

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA**

THIS THURSDAY, THE 14TH DAY OF NOVEMBER, 2019

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

CHARGE NO: CR/519/19

BETWEEN:

FEDERAL REPUBLIC OF NIGERIACOMPLAINANT

AND

BANJI OLUWATOSIN (a.k.a Carl Patrick)DEFENDANT

JUDGMENT

The defendant was charged under a one count charge dated 26th September, 2019 as follows:

That you BANJI OLUWATOSIN (a.k.a Carl Patrick) sometime in 2019 at Abuja FCT within the Jurisdiction of this Honourable Court fraudulently using the identity of Carl Patrick, a United States Military Officer, induced one Babara Rojas of the United States of America through Instagram social media account to deliver the sum of (\$1500) One thousand five hundred dollars to you and you thereby committed an offence under Section 321 of the Penal Code Law of the Federal Republic of Nigeria and punishable under Section 322 of the same law.

He was arraigned today 14th November, 2019 and he pleaded guilty to the charge. The prosecution informed the court that they had reached a plea bargaining agreement with the defendant and that they had filed same in court on 12th November, 2019 and want the court to convict on the terms as agreed. The plea agreement was filed in court on 12th November, 2019 and signed by the prosecutor,

defendant, his legal practitioner and the investigation officer. The agreement substantially complies with the provisions of **Section 270 (7) of ACJA 2015** and the punishment prescribed also falls within the appropriate range of punishment stipulated for the offence under **Section 322 of the Penal Code**.

Further to the provision of **Section 270(10) of ACJA 2015**, I enquired from the defendant whether he admits the allegation in the charge to which he pleaded guilty. He answered in the affirmative. I also enquired as to whether he entered into the agreement voluntarily and without undue influence; he equally answered in the affirmative.

I am therefore in no doubt that the defendant fully understood the Charge vis-à-vis the plea agreement he freely entered into. In the circumstances, the duty of court is circumscribed by the clear provisions of **Section 270 (10) of ACJA**. I therefore find and pronounce the defendant guilty on the one Count Charge and Convict him as charged.

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Hon. Justice A.I. Kutigi

SENTENCE

I have carefully considered the plea for mitigated sentence as articulated by learned counsel to the defendant. I have also similarly considered the response by prosecuting counsel that the accused does not have a criminal record.

Now in this case, parties have entered into a precisely streamlined agreement in the following terms:

“WHEREAS:

- 1. Following the arrest of the suspect alongside his other friends by the Intelligence Response Team of the Nigeria Police, the suspect was transferred to the Commission on the 15th July, 2019. Investigation conducted following the arrest of the defendant revealed that he is into internet scam and had fraudulently obtained the sum of \$1200 (One thousand two hundred dollars) from an American named Babara Rojas,**

under a false identity of Carl Patrick, a United States Military personnel. During the course of investigation into the case, BANJI OLUWATOSIN (a.k.a Carl Patrick) admitted his wrong doing, showed remorse for his actions and paid the sum of \$1200 (One thousand two hundred dollars) fraudulently obtained from his victim. He also agreed to forfeit the phone and laptop used (Iphone 7 plus) in the commission of these crimes to the Federal Government of Nigeria through the Economic and Financial Crimes Commission.

- 2. The Defendant through his lawyer, A.G. Enabosi Esq. has applied for plea bargain and the Prosecution hereby accepts as stated hereunder.**

IT IS HEREBY AGREED AS FOLLOWS:

- 1. That before the conclusion of this agreement, the Defendant was informed:
 - i. That he has the right to remain silent.**
 - ii. Of the consequences of not remaining silent.**
 - iii. That he is not obliged to make any confession that could be used in evidence against him.****
- 2. That the Defendant shall plead guilty to the charge of Impersonation dated and filed the 26th day of September, 2019 before this Honourable Court.**
- 3. That the phone used by defendant in the commission of these crimes (Iphone 7 plus) be sold by the Prosecution and the proceeds be forfeited to the Federal Government of Nigeria.**
- 4. That upon conviction, sentencing of the Defendant by this Honourable Court shall be one year imprisonment or an option of fine of N400,000 (Four Hundred Thousand Naira) to be paid to the Federal Government of Nigeria through the Economic and Financial Crimes Commission.**
- 5. That the sum of \$1200 recovered from the defendant during the investigation shall be paid to Barbara Rojas by the Economic and**

Financial Crimes Commission through the United States Embassy as restitution.”

The court was urged to sentence the defendant on these defined terms. I have carefully evaluated these agreed terms and as stated earlier, the terms including the punishment fall within the accepted range of punishment stipulated for the offence by law.

Now my attitude when it comes to sentencing is basically that it must be a rational exercise with certain specific objectives. It could be for retribution, deterrence, reformation etc in the hope that the type of sanction chosen will put the particular objective chosen, however roughly, unto effect. The sentencing objective to be applied and therefore the type of sentence to give may vary depending on the needs of each particular case.

In this case, if the objective is deterrence and reformation for the young defendant and I presume they are, then the agreement reached would appear to me fair and reasonable.

In the circumstances, the court must therefore here engage in some balancing act: (1) To be consistent and firm in enforcing clear provisions of the law and (2) To be fair to the defendant where true penitence as in this case is displayed. I have considered all these factors, particularly the fact that the defendant is a first offender and who has exhibited sincere penitence in the circumstances. Rather than insist on his inalienable right to a trial, he pleaded guilty thereby saving tax payers resources and time of court. I have similarly noted the notorious fact that the prison system in our country is faced with enormous challenges not only in terms of capacity but also its reformatory capabilities.

Having weighed all these including the disposition of the prosecution, I incline to the view that adopting the agreement reached by parties appear to me desirable and appropriate in this case and would fully achieve the noble goals of deterrence and reforming the defendant towards a pristine path of moral rectitude.

Accordingly, I hereby sentence the convict to a term of One (1) Year imprisonment or an option of fine in the sum of N400,000 (Four Hundred Thousand Naira Only).

I also further make the following **Orders** pursuant to the provision of **Section 270 (12) of the ACJA 2015** as follows:

- 1. That the phone used by defendant in the commission of these crimes (Iphone 7 plus) be sold by the Prosecution and the proceeds be forfeited to the Federal Government of Nigeria.**

- 2. That the sum of \$1200 recovered from the defendant during the investigation shall be paid to Barbara Rojas by the Economic and Financial Crimes Commission through the United States Embassy as restitution.**

- 3. That the Defendant BANJI OLUWATOSIN (a.k.a Carl Patrick) shall depose to an affidavit of undertaking to be of good behavior before this Honourable Court.**

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Hon. Justice A.I. Kutigi

Appearances:

- 1. M.A. Lamin Esq., for the Complainant**

- 2. Ezekiel Idoko Esq., for the Defendant.**