IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY HOLDEN AT ABUJA

THIS TUESDAY THE 15TH DAY OF DECEMBER, 2015.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI -- JUDGE

CHARGE No CR/42/11

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA…….....COMPLAINANT

AND

ELISHA ANKUMA CHORI.....ACCUSED PERSON

JUDGMENT

The Accused Person is standing trial by virtue of an amended charge dated 16th November, 2015 and filed same date in the court's registry. The amended charge was duly regularized by an order of court dated 15th December, 2015. The two counts charge reads as follows:

1. That you Elisha Ankuma Chori sometime in October, 2010 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory being a Businessman falsely pretended to hold the office of a staff of the Economic and Financial Crimes Commission, as a public servant; and in such assumed character did promise to help one Mrs. Jummai Benson recover her money from an individual, under colour of such office; and therefore committed an offence contrary to and punishable under **Section 132 of the Penal Code Act, Cap 532, Laws of the Federal Republic of Nigeria 1990.**

2. That you Elisha Ankuma Chori sometime in October, 2010 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory with intent to cheat, presented yourself as a staff of the Economic and Financial Crimes Commission and in such assumed character attempted to induce one Jummai Benson to deliver the sum of N100,00(One Hundred Thousand Naira) Only to you; and therefore commit an offence

contrary to and punishable under **Section 95 of the Penal Code Act, Cap 532, Laws of the Federal Republic of Nigeria 1990.**

It is important to briefly state that prior to the filing of the amended charge, hearing had commenced on the original charge filed which the Accused pleaded not guilty to and the prosecution had called two witnesses who gave evidence and were duly cross-examined by learned counsel to the Accused Person. The matter was for continuation of hearing to enable the prosecution call further witnesses in proof of its case when the prosecution filed the extant amended charge.

Now on 15th December, 2015, the two counts amended charge was fully read to the Accused in English, he understood same to the satisfaction of court and he duly pleaded guilty to the two counts charge. To ensure that the Accused truly intended to plead guilty to the two counts charge, I called or invited the prosecution to state the facts of the case with respect to each count.

Learned counsel to the prosecution proceeded to state the material facts and tendered documents in support or in proof of the ingredients or elements of the offences the Accused is charged with.

The attention of court was also drawn to a plea agreement dated 16th November, 2015 and filed same date in the courts registry in which the accused admitted to having impersonated a staff of the Economic and Financial Crimes Commission (E.F.C.C) and in such character agreed to help one Jummai Benson to recover her money under the colour of such office and also attempted to induce one Jummai Benson to deliver the sum of N100,000(One Hundred Thousand Naira) only to him. Based on this agreement, the accused willingly changed his plea to guilty and the prosecution has accepted same.

After the presentation by the prosecution and pursuant to **Section 270(iv) of ACJA 2015**, I enquired from the Defendant whether his plea of guilty is as to the facts stated by the prosecution. The Accused answered in the affirmative that he fully understood the facts and ingredients of the offences and stood by his plea of guilty. I also enquired again from the accused further to the same provision of **Section 270(iv) of ACJA 2015** whether he entered into the plea agreement voluntarily and without undue influence and he answered in the affirmative; that he entered into the plea agreement

freely, voluntarily and was not unduly influenced by the EFCC or indeed anybody.

Learned counsel to the Accused person similarly affirmed that his client understood the charge and that he was pleading guilty to the two counts amended charge. He also confirmed that he was part of the plea bargaining agreement which he duly signed.

I am in no doubt therefore that the Accused fully understood the charge, the terms of the plea agreement he freely entered into with the prosecution and his plea of guilty was unequivocal.

In the circumstances, the duty of the court is circumscribed by the clear provisions of **Section 187(1) and (2) of the Criminal Procedure Code.** I hereby accordingly find and pronounce the Accused guilty on the two counts charge and convict him as charged.

Hon. Justice A.I. Kutigi

SENTENCE

I have carefully considered the plea for mitigated sentence as brilliantly articulated by learned counsel to the Accused Person. I have similarly carefully considered the response of learned counsel to the Prosecution.

Let me state at the outset that I am persuaded by the submissions on both sides of the aisle. In considering these submissions, I am obviously to be guided by the clear provisions of the law which provides the punishment for the offences charged and the plea agreement deal settled by the prosecution and the convict. The punishments under **Sections 132 and 95** range from imprisonment or fine or both. Whatever discretion that may be exercised must be such obviously allowed by law. It is trite law that the sentence of a court must be in accordance with that prescribed by the statute creating the offence. The court cannot therefore impose a higher punishment than that prescribed for the offence neither can a court impose a sentence which the statute creating the offence has not provided for. See **Ekpo V. State (1982)1 NCR 34.**

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 discharging this, no doubt difficult exercise, the court has to decide first on which from the above principles or objective apply better to the facts of a case and then the quantum of punishment that will accord with it.

In this case, if the objective is deterrence and reformation for the young Accused Person and I presume they are, then the maximum punishment for each of the two counts as provided for in the penal code appear to me particularly excessive in the light of the facts of this case alluded to by counsel on both sides of the aisle.

In same vein, it is a notorious fact that crimes of this nature appear now to be prevalent in our clime and the courts as preventive tools in the criminal justice system must not be seen to encourage criminal acts of this nature by giving light sentences. The court must therefore here engage in some tight balancing act: (1) To be consistent and firm in enforcing clear provisions of the law and (2) To be fair to the Accused Person where true penitence as in this case is displayed. I have considered all these factors, particularly the fact that the Accused Person is a first offender with a young family and so many dependents and who has exhibited sincere penitence in the circumstances. Rather that insist on his inalienable right to a trial, he pleaded guilty thereby saving tax payers resources and time of court. This attitude must have played a part obviously in the prosecution agreeing to the plea bargain agreement dated 16th November, 2015.

Having weighed all these facts, I incline to the view that a lighter sentence appear to me desirable and appropriate in this case and would fully achieve the noble goals of deterrence and reforming the accused towards a pristine path of moral rectitude.

On count 1, **Section 132 of the Penal Code** under which the convict was charged and convicted provides punishment for personating a public officer

to be a term of imprisonment which may extend to 3 years or with fine or both.

In the extant situation, since the plea agreement in place provides that the convict be sentenced to only a fine of an amount to be fixed at the discretion of the court and which can properly and legally be situated within the range of punishments under **Section 132** and I do not consider that the offence requires a heavy sentence, I hereby sentence the convict to a fine of N40,000.

On count 2, **Section 95** under which the convict was charged and convicted provides a punishment of imprisonment for a term which may extend to one half of the longest term provided for that offence or with such fine as is provided for the offence or with both.

Here too as in count 1, since parties have subscribed to only fine as the punishment and I also do not consider that the offence requires a heavy sentence, I hereby sentence the convict to a fine of N20,0000.

The sentences are to run consecutively.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Dalyop Eunice Vou (Miss) for the Complainant.**

2. **M.M. Hirse, Esq., for the Accused Person.**