

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

THIS TUESDAY, THE 3RD DAY OF DECEMBER, 2019

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

CHARGE NO: CR/51/2018

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

HENRY EROMOSELE EHOVUOMEN DEFENDANT

JUDGMENT

The Defendant was initially charged on a one Count Charge of Stealing before Honourable Justice S.E. Aladetoyinbo, now retired. From the records, he could not be arraigned because of serious ill-health and the respected trial judge granted him bail on self recognisance and stated that the arraignment will be done when the defendant is in sufficient good health and adjourned the arraignment to 10th June, 2019. The trial judge then subsequently retired and the matter was reassigned to this court by the Honourable, the Chief Judge F.C.T.

The Defendant was then arraigned on 3rd December, 2019 under a one count charge dated 10th December, 2019 as follows:

That you, HENRY EROMOSELE EHOVUOMEN sometime in 2016 at Abuja in the Abuja Judicial Division of the High Court of the FCT committed theft of N97, 000, 000:00k (Ninety Seven Million Naira) by taking it out of the possession of Nigeria Prisons Service and thereby committed an offence

punishable under Section 287 of the Penal Code Laws of the Federation (Abuja) 1990.

The Defendant 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 10th December, 2019 and want the court to convict on the terms agreed. The plea agreement was signed by the Prosecutor, Defendant and his legal practitioner. It is important to state that parties had earlier filed a plea agreement which did not indicate the nature of the punishment agreed on conviction and there was no value to the properties forfeited by the defendant. The court considered that in the absence of these information, it will be difficult to determine the justice and indeed appropriateness of the plea agreement. The prosecution then took a date to supply these particulars. A new plea agreement dated 10th December, 2019 earlier alluded to was then filed. The agreement with all these particulars appear to now substantially comply 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 287 of the Penal Code Laws 1990.**

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, 2015**. I therefore find and pronounce the defendant guilty on the one Count Charge and convict him accordingly.

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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 the prosecuting counsel that the accused does not have a criminal record. Now in this case, parties have entered into a precise streamlined plea agreement in the following terms:

PLEA BARGAIN AGREEMENT

The plea bargain agreement is made pursuant to Section 270 of the Administration of Criminal Justice Act, 2015, this day of November 2018 between the Federal Republic of Nigeria (represented by the Economic and Financial Crimes Commission herein after refer to as EFCC of the First Part and Henry Eromosele Ehovuomen of the second part.)

WHEREAS:

- 1. Following the invitation of the defendant by Forensic Accounting and Financial Investigation Unit of the EFCC sometime in 2006 to answer to the allegations of theft of the sum of Ninety Seven Million Naira by the defendant from the coffers of the Nigerian Prisons.**
- 2. Investigation conducted revealed that the defendant in collaboration with others one of them known as Mamman Lily (now a convict) convicted by Honourable Justice Asmau of Court 38 received multiple salaries.**

During the course of investigation into the case, Henry Eromosele Ehovuomen admitted his wrong doings and showed remorse for his actions and paid the sum of Fourteen Million Naira (N14, 000, 000.00) to the Federal Government through the Economic and Financial Crimes Commission.

- 3. The defendant through his lawyer Soji Toki Esq. has applied to plea bargain and the prosecution hereby accepts as stated under:**

IT IS FURTHER agreed that:

That before the conclusion of this agreement, the defendant has been informed:

- i. That he has a right to remain silent**
- ii. Of the consequence of not remaining silent.**
- iii. That he is not obliged to make any confession that could be used in evidence against him.**

The Defendant has accepted liability for the sum of N97, 000, 000.00 (Ninety Seven Million Naira) which constitutes proceeds of crime.

- 1. That the defendant shall plead guilty to the charge of theft dated 28th day of November, 2018 before this Honourable Court. Suspect realizing by reason of his admission to the offences that a criminal case of theft has been made out against him by the team of the Commission's investigators; has consequently communicated his intention to voluntarily offer to enter a plea bargain process with the Commission.**
- 2. That the suspect in furtherance of the plea bargain process deposed to an affidavit voluntarily offering to forfeit to the Federal Government of Nigeria through the Commission, the following properties he identified as proceeds of the criminal offences he earlier admitted to, to wit:**

- (a) Four flats of 2 Bedroom situate at Plot CDR 279 Lugbe layout, Lugbe Abuja with open market value as N85, 700, 000.00 (Eighty Five Million, Seven Hundred Thousand Naira) only.**

It is evidenced by a Sale Agreement dated 5th day of September, 2013 between Sanusi Abduraheem hereinafter referred to as the seller and the defendant Henry Eromosele Ehovuomen hereinafter referred as the purchaser. The said sale agreement is hereby attached and marked as EFCC1.

- (b) Plot 2062C, Cadastral Zone 04-07, Trader Layout 11 1, Gwagwalada Area Council measuring 1084.42 sqm demarcated with property**

Beacons No. PB23652, PB23654, PB23703 and PB23702 covered by Customary Certificate of Occupancy No FCT/GAC/RLA/JG/2336 dated 25th November, 2003 with open market value as N31, 500, 500.00.

(c) It is evidence by a Power of Attorney dated 24th day of February, 2013 between one Abubakar Danladi as the Donor and the defendant Eromosele Ehovuomen as the Donee hereby attached and marked as Exhibit EFCC2.

(d) Evidence of the Value of both properties is hereby attached and marked as Exhibit EFCC 3.

3. That upon conviction, sentencing of the defendant by this Honourable Court shall be 3 months imprisonment or an option of fine of N500, 000.00 (Five Hundred Thousand Naira only).

4. That the defendant Henry Eromosele Ehovuomen shall depose to an affidavit of undertaking to be of good behavior before this Honourable Court.

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. The sum forfeited already and the valuation of the properties done show clearly that the sums to be forfeited in total far outweighs the sums subject of the charge.

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 e.t.c 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 for the defendant and others in public service 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 on the record is said to be seriously ill 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 the 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. That perhaps explains the emphasis now on non-custodial punishments by ACJA 2015.

Having weighed all these including the disposition of the prosecution and in particular, the stigma of conviction which cannot be underestimated in the circumstances, 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 perhaps reforming the defendant towards pristine path of moral rectitude.

Accordingly, I hereby sentence the convict to a term of Three (3) Months imprisonment or an option of fine in the sum of N500, 000 (Five 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 defendant shall forfeit the following amount and properties to the Federal Government of Nigeria:**

(a) The sum of N14, 000, 000.00 (Fourteen Million Naira only) which on the record has already been forfeited to the Federal Government of Nigeria.

(b) Four flats of 2 Bedroom situate at Plot CDR 279 Lugbe layout, Lugbe Abuja with open market value of N85, 700, 000.00 (Eighty Five Million, Seven Hundred Thousand Naira) only shall also be forfeited forthwith to the Federal Government of Nigeria.

(c) Plot 2062C, Cadastral Zone 04-07, Trader Layout 11 1, Gwagwalada Area Council measuring 1084.42 sqm demarcated with property Beacons No. PB23652, PB23654, PB23703 and PB23702 covered by Customary Certificate of Occupancy No FCT/GAC/RLA/JG/2336 dated 25th November, 2003 with open market value of N31, 500, 500.00 (Thirty One Million Five Hundred Thousand, Five Hundred Naira) shall similarly be forfeited forthwith to Federal Government of Nigeria.

2. That the defendant shall depose to an Affidavit of Undertaking to be of good behaviour.

Hon. Justice A.I. Kutigi

Appearances:

1. C. I. Dennis (Mrs.) Esq. for the Prosecution.

2. Soji Toki Esq. for the Defendant.