6/3/19

IN THE COURT OF APPEAL

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

ON THURSDAY THE 28TH DAY OF FEBRUARY, 2019

BEFORE THEIR LORDSHIPS

TIJJANI ABUBAKAR	**JUSTICE, COURT OF APPEAL**
ABIMBOLA O. OBASEKI-ADEJUMO	**JUSTICE, COURT OF APPEAL**
JAMILU YAMMAMA TUKUR	**JUSTICE, COURT OF APPEAL**

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CA/L/174/18

BETWEEN:

SOLOMON OKEDARA ---------- **APPELLANT**

6/3/19

AND

ATTORNEY GENERAL OF THE FEDERATION ------- **RESPONDENT**

JUDGMENT

(DELIVERED BY TIJJANI ABUBAKAR, JCA)

This appeal is against the Judgment of the Federal High Court, sitting in the Lagos Judicial Division delivered by **I. N. BUBA J.** on the 7th day of December, 2017, in Suit No: **FHC/L/CS/937/2017** as contained at pages

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55 – 91 of the Records of Appeal wherein the learned trial Judge dismissed the Appellant's Suit for lacking in merit. The Appellant as Applicant instituted this suit by an Originating Summons and Written Address dated 14th of June, 2017 against the Respondent. The fulcrum of the Appellant's suit before the lower Court is that the provisions of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 contravenes Section 36 (12) and 39 of the 1999 Constitution of the Federal Republic of Nigeria, as amended and as such should be declared inconsistent with the provisions of the Constitution.

In response to the Originating Processes, the Respondent filed a Counter-Affidavit and Written Address on the 22nd of June, 2017 both contained at pages 30 – 37 of the Records of Appeal. The Appellant in turn filed a Reply on Points of Law dated 7th of July, 2017 and contained at pages 38 – 52 of the records of Appeal. The lower Court then delivered its Judgment in favor of the Respondent. The Appellant became aggrieved by the decision and therefore filed Notice of Appeal on the 5th day of February, 2018 containing six grounds of appeal. The Notice of appeal is at pages 92 – 97 of the records of appeal. The Appellant's Brief of Argument was filed on the 6th day of March, 2018 by the Appellant in person. On the other hand, the Respondent filed its Brief through learned Counsel Ibrahim Shitta-Bey SSC on the 4th day of October, 2018. The Appellant filed a Reply Brief on the 16th day of October, 2018.

The Appellant formulated 7 (seven) issues for determination, they are reproduced as follows:

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).*

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).*

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. *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 for determination. (GROUND 4).*

5. *Whether the vague and overboard 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).*

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

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).

Learned counsel for the Respondent on the other hand nominated 3 (three) issues as for determination as follows:

1. *Whether the lower Court considered, and also made a finding, on the vagueness and ambiguity of the provisions of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015? (GROUNDS 1, 2 & 4).*

2. *Whether the provisions of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 are in conflict with the provisions of section 36(12) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, as to warrant their being declared null and void as contemplated by section 1 (1) of the Constitution? (GROUND 3).*

3. *Whether the provisions of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 would interfere with the constitutional rights to freedom of expression of the Appellant as envisaged by section 39 of the Constitution of the Federal Republic of Nigeria, 1999, as amended? (GROUND 4).*

APPELLANT'S SUBMISSIONS

Before I proceed to consider the submissions of the Appellant, let me state that the 7 (seven) issues formulated by the Appellants were predicated on 6 (six) Grounds of Appeal; this, in my opinion amounts to a proliferation of issues; which this Court will not accept or encourage. Judicial authorities abound on this position. In **NWANKWO Vs. YAR'ADUA [2010] 12 NWLR (Pt. 1209) Pg. 518; (2010) LPELR-2109 (SC) Pg. 35, Paras. A – C** the Supreme Court per **OGBUAGU JSC** held that: *"... there are more issues formulated for determination than the number of the said grounds of Appeal. That this amounts to proliferation of issues which is not allowed by this Court. I agree. The fact of proliferation of issues has been deprecated by two Appellate Courts in a number of decided authorities."* See also **BILLE Vs. STATE (2016) LPELR-40832 (SC) Pg. 7, Paras. B – C** and **UNION BANK Vs. SALAUDEEN (2017) LPELR-43415 (CA) Pg. 6-7, Paras. F – F** where this Court held that:

> ***"I have carefully perused the issues formulated for determination by the Appellant and also the Respondent. I notice that both parties distilled three issues for determination in this appeal.***
>
> ***I notice also, that the Appellant raised two (2) Grounds of Appeal in the Notice of Appeal. It is the law that parties are not allowed to formulate more issues than Grounds of Appeal filed. Accordingly, a party, either Appellant or Respondent may formulate issues equal to the number of***

Grounds of Appeal or fewer issues than the Grounds of Appeal...

Where more issues are distilled than the Grounds of Appeal, it amounts to proliferation of issues and should therefore be discountenanced..."

In the circumstances therefore, issue No. 5, which is the second issue distilled from Ground No. 4 is hereby discountenanced by me. The Appellant, who is also a legal practitioner ought to know that he will not be permitted in law to formulate seven issues for determination from six grounds of appeal as contained in his Notice of Appeal; and since two issues were formulated from one ground, that is, Ground No. 4, the second issue is hereby discountenanced. I shall now proceed to consider the submissions of the Appellant on the other issues submitted for determination.

ISSUE ONE AND TWO

The Appellant referred to the definition of the word 'Define' in the Black's Law Dictionary, 8th Ed.; **GRAYNED Vs. CITY OF ROCKFORD (1972) 408 US 104;** and **BLACK-CLAWSON INTERNATIONAL LTD Vs. PAPIERWERE WALDH OF ASCHAFFENBERG AG (1975) 2 WLR 513; (1975) 1 All ER 810, UKHL 2, 638** to contend that what constitutes an offence in Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 was not clearly defined; that no limits of actions or omissions are set out in the said section; and that for a provision of a criminal offence to be valid, it must be defined explicitly and precisely in order to give citizens direction on what conducts or omissions

constitute the offence. Counsel further argued that there is no definition or explanation as to the degree at which a message or matter becomes 'grossly offensive'; that there is no yardstick for what amounts to 'menacing character' or 'needless anxiety; and that what amounts to an 'insult' is also not defined.

The Appellant also referred to Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria, as amended to submit that for a criminal to be arrested, detained or prosecuted for a criminal offence, there must be a written law; the offence must be defined in the written law; and a penalty must be prescribed – these factors, counsel argued must co-exist. Learned counsel referred to **AOKO Vs. FAGBEMI (1961) 1 All NLR 400; IFEAGWU Vs. FEDERAL REPUBLIC OF NIGERIA (2004) 47 WRN 86 CA** and **CHAMBERS Vs. DIRECTOR OF PUBLIC PROSECUTIONS (2013) 1 WLR 1833** to submit that the words used in Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 are not only undefined, unclear and ambiguous, they are even capable of subjective interpretation and misinterpretation. The Appellant therefore urged this Court to resolve issue number one in his favour.

With respect to issue No. 2, the Appellant contended that Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 is in conflict with Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria, as amended and that the lower Court was wrong in its finding at page 88 – 89 of the records of Appeal that there is no conflict between the provisions of the Act and the Constitution. The Appellant argued that Section 24 (1) of the Cybercrimes (Prohibition,

Prevention Etc.) Act, 2015 does not have the criminal offences contained therein defined as required by Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria, as amended. The Appellant therefore urged this Court to resolve issue No. 2 in his favour.

ISSUE THREE

The Appellant referred to the findings at pages 89 – 91 of the Records of Appeal to submit that the learned trial Judge erred in law in formulating the question whether the word 'cybercrime' is capable of a direct definition and arriving at the conclusion that the word 'cybercrime' has not or has never had a single acceptable definition. Appellant relied on **CHIEF AMODU TIJANI DADA & 2 ORS Vs. MR JACOB BANKOLE & 2 ORS [2008] 1 SCNJ 244; IROM Vs. OKIMBA [1998] 2 SCNJ 5; J. A. ADERIBIGBE Vs. TIAMIYU ABIDOYE [2009] 4-5 SC (Pt. 111) 123** and **VICTINO FIXED ODDS LTD Vs. JOSEPH OJO & ORS [2010] 3 SC (Pt. 1) 1** to submit that the issue of definition of the word 'cybercrime' was not part of the issues formulated by either of the parties before the Court; and that the Court must confine itself to the issues formulated for determination by the parties before it. The Appellant further relied on **PETER C. OJOH Vs. OWUALA KAMALU & ORS [2005] 12 SCM 332** to submit that when a court fails to confine itself to the issues raised before it, it exposes its impartiality to questioning; and that the trial Court erred in determining the Appellant's case on the finding that cybercrime is incapable of direct definition, he urged this Court to resolve this issue in his favour.

ISSUE FOUR

The Appellant cited **JOHN AGBO Vs. THE STATE [2006] 1 CJN 332; AEROFLOTSOVIENT AIRLINES Vs. UBA LTD [1986] NSCC 698; MOJEED SUARA YUSUF Vs. MADAM IDIATU ADEGOKE & ANOR [2007] 4SCNJ77** and **ETERNAL SACRED ORDER OF CHERUBIM Vs. ADEWUNMI & ORS [1969] NSCC 114** to submit that a Court is duty bound to dispassionately consider and address all the issues placed before it by the parties before coming to a conclusion. Appellant argued that the learned trial Judge in the instant case erred and failed to consider, deal with and pronounce on most of the issues placed before him including the issue of the vagueness, ambiguity and over-breadth of Section 24 (1) of the Cybercrimes Act, 2015.

The Appellant further contended that a law that limits fundamental rights and freedoms must be precise and clear enough to cover only activities connected to the law; and that when the wordings of an enactment are vague and ambiguous; such an enactment is capable of subjective interpretation and misinterpretation, he referred to **FEDERAL COMMUNICATIONS COMMISSION Vs. FOX TELEVISON STATIONS, 132 SC 2307; BURSTYN Vs. WILSON 96 L. ED 1098; SHREYA SINGHAL Vs. UNION OF INDIA (2003) 12 SCC 73** and **GEOFFREY ANDARE Vs. ATTORNEY GENERAL & ORS. (Petition No. 149 of 2014** to submit that the Section 66A of the Information Technology Act of India and Section 29 of the Kenya Information and Communication Technology Act which both have provisions *in pari material* with the

provisions of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 were both declared as vague and unconstitutional.

Learned counsel contended that Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 (as well as Section 66A of the Information Technology Act of India and Section 29 of the Kenya Information and Communication Technology Act both of which have been declared vague and unconstitutional) are a replica of the UK Post Office (Amendment) Act of 1935. The Appellant submitted that the lower Court ought to have followed the Kenyan and Indian judicial precedents but it failed to consider the issue as raised by the Appellant. Appellant referred to **BURSTYN Vs. WILSON (Supra)** to submit that if the Court cannot tell what amounts to 'grossly offensive' and 'menacing character', how then will those to be governed by the Act tell; and that the provisions of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 are vague and ambiguous.

It was further contended by the Appellant that Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 is too wide such that any discussion, opinion or advocacy on governmental, literary, scientific or artistic subjects that were ordinarily constitutionally protected can be covered in it if such discussion or opinion is considered as 'grossly offensive' or to have caused 'annoyance' to some other persons. Appellant also referred to **UNITED STATES Vs. REESE (1875) 92 US 214 at 221** to submit that a legislation ought not to set a net large enough to catch all possible offenders and leave the Court in a position of deciding who should be detained and who should be set at

liberty; and that legislation sought to meet minimum guidelines for law enforcement, he further submitted that Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 is vague, ambiguous and does not meet the requirements of legality of a criminal offence; he urged this Court to resolve issue No. 4 in his favour.

ISSUE SIX

The contention of the Appellant on this issue is that the trial Court was wrong to have held that Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 is in the best interest of generality of the public when the Respondent merely stated without proving how the said section provided for public order and morality, he referred to **ACHIMU Vs. HON. MINISTER FOR INTERNAL AFFAIRS (2005) 2 FHCLR 401** and **NWAKWO Vs. STATE 48 (1985) 6 NCLR 228** to contend that Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 cannot be established to be in the interest of the generality of the public; that the phrases and words like 'grossly offensive', menacing character', 'annoyance', 'ill will', 'insult', 'enmity' and 'inconvenience' all present the law to be a ready tool in the hands of a few rich and power-drunk individuals to suppress the poor and gag freedom of expression as well as victimize the vulnerable. The Appellant therefore urged this Court to resolve this issue in his favour.

ISSUE SEVEN

The Appellant relied on **JOHN AGBO Vs. THE STATE** to submit that the trial Court erred in failing to consider, deal with and pronounce on the issue of whether the provisions of Section 24 (1) of the Cybercrimes

(Prohibition, Prevention Etc.) Act, 2015 are within the permissible restrictions stipulated in Section 45 of the 1999 Constitution of the Federal Republic of Nigeria, as amended or whether Section 45 of the 1999 Constitution of the Federal Republic of Nigeria, as amended can save Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015. Counsel referred to **ABACHA Vs. FAWEHINMI (2001) 51 WRN 29; CHIKE OBI Vs. DIRECTOR OF PUBLIC PROSECUTION (No. 2) [1961] All NLR 458** and **OLAWOYIN Vs. ATTORNEY GENERAL OF NORTHERN NIGERIA (1961) 1 All NR** to submit that though the freedom of expression provided for in Section 45 of the Constitution is not absolute and subject to some permissible restrictions, such restrictions must be in the interest of public morality; must not be excessive or out of proportion to the object it is sought to achieve; it must be defined by a law; pursue a constitutionally recognized objective; and be necessary and proportionate.

The following cases were cited: **ABDULKAREEM Vs. LSG [2016] All FWLR (Pt. 850) Pg. 101; THE SUNDAY TIMES Vs. UNITED KINGDOM, 26 April 1979 Application No. 6538/74, Para. 49; AWOLOWO Vs. FEDERAL MINISTER OF INTERNAL AFFAIRS (1962) 4 NCLR 261 FCA; THE PUNCH NIGERIA LTD. Vs. ATTORNEY-GENERAL OF THE FEDERATION (1988) 1 HRLRA 488; SAKAL PAPERS (P) LTD Vs. UNION OF INDIA AIR (1962) SC 305; OLAWOYIN Vs. ATTORNEY GENERAL OF NORTHERN NIGERIA (Supra); NYAMBIRAI Vs. NATIONAL SOCIAL SECURITY AUTHORITY & ANOR (1995) 2 ZLR 1 (S) at Pg. 13, Paras. C – F; R Vs. OAKES [1986] 1 SCR 103 (69) – (70); GEOFREY ANDARE Vs. THE ATTORNEY GENERAL &**

ORS (Petition No. 149 of 2015) and **LOHE ISSA KONATE Vs. THE REPUBLIC OF BUKINA FASO (Application No. 004/2013).**

The Appellant submitted that in the instant case, Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 is clearly not defined by law; the particular objective(s) it seeks to protect or pursue is not clear; the restriction which it represents and the punishment of a fine of ₦7,000,000.00 or imprisonment for a term of not more than 3 years or both is neither necessary nor proportionate but clearly excessive and patently disproportionate. Counsel submitted that Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 is not within the permissible restrictions stipulated in Section 45 of the 1999 Constitution of the Federal Republic of Nigeria, as amended. This Court was urged to resolve issue No. 7 in favour of the Appellant and declare Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 as unconstitutional, null and void; and allow this appeal.

SUBMISSIONS OF COUNSEL FOR THE RESPONDENT

ISSUE ONE

Learned counsel for the Respondent submitted that the provisions of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 are crystal clear and would not warrant any difficulty in their interpretation by the Courts. Counsel cited **AGWALOGU Vs. TURA INT'L LTD NIG & ORS (2017) LPELR-42284 (CA) Ratio 2** to submit that the Courts will give literal and purposeful interpretation to statutes where the need arises; and that the phrases 'grossly offensive' and 'menacing

character', would be given their rightful meanings by the Courts. Counsel argued that the primary concern of the Courts is the ascertainment of the intentions of the lawmakers through the known canons of interpretations.

Learned counsel referred to **SEAFORD COURT LTD Vs. ASHER (1949) 2 KB 481 at 498; ATTORNEY-GENERAL OF THE FEDERATION Vs. ABUBAKAR [2007] 10 NWLR (Pt. 104) Pg. 1 at 171-172; COP Vs. IBRAHIM (2016) LPELR-41319 (CA) Ratio 8; BAKARE Vs. NIGERIAN RAILWAY CORPORATION [2007] 17 NWLR (Pt. 1064) Pg. 606** and **ABIODUN Vs. CHIEF JUDGE OF KWARA STATE [2007] 18 NWLR (Pt. 1065) Pg. 109 at 211-222, Paras. C – B** to submit that Courts are enjoined to adopt a holistic approach and construe all the provisions as a whole and not in bits and pieces in a truncated form. Counsel argued that contrary to the Appellant's submissions, Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 properly defined, identified and criminalized those acts which the legislature intended to legislate against; and that a combined reading of Section 1 and 24 (1) of the Act makes the intention and objectives of the Act and certain acts which are intended to be criminalized by the Act distinctly clear.

Learned counsel submitted that the Courts in its interpretative roles would consider what is 'grossly offensive' and 'menacing character' as contained in Section 24(1)(a) and would be guided by words like 'causing annoyance', 'insult', 'criminal intimidation', 'inconvenience' and others as contained in Section 24 (1)(b). Counsel argued that the Appellant just treated the words 'grossly offensive' and' menacing

character' in isolation and without recourse to Section 21 (1) (b) of the Act which provides the parameters which the Court will consider in interpreting the law. Learned counsel submitted that the law is very clear and that it is not mandatory that the interpretation section of the Act must contain definition of every word used in the enactment because so doing will leave the judiciary with no visible function.

Learned counsel argued that the decision of **AOKO Vs. FAGBEMI (Supra)** and **IFEAGWU Vs. FEDERAL REPUBLIC OF NIGERIA (Supra)** are inapplicable in the instant case because the facts are clearly distinguishable from the scenario envisaged by Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 which clearly is a written law that contains a defined offence and a clearly spelt out penalty. Counsel argued further that the words used in Section 24 (1) of the Act are unambiguous and amenable to easy interpretation by the Courts. Learned counsel referred further to Section 200 of the Administration of Criminal Justice Act, 2015 to submit that Section 24 (1) of the Act contains words which if given their ordinary meanings would not cause any ambiguity. Counsel referred to **ATTORNEY-GENERAL OF ANAMBRA STATE Vs. ATTORNEY-GENERAL OF THE FEDERATION & ORS (2005) 5 SCNJ Pg. 38** to submit that Courts of law do not engage in resolving academic questions; that the Appellant's fears are unfounded, speculative, fancifully hypothetical and academic; and that it is for the Courts to interpret what 'grossly offensive', 'menacing character', 'insult', 'needless anxiety' and other phrases mean.

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Learned counsel for the Respondent further referred to the findings of the lower Court at page 89 of the Records of Appeal to contend that the learned trial Judge made a specific finding of fact on the vagueness or otherwise of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015. Counsel argued that the Appellant's contention that the lower Court did not make a finding on the issue of whether Section 24 (1) of the Act conflicts with 36 (12) and 39 of the 1999 Constitution of the Federal Republic of Nigeria, as amended is misconceived because the lower Court made a finding on the said issue. Learned counsel submitted that Section 24 (1) of the Act cannot be defined or considered without reference to the term 'cybercrime'. Counsel urged this Court to resolve this issue in favour of the Respondent.

ISSUE TWO

Learned counsel submitted that the lower Court was right in its conclusion that the provisions of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 do not contradict or are not in conflict with Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria, as amended; and that the Section 24 (1) of the Act satisfies the three basic conditions which must co-exist as contemplated by Section 36 (12) of the Constitution and pronounced by the Court in **AOKO Vs. FAGBEMI (Supra)** which are that the law must be written; the offence must be defined in a written law; and a penalty must be prescribed. Counsel submitted that Appellant's contention that Section 24 (1) of the Act should be declared as inconsistent with Section

36 (12) of the Constitution amounts to a non-issue and that Section 1 (3) of the Constitution is also not applicable to the instant case.

It was contended by learned Counsel for the Respondent that to argue that every word in a Statute must be explicitly explained to the satisfaction of everyone would amount to stretching the law to very ridiculous extent. Counsel referred to sections 200, 203 and 206 of the Administration of Criminal Justice Act, 2015 and **GEORGE Vs. F.R.N. (2013) 12 SCNJ Pg. 1 at 20, Paras 15 – 20** to submit that the words in Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 have clearly and distinctly criminalized certain identifiable conducts which the law frowns at; and correspondingly penalized them with terms of imprisonment, option of fine or both thereby satisfying the basic requirements of Section 36 (12) of the 1999 Constitution of the Federal Republic of Nigeria, as amended. Learned counsel referred to **ADONIKE Vs. STATE (2015) LPELR (SC) Ratio 3** and submitted that the conflict and inconsistency referred to by the Appellant are self-induced and non-existent. Counsel urged that this issue be resolved in favour of the Respondent against the Appellant.

ISSUE THREE

Learned counsel for the Respondent submitted that the freedom of expression provided for in Section 39 (1) of the 1999 Constitution of the Federal Republic of Nigeria, as amended is not without limits and restrictions and that provisions of Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 is not in conflict with Section 39 of the Constitution. Counsel argued that the lower Court was right in

holding that the provisions of Section 39 of the Constitution cannot be read in isolation; rather, they must be read along with the provisions of Section 45 of the Constitution.

Learned counsel submitted that all over the world, there is nothing like free speech without limits and that the lower Court was right to have held that a community reading of Section 24(1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 and Sections 39 and 45 of the 1999 Constitution of the Federal Republic of Nigeria, as amended would reveal that public interests, public safety, order and privacy rights are what Section 24 (1) of the Cybercrimes Act intend to regulate; and that the provisions of the Act is not generic, nebulous or imprecise. Counsel contended that the case of **OLAWOYIN Vs. ATTORNEY GENERAL OF NORTHERN NIGERIA (Supra)** relied upon by the Appellant is not helpful to the case of the Appellant because restrictions can be imposed on the rights to freedom of expression when it is necessary in the interest of justice. Learned counsel submitted that Section 24 (1) of the Cybercrimes Act is not excessive or out of proportion to the object which it is sought to achieve. Counsel urged this Court to resolve issue No. 3 in favour of the Respondent, and dismiss the appeal.

APPELLANT'S REPLY

The Appellant in Reply to the Respondent's submissions referred to the findings of the lower Court at pages 88-89 of the Records of Appeal to submit that there is no place throughout the judgment wherein the learned trial Judge specifically made a finding on the principle of legality that forbids vagueness, ambiguity and over-breadth of criminal

provisions contained in Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 as submitted before it by the Appellant, he referred to **PETER Vs. ARCHITECT OKOYE & ANOR [2002] FWLR (Pt. 110) 1864 at 1882** to urge this Court to pronounce on the issue as to the vagueness, ambiguity and over-breadth of Section 24 (1) of the Cybercrimes Act.

Learned counsel referred to Legislative Drafting by Thornton G. C. Butterworths, London 4th Ed. (1996) Pg. 349; **GEORGE Vs. F.R.N. [2014] All FWLR (Pt. 718) 879** and **ASAKE Vs. NIGERIAN ARMY COUNCIL [2007] All FWLR (Pt. 396) 731 at 746-747** to submit that the provisions of a criminal or penal law cannot be vague, ambiguous and be made subject of canons of interpretation as referred to by the Respondent. Counsel reiterated some of the arguments and authorities already in the Appellant's Brief and concluded that penal laws are meant to be such clearly written in order to guide even an ordinary citizen to know what actions or omissions would constitute a crime and which ones do not. Learned counsel urged this Court to allow this appeal and commit Section 24 (1) of the Cybercrimes (Prohibition, Prevention Etc.) Act, 2015 to the 'bin of history' as a failure for being null, void and unconstitutional.

RESOLUTION

Having read the arguments canvassed by the respective counsel on the issues formulated, I believe viewing the appeal from a very narrow compass the main issue for determination is not beyond *"whether section 24(1) of the Cybercrimes Act, 2015 is unconstitutional or not"*

The Appellant argued that the section is unconstitutional, stating that it is vague, overbroad, and therefore inconsistent with the freedom of expression guaranteed by the Constitution. The Respondent, on the other hand submitted that the section is constitutional; and is very clear and unambiguous. At the end of the trial, the lower Court agreed with the Respondent and held the view that the provisions of section 24(10 of the Act are not in conflict with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Before embarking on comprehensive analysis and determination of the narrow issue in controversy between the contending parties in this appeal, it is proper to emphasize that the duty of the court, in cases where the provisions of an Act enacted by the legislature are contested for reasons of being in conflict and therefore inconsistent with the provisions of the Constitution, is to consider the provisions of the Constitution which are in issue and lay same side by side with the statute which is being challenged and resolve whether the statute is indeed in conflict with the provisions of the Constitution. See the illuminating words expressed by the United States Supreme Court in **U.S. Vs. BUTLER, *et al* (1936) 297 U.S. 1** as follows:

> ***"When an Act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty; to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former... This Court neither approves nor condemns any legislative policy.***

Tijjani Abubakar, JCA

Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution; and having done that, its duty ends..."

As **ADEKEYE, JSC** rightly said regarding the duty of the court, in **MARWA & ORS Vs. NYAKO & ORS (2012) LPELR – 7837 (SC)**, ***"under the Constitution (the) Court has no power to make laws, therefore its primary responsibility in the area of interpretation is basically – to identify the purpose which the framers of the Constitution sought to achieve. On finding that purpose, a meaning which is in accord with that purpose must be given the words of the Statute..."*** See also **RABIU Vs. KANO STATE (1980) LPELR – 2936 (SC).** In the present appeal, this court is faced with a consideration and construction of the provisions of Section 24(1) of the Cybercrime Act, 2015 which the Appellant is contending to be inconsistent with section 36(12) and section 39 of the 1999 Constitution.

Section 24(1) of the Act reads:

(1) A 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 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 is liable on conviction to a fine of not more than ₦7,000,000.00 or imprisonment for a term not more than 3 years or both.

Whereas section 36(12) of the 1999 Constitution (as amended) provides that:

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

Section 39 of the Constitution on the other hand provides that:

(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.

(2) 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; Provided that no person, other than the Government of the Federation or of a State or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television

or wireless broadcasting station for, any purpose whatsoever.

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society –

(a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or

(b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law."

Without any particle of doubt, under our constitution, liberty of thought and freedom of expression is paramount. In **DIN Vs. AFRICAN NEWSPAPERS OF NIG. LTD (1990) LPELR – 947 (SC)**, the Supreme Court of Nigeria, *per* **KARIBI-WHYTE, JSC** held that the ***"right to comment freely on matters of public interests 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 clearly treasure for our personal freedom..."*** See also **AVIOMAH Vs. COP & ANOR (2014) LPELR – 23039 (CA); OKAFOR & ORS Vs. NTOKA & ORS (2017) LPELR – 42794 (CA)**. The provisions of

section 39 of the Constitution are clear and unambiguous to the effect that it guarantees that every citizen of this country shall be entitled to freedom of expression which was extended to include the freedom to hold opinion and pass information without interference. This freedom presupposes free flow of opinion and ideas essential to sustain the collective life of the citizenry. It is very important for me to stress that the right provided under section 39 is not an open-ended or absolute right, the right is qualified, and therefore subject to some restrictions by the provisions of section 45 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the section provides as follows:

> *(1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution, shall invalidate any law that is reasonably justified in a democratic society-*
> *(a) in the interest of defense, public safety, public order, public morality or public health; or*
> *(b) for the purpose of protecting the rights and freedom of other persons..."*

From the above provisions, it is obvious that the legislature has the power to enact laws that are reasonably justifiable in a democratic society and such laws shall not be declared invalid merely because they appear to be in conflicts with the rights and freedom extended to citizens under the Constitution. It is therefore within the powers of the legislature, in the interest of the public, to place restrictions and introduce safe-guards upon the constitutional right of a citizen, I must be quick to add that, in the light of the wordings in section 45(1) *supra* is not open to the legislature to achieve this object by directly or

immediately curtailing the right of the Nigerian citizens unless such restriction accords with the circumstances enumerated under section 45(1)(a) and (b) *supra*. Therefore, as in the case at hand, the right of freedom of speech guaranteed under section 39 cannot be taken away except for purposes of preserving the interest of defense, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons.

The Appellant argued that section 24(1) of the Cyber Crime Act is vague, overbroad, and that the words used therein are not defined, and is therefore in conflict with the provisions of section 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) therefore leaving room for various manner of constructions. The Appellant particularly dwelt on the failure to clearly provide the definition of what constitutes a message that is *'grossly offensive', 'indecent', 'obscene' or 'menacing character?* and, who and what is the boundary for determining what character of messages cause *'annoyance', 'inconvenience', 'needless anxiety'?* Appellant said there is no clear definition of all these words from the provisions of the law.

Taking guidance from the decision of the Supreme Court of Nigeria in **MARWA & ORS Vs. NYAKO & ORS (Supra),** the Court faced with the challenge of resolving allegations of conflict between existing legislations has a duty *to identify the purpose which the framers of the Constitution sought to achieve,* and ascribe that purpose to the provisions of the statute. I must state without any reservations that section 39 of the Constitution is made subject to the provisions of

section 45 which gives room for derogation from the provisions of section 39 of the Constitution. Before I address the perceived conflict, let me set the records straight by determining the purpose of the Cybercrimes (Prohibition & Prevention etc.) Act 2015, the objectives sought to be achieved by the enactment is found in section 1 of the Act and the section provides as follows:

> *The objectives of this Act are to –*
>
> *(a) provide an effective and unified legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria;*
>
> *(b) ensure the protection of critical national information infrastructure; and*
>
> *(c) promote cyber security and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.*

This section conveys the determination of the legislature to protect several rights including privacy rights of citizens. A clear analysis of section 45 of the Constitution will show that the section sets out to protect the interest of defense, public safety, public order, public morality or public health; or the rights and freedom of other persons. Both provisions of the cybercrimes Act and section 45 of the Constitution set out to protect the privacy rights of citizens. I have no difficulty in coming to the conclusion that the intention of the

legislature in enacting the Cybercrimes Act 2015 is in accord with the provisions of section 45 of the Constitution.

The Appellant also cited section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to contend that a person cannot be tried and convicted for an offence unless the offence is clearly provided for under a written law. The section provides that *"(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law."* The Appellant said section 24 of the Act does not satisfy the requirements of section 39 (12) of the Constitution, it is therefore unconstitutional.

In my humble understanding of the provisions of section 24 (1) of the cybercrimes Act 2015, the words are explicit and leave no room for speculation or logical deductions. The section is again reproduced as follows and I quote:

Section 24(1) of the Act reads:

(2) A person who knowingly or intentionally sends a message or other matter by means of computer systems or network that –

(c) is grossly offensive, pornographic or of an indecent, obscene or menacing character or causes any such message or matter to be sent, or

(d) *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 is liable on conviction to a fine of not more than ₦7,000,000.00 or imprisonment for a term not more than 3years or both.*

Section 24 Sub-section 2 of the Act provides for causing to be sent materials that are grossly offensive, pornographic, indecent, obscene or of menacing character, or knowing them to be false for the purpose of causing annoyance, inconvenience, danger or obstruction, insult, enmity hatred ill will or needless anxiety. With all due respect to the Appellant in the instant appeal, the language of the law is explicit and admits of no recourse to undue technicalities, the words are plain and ordinary. For the purpose of setting the ball rolling in bringing the defendant to justice, I think the legislation has the capacity to convey to the defendant in reasonably substantial details what he is coming to meet in Court. Again the penalty, if found guilty at the conclusion of trial is also specifically provided for. I would not like to say that the Appellant in this appeal is unduly resorting to game of wits, but such acrobatic scheming by the Appellant is totally uncalled for, they seem to be a designed to scramble the understanding of the Court. The offence is clearly defined and the punishment is also clearly stated in the law. In my humble understanding therefore the provisions of section 24(1) of the cybercrimes Act 2015 are not in conflict with the

provisions of sections 36 (12) and 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The Appellants appeal is therefore devoid of merit and deserves to be dismissed, it is hereby dismissed. The Judgment of the lower Court delivered by **BUBA J.** of the Federal High Court in Suit No. **FHC/L/CS/937/2017** on the 7th day of December, 2017, is hereby affirmed by me.

Parties in this appeal shall bear their respective costs.

I commend the Appellant and learned Counsel for the Respondent who strayed into foreign jurisdictions to enrich my understanding of the subject.

TIJJANI ABUBAKAR
JUSTICE, COURT OF APPEAL

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APPEARANCES

Oluwasegun Otebola with S. Okedara for the Appellant

Ibrahim Shitta-Bay for the Respondent

CA/L/174/18

AbimbolaOsarugueObaseki-Adejumo, JCA

I had the opportunity of reading in draft the judgment of my learned brother **TIJJANI ABUBAKAR, JCA** just delivered. I am in agreement with the reasoning and conclusion therein.

The appeal lacks merit and it is accordingly dismissed. The judgment of the lower court delivered by **BUBA, J** in Suit No: FHC/L/CS/937/2017 is accordingly affirmed.

I also abide by all other consequential orders in the lead judgment.

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO
JUSTICE, COURT OF APPEAL

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JAMILU YAMMAMA TUKUR JCA

My learned brother TIJJANI ABUBAKAR JCA afforded me the opportunity of reading in draft before today the lead Judgment just delivered and I agree with the reasoning and conclusion contained therein, adopt the Judgment as mine with nothing further to add.

Certification — ₦1000

JAMILU YAMMAMA TUKUR
JUSTICE, COURT OF APPEAL

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