). (Emphasis mine)

8.7. In **BURSTYN V. WILSON, 96 L. ED. 1098**, "sacrilegious writings and utterances" were outlawed. In this case, the U.S. Supreme Court stepped in to strike down the offending Section stating:

"It is not a sufficient answer to say that 'sacrilegious' is definite, because all subjects that in any way might be interpreted as offending the religious beliefs of any one of the 300 sects of the United States are banned in New York. To allow such vague, undefinable powers of censorship to be exercised is bound to have stultifying consequences on the creative process of literature and

art—for the films are derived largely from literature. History does not encourage reliance on the wisdom and moderation of the censor as a safeguard in the exercise of such drastic power over the minds of men. We not only do not know but cannot know what is condemnable by 'sacrilegious.' And if we cannot tell, how are those to be governed by the statute to tell? (at page 1121) (Emphasis mine)

8.8. In the recent Indian case of **SHREYA SINGHAL V UNION OF INDIA (2013) 12 S.C.C. 73**, the **Supreme Court of India** declared **Section 66A of the Information Technology Act** of India vague, unconstitutional, null and void. The said statutory provision which is *in pari materia* with Section 24 (1) of Nigeria's Cybercrime Act, 2015 provides as follows:

66 A. Any person who sends, by means of a computer resource or a communication device,—

a. Any information that is grossly offensive or has menacing character; or

b. Any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or

c. Any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

8.9. The court in the 123 page judgment held that words like *"grossly offensive"* and *"menacing character"* are vague and ambiguous. The 2 man Bench expressly queried amongst others, *"Does a message have to be sent 3 times or 8 times to be accepted as persistently sent?* Apparently,

this is also one of such several queries that establish the vagueness of the provision.

8.10. In a similar commendable development, a Kenyan High Court judge, **Ngugi J.** on 19th April, 2016 also declared Section **29 of the Kenya Information and Communications Act** that is also *in pari materia* with vague and ambiguous Section 24 of Nigeria's Cybercrime Act as making vague provisions and of course, unconstitutional. In **GEOFFREY ANDARE V ATTORNEY GENERAL & OTHERS (PETITION NO 149 OF 2015)**, the constitutionality of Section 29 of the Kenya Information and Communications Act was considered and decided. The section provides that:

> *"29. A person who by means of a licensed telecommunication system-*
>
> *a. Sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing character;*
>
> *b. Sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person, commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or to both"*

8.11. In his words, **Ngugi J** held that *"Section 29 imposes penal consequences in terms which I have found to be vague and broad, and in my view, unconstitutional for that reason"*

8.12. A glance at **Nigeria**'s Section 24 (1) of the Cybercrimes Act, 2015, **Kenya**'s Section 29 of Kenya Information and Communications Act, and **India**'s Section 66A of Information Technology Act reveals the regrettable umbilical cord these countries maintained with their former colonial master-**Great Britain**. This law known as Section 24 (1) of the **Cybercrimes Act in Nigeria**, Section 29 of the **Information and Communications Act in Kenya** and Section 66A of the **Information Technology Act in India** was originally copied from the **UK Post Office (Amendment) Act,1935.** Precisely, Section 10 (2) (a) of the UK Post Office (Amendment) Act, 1935 made it an offence to send any message

by telephone which is *"grossly offensive or of an indecent, obscene, or menacing character"*

8.13. However, as cited above, **Kenya** and **India** have judicially severed the said "regrettable umbilical cord" in their respective judgments cited above which judgments have not only been lauded the world over but have become unassailable precedents around the world on subjects of Principle of legality and protection of Freedom of Expression from vague, ambiguous, overbroad and undefined provisions of law. It is therefore regrettable that with the preponderance of issues and arguments advanced before the lower court, the learned trial judge did not even deem it fit, in the least, to consider the germane issues raised by the appellant let alone deciding on them for a pronouncement of unconstitutionality and nullity of Section 24 (1) of the Cybercrimes Act, 2015.

8.14. My lords, just like it was stated in **BURSTYN V. WILSON (Supra)**, we do not only know but cannot actually know what is condemnable by 'grossly offensive' or "menacing character" And if the court cannot tell, how are those to be governed by Section 24 (1) of the Cybercrimes Act, 2015 to tell? It is hereby respectfully submitted that the provisions of Section 24 (1) of the Cybercrime Act are vague and ambiguous.

8.15. **OVERBREADTH**

Section **24 (1) of the Cybercrime Act, 2015** casts its net too wide that any discussion, opinion or advocacy on governmental, literary, scientific or artistic subjects that are ordinarily constitutionally protected can be covered in it. For instance, a discussion or opinion on politics or art may be considered to be *"grossly offensive"* by someone or may cause *"annoyance"* to some persons. In condemning overbroad provisions of legislations, in **UNITED STATES V REESE (1875), 92 US 214 AT 221**, the court held that constitution does not permit a legislature to set a net large enough to catch all possible offenders and leave it to the court to step in and say who could be rightfully detained and who should be set at liberty. It was emphasized that a broad sweep of the Ordinance violated the requirement that legislation needs to meet to establish minimum guidelines to govern law enforcement.

8.16. It is therefore respectfully submitted that Section 24 (1) of the Cybercrime Act, 2015 is vague, ambiguous and overbroad and do not meet the requirements of legality of a criminal offence. This honourable court is hereby urged to resolve **ISSUE 4** in favour of the Appellant.

9.0. **ISSUE 5**

9.1. Section 39 of the 1999 Constitution provides for Freedom of Expression as follows:

> *39 (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.*

9.2. Freedom of Expression is one of the most important fundamental human rights to every human being irrespective of tribe, sex, color, creed, education or even nationality. It is for this reason that Freedom of Expression and some other fundamental rights are provided for in local and international bills of rights like national Constitutions, African Charter on Human and People's Rights, Universal Declaration on Human Rights, International Covenant on Civil and Political Rights. In **ABDULKAREEM V LSG (2016) ALL FWLR (PT.850), PG.101,** the Court of Appeal held that:

> *"Fundamental Human rights are not ordinary rights. They are elevated rights, some of them have their origin in international conventions or treaties. They are a special class of rights and no person shall be deprived of the enjoyment of any such rights except by the proper observance of the due process of law" (p.1175,)*

9.3. Emphasizing the importance of Freedom of Expression to an individual and to the society, the Supreme Court of Nigeria in **DIM V AFRICAN NEWSPAPER LTD (1990) 3NWLR (PT.139), PG. 392** per **Karibi-Whyte JSC** at pages 408-409, held that:

> *"The right to comment freely on matters of public interest is one of the fundamental rights of free speech guaranteed to the individual in our constitution. It is so dear to the Nigerian and of vital importance and relevance to the rule*

of law which we so dearly treasure for our personal freedom"

9.4. Does Freedom of Expression guaranteed in Section 39 of the 1999 Constitution (as amended) cover speeches or expressions made via computer systems or networks including social media? In answering this question, a critical look at Section 39 of the 1999 Constitution (as amended) helps resolve the issue. Subsection (2) of section 39 of the 1999 Constitution (as amended) provides that:

> *"Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions" (Emphasis supplied)*

9.5. In **OKOGIE V AG LAGOS STATE (1981) 2 NCLR p.337**,the Supreme Court held that the word "medium" used in Section 36 of the 1979 Constitution of the Federal Republic of Nigeria which is *in pari materia* with Section 39 of the 1999 Constitution is not limited to the orthodox mass communication but could reasonably include schools. It is clear that the reasoning of the apex court in arriving at this position is premised on the fact that a school is a "medium" used in "imparting ideas and information". What the court really needed to determine in Okogie's case was the "imparting of ideas and information" by the school as a medium. Therefore, if any or all of "holding of opinions" "receiving of ideas and information" and "imparting of ideas and information" would take place on any medium including computer systems or networks like social media, Section 39 of the 1999 Constitution (as amended) would apply for its protection. It is therefore submitted that Freedom of Expression guaranteed under section 39 of the 1999 Constitution (as amended) covers speeches or expressions made via computer systems or networks including social media.

9.6. Going forward, governments in Nigeria have at one time or the other promulgated laws to limit or restrict freedom of expression. Some of these laws include Criminal Defamation, Sedition Law, and even the recently aborted Frivolous Petition Bill, 2015 amongst others. Sedition Law has been put to test of constitutionality in the court room and could not survive the fatal judicial blows in the case of **NWANKWO V THE**

STATE 48.(1985) 6 NCLR 228. Section 24 (1) of the Cybercrime Act 2015 is believed to be another "statutory cancer" to Freedom of Expression.

9.7. Specifically, owing to its vague and overbroad wording, section 24 (1) of the Cybercrime Act, 2015 interferes with constitutionally protected speeches and expressions guaranteed in section 39 of the 1999 Constitution (as amended). In **NPP V GBC (2000) 20 WRN 163** (Ghana), Supreme Court of Ghana in a flowery style and graphic form presented how the government uses the instrumentality of law like Section 24 (1) of the Cybercrime Act, 2015 to silence the citizens by prosecutions. The Court per Anua-Sekyi JSC (pp. 180-181) held that:

> *"The democratic tradition that divergent views and dissenting opinions be given free expression may be summed up in the words Tallentyre used to describe the attitude of Voltaire on the burning of Helvetius' De L'espirit in 1759. "I disapprove of what you say, but I will defend to the death your right to say it" History abounds with examples where those in authority were so sure they were right that they regarded dissent as subversive. The Reformation was preceded by hertelics and followed by the prosecution of papists. The temptation to ride roughshod over the opinions of others must be resisted, for it is only by the free flow of ideas and discussion that error is exposed, truth vindicated and liberty preserved"*

9.8. Other than the fact that some Nigerians have been arrested, detained and currently being prosecuted under Section 24 (1) of the Cybercrimes Act, 2015, the law has chilling effect on Freedom of Expression as millions of Nigerians who own and operate social media accounts for the holding, dissemination and receiving of information, ideas and opinions would now be (some are already being)forced to resort to self-censorship or totally avoid expressing themselves on the computer systems or networks including social media networks or platforms-a totally undemocratic development.

9.9. As stated earlier, that the wording of section 24 (1) of the Cybercrime Act, 2015 is overbroad and can rope in constitutionally protected

speeches that may be ordinarily offensive or annoying to some persons or some sections of the society without more, constitutes an interference to Freedom of expression guaranteed in section 39 of the 1999 Constitution and is humbly submitted to be inconsistent thereto.

9.10. We urge Your Lordship to resolve **ISSUE 5** in favour of the Appellant

10.0. **ISSUE 6**

10.1. In the respondent's written address responding to the appellant's application before the lower court, the respondent only stated that "*Section 24 (1) of the Cybercrirme Act is a law that is provided for the purpose of public order and morality thereby allowing not contravening the likelihood of infringement of Fundamental Human Right as canvassed by the Applicant" (Page 36 of the Record).*

10.2. My lords, the burden of proving that Section 24 (1) of the Cybercrime Act is in the best interest of generality of the public is on the respondent who cannot just merely state but must convincingly establish. Unfortunately, the respondent did not do more than merely making the statement cited above without advancing any serious argument to establish same. In **ACHIMU V HON. MINISTER FOR INTERNAL AFFAIRS (2005) 2 F.H.C.L.R 401**, the court held that the respondents have a duty to establish that the restriction is serving or intended to serve a constitutionally recognized objective.

10.3. My lords, looking at Section 24 (1) of the Cybercrime Act, it cannot be established that the subsection is in the best interest of generality of the public. The phrases and words used in Section 24 (1) of the Cybercrime Act like "grossly offensive", "menacing character", "annoyance", "ill will", "insult" "enmity" "inconvenience" present the law to be a ready tool in the hands of few rich and power-drunk individuals to suppress the poor, gag Freedom of Expression and victimize the vulnerable but not for any public interest. In **NWANKWO V. THE STATE (Supra)** the defendant was charged with sedition under section 51 of the Criminal Code before an Onitsha High Court for publishing a book which had exposed corrupt practices under Governor Jim Nwobodo of former Anambra state. The appellant was convicted and sentenced to one year imprisonment. But the conviction and sentence were set aside by the

Court of Appeal on the grounds that the offence of sedition is illegal and unconstitutional, Speaking for the court, Olatawura JCA held inter alia:

> *"We are no longer the illiterates or the mob society our colonial masters had mind when the law was promulgated...To retain S. 51 of the Criminal Code, in its present form, that is even if not inconsistent with the freedom of expression guaranteed by our Constitution will be a deadly weapon to be used at will by a corrupt government or a tyrant...Let us not diminish from the freedom gained from our colonial masters by resorting to laws enacted by them to suit their purpose."* (Emphasis supplied)

10.4. The respondent, having failed to establish how section 24 (1) of the Cybercrime Act is in the best interest of generality of the public by advancing persuasive argument in support of same, the trial court was thereby wrong to have held that section 24 (1) of the Cybercrime Act is in the best interest of generality of the public.

10.5. My lords, this honourable court is hereby urged to resolve **ISSUE 6** in favour of the Appellant.

11.0. **ISSUE 7**

11.1. The learned trial judge clearly did not consider, deal with and pronounce on the issue as to whether provisions of Section 24 (1) of the Cybercrime Act are within the permissible restrictions stipulated in Section 45 of the 1999 Constitution or whether Section 45 of the 1999 Constitution can save Section 24 (1) of the Cybercrime Act, 2015. Based on the decision of Supreme Court in **JOHN AGBO V THE STATE (Supra)** therefore, it is humbly submitted that the trial judge, with due respect was wrong when he failed to rule on the issue as to whether provisions of Section 24 (1) of the Cybercrime Act are within the permissible restrictions stipulated in Section 45 of the 1999 Constitution or whether Section 45 of the 1999 Constitution can save Section 24 (1) of the Cybercrime Act, 2015.

11.2. As important as Freedom of Expression is, it is still being gagged by spirited efforts of government by broadly criminalizing it. **Andy Levy** thus couldn't have been less right when he expressed that:

"Criminalizing offensive speech is a far greater and essential danger to freedom than terrorism is. Anybody who wants to criminalize speech that they find offensive differs from the terrorists only in degree, not in kind".

11.3. It is however a known fact that Freedom of expression is not absolute but subject to some permissible constitutional restrictions. Section 45 of the 1999 Constitution (as amended) that stipulates the said permissible restrictions provides that:

"Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-

a. In the interest of defence, public safety, public order, public morality or public health

b. For the purpose of protecting the rights and freedom of other persons"

11.4. It must be clearly stated at this stage that such a law to restrict any of those fundamental human rights shall be strictly analyzed in Section 45 shall be strictly analyzed bearing in mind core democratic values at the very heart of which is protection of Freedom of Expression. In **ABACHA V FAWEHINMI (2001) 51 WRN 29**, the Supreme Court per Achike JSC held that:

"I agree with learned cross-appellant's view that where a statute tends to encroach on, curtail or abridge the freedom or the liberty of an individual, that statute is generally construed very strictly and narrowly against anyone claiming benefit therefrom " (Page 113. Paras. F-G)

11.5. The foregoing statutory provisions constitute the hurdles a restriction that tends to limit Freedom of Expression must pass. Clearly, it is for the court to declare if a restriction passes these hurdles. In **CHIKE OBI V DIRECTOR OF PUBLIC PROSECUTION (No.2) (1961) All NLR 458**, the Federal Supreme Court held that its role was not merely to *"rubberstamp the acts of the Legislature and the Executive, that the court must be the arbiter of whether or not any particular law is reasonably justifiable"*

11.6. In interpreting the restrictions listed above, the court in **OLAWOYIN V ATTORNEY GENERAL OF NORTHERN NIGERIA [1961] 1 All NR**, held that a restriction upon a fundamental right before it may be considered justifiable must (a) be necessary in the interest of public morality **and** (b) not to be excessive or out of proportion to the object which it is sought to achieve.

11.7. For a restriction (law) to be permissible under Section 45 of the 1999 Constitution, such a restriction must therefore have the following characteristics:

11.8. **Defined by a law**: The restriction must be defined by a law. See **ABDULKAREEM V LSG (Supra)**. To satisfy the first requirement, the law or regulation, which should be formally adopted by law-making authorities, must be sufficiently clear and precise; vague or unclear provisions will not suffice. See **THE SUNDAY TIMES V. UNITED KINGDOM, 26 APRIL 1979, APPLICATION NO. 6538/74, PARA. 49**

11.9. **Pursue a constitutionally recognized objective**: The restriction must be in pursuit of ONLY any of the itemized objectives in the constitution which are (i)the interest of defence, (ii)public safety, (iii)public order, (iv)public morality or (v)public health, (vi)right and (vii)freedom of other persons. In **AWOLOWO V FEDERAL MINISTER OF INTERNAL AFFAIRS (1962) 4 NCLR 261 FCA**, the court held that:

> *"Invasion is permitted only to the extent that it is essential of some constitutionally recognized interest and not more"* (Emphasis supplied)

11.10. A restriction will therefore be impermissible if it is solely critical of government or political ideology of a government, party or individual no matter how offensive or annoying it may be. See **THE PUNCH NIGERIA LTD. V. ATTORNEY-GENERAL OF THE FEDERATION. (1998) 1 HRLRA 488), SAKAL PAPERS (P) LTD V UNION OF INDIA AIR 1962 SC 305.**

11.11. **Be necessary and Proportionate**: It must be shown that the restriction is one necessary or required and be the least restrictive means to protect constitutionally recognized objectives. Essentially, and distilling from the

OLAWOYIN V ATTORNEY GENERAL OF NORTHERN NIGERIA (Supra) proportionality is very critical in determining a restriction that is reasonably justifiable in a democratic society. Leading authors **G. HUSCROFT, B MILLER** and **G WEBBER (EDS)** have authoritatively stated the jurisprudence of proportionality includes this 'serviceable—but by no means canonical—formulation' of the test:--

> *"i. Does the legislation (or other government action) establishing the right's limitation pursue a legitimate objective of sufficient importance to warrant limiting a right"*
>
> *ii. Are the means in service of the objective rationally connected (suitable) to the objective"*
>
> *iii. Are the means in service of the objective necessary, that is, minimally impairing of the limited right, taking into account alternative means of achieving the same objective"*
>
> *iv. Do the beneficial effects of the limitation on the right outweigh the deleterious effects of the limitation; in short, is there a fair balance between the public interest and the private right"*

11.12. In the Zimbabwean case, **NYAMBIRAI VS NATIONAL SOCIAL SECURITY AUTHORITY & ANOTHER (1995 (2) ZLR 1 (S) at 13C-F)** Gubbay CJ elaborated the test as follows:-

> *"In effect the court will consider three criteria in determining whether or not the limitation is permissible in the sense of not being shown to be arbitrary or excessive. It will ask itself whether:-*
>
> *i. the legislative objective is sufficiently important to justify limiting a fundamental right;*
>
> *ii. the measures designed to meet the legislative object are rationally connected to it; and*
>
> *iii. the means used to impair the right or freedom are no more than is necessary to accomplish the objective."*

11.13. In the Canadian case of **R V OAKES [1986] 1 SCR 103 [69]–[70]** the court was considering whether Section 8 of the Narcotic Control Act which had been found to be unconstitutional for violating Section 11 of the Canadian Charter of Rights and Freedoms, was a reasonable limit prescribed by law and demonstrably justified in a free and democratic society. The court held that

> *"First, which the measures responsible for a limit on a Charter right or freedom are designed to serve, must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom,: R V Big M Drug Mart Ltd,. supra at p.352 The standard must be high in order to ensure that objectives which are trivial or discordiant with the principles integral to a free and democratic society do not gain s.1 protection...."*

11.14. In **GEOFREY ANDARE V THE ATTORNEY GENERAL & ORS (Supra)** the court held that:

> *"the respondents were under a duty to demonstrate the relationship between the limitation and its purpose, and to show that there were no less restrictive means to achieve the purpose intended. They have not done this" (Emphasis supplied)*

11.15. In **LOHÉ ISSA KONATÉ V. THE REPUBLIC OF BURKINA FASO (APPLICATION NO. 004/2013)**, in a suit against criminal defamation, the African Court on Human and People's Rights, held that:

> *"The chilling effect of criminalizing defamation is further exacerbated by the maximum punishment of two years imprisonment imposable for any contravention of section 194 of impugned section. This penalty, in my view, is clearly excessive and patently disproportionate for the purpose of suppressing objectionable or opprobrious statements. The accomplishment of that objective certainly cannot countenance the spectra of imprisonment as a measure that is reasonably justifiable in a democratic society."* (Emphasis supplied).

11.16. Bringing Section 24 (1) of the Cybercrime Act, 2015 on the legislative cum judicial barometer as presented above the following inferences can be distilled:

11.17. (i)Section 24 (1) of the Cybercrimes Act is clearly not a defined Law as has been extensively argued under **ISSUE 1** above.

(ii)It is not clear what particular itemized objective or objectives Section 24 (1) of the Cybercrime Act, 2015 seeks to protect or pursue. Does it seek to pursue or protect ANY or ALL of (i)the interest of defence, (ii)public safety, (iii)public order, (iv)public morality or (v)public health, (vi) right and (vii)freedom of other persons. It must be stated that it is not sufficient for a party seeking to rely on Section 45 of the 1999 Constitution in limiting Freedom of Expression to merely state an objective contained in Section 45 of the 1999 Constitution just like the Respondent in this appeal did in his written address before the lower court (Page 36, Line 13 of the Record), such party must in fact establish the objective. In **ACHIMU V HON. MINISTER FOR INTERNAL AFFAIRS (Supra)** per Mustapha J. held that:

> *"the right conferred by Section 37 of the 1999 Constitution is not absolute as it is circumscribed by the provision of Section of 45 (1) of the same constitution which provides that the right to family life can be interfered with the interest of defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons....The Respondents have not to my mind, **established** the interest of defence, public safety, public order, public morality or public health that the directive is serving or intended to serve. Whose* right *and freedom is it intended to serve?"* (Underling supplied) See **THE PUNCH NIGERIA LTD. V. ATTORNEY-GENERAL OF THE FEDERATION (Supra), THE GUARDIAN NEWSPAPER LTD V ATTORNEY-GENERAL OF THE FEDERATION (1999) 9NWLR (PT.618) 187**

(iii) It is clear that the restriction which Section 24 (1) of the Cybercrimes Act represents which brings with itself a penalty of **N7, 000, 000.00 or**

imprisonment for a term of not more than 3 years or to both such fine and imprisonment is neither necessary nor proportionate. A penalty of **fine** of N7, 000,000 or **imprisonment** of 3 years or both is indeed excessive or out of proportion. My lords, providing imposable fine of up to N7,000,000 or imprisonment of 3 years or both for offensive, annoying or insulting speeches as done by Section 24 (1) of the Cybercrimes Act is clearly excessive and patently disproportionate as held in **LOHÉ ISSA KONATÉ V. THE REPUBLIC OF BURKINA FASO (Supra).**

Furthermore, the respondent failed to establish to the trial court that Section 24 (1) of the Cybercrimes Act restricts Freedom of Expression (a constitutionally protected right) only as little as possible and that there was no less restriction. See **GEOFREY ANDARE V THE ATTORNEY GENERAL&ORS (Supra).**

It is respectfully submitted that provisions of Section 24 (1) of the Cybercrime Act are **NOT** within the permissible restrictions stipulated in Section 45 of the 1999 Constitution **neither** can Section 45 of the 1999 Constitution save Section 24 (1) of the Cybercrime Act, 2015. This honourable court is hereby urged to resolve **ISSUE 7** in favour of the Appellant.

12.0. CONCLUSION

12.1. My lords, this brief of argument cannot be concluded without commending the industry of the learned trial judge. The learned trial judge heard this suit promptly without any delay. However, and notwithstanding the commendation, the fact remains that many patent errors are in the judgment, many of which have resulted from the misapprehension of issues raised and settled principles of law.

12.2. Finally, Section 24 (1) of the Cybercrimes Act, 2015 cannot stand and must be declared unconstitutional, null and void for each and all of the following reasons:

(i) It conflicts with Section 36 (12) of the 1999 Constitution (as amended).

(ii) It contradicts the principle of legality of criminal provisions that forbids criminal provisions from being vague, ambiguous and overbroad.

(iii) It interferes with Freedom of Expression as provided in Section 39 of the 1999 Constitution (as amended).

(iv) It is not permitted by Section 45 of the 1999 Constitution (as amended).

The appellant hereby respectfully urges Your Lordships to allow the appeal and grant the Appellant's reliefs in entirety.

Dated this 1st day of March 2018

NIGERIAN BAR ASSOCIATION NBA OKEDARA SUNDAY SOLOMON SCN059186 Valid 7th March 2018

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