

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

THIS TUESDAY THE 18TH DAY OF MAY, 2015.

BEFORE: HON. JUSTICE A. I. KUTIGI -- JUDGE

CHARGE No CR/29/14

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

OTO-OBONG EMMANUEL BASSEY.....ACCUSED PERSON

JUDGMENT

The Accused Person is standing trial by virtue of an amended charge dated 27th April, 2015 and filed on 29th April, 2105 in the court's registry. The two counts charge reads as follows:

1. That you Oto-Obong Emmanuel Bassey sometime in 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, fraudulently induced one Mrs. Dorothy Adiele, to pay to you the sum of ₦750,000.00(Seven Hundred and Fifty Thousand Naira Only) by deceiving her to believe that you will secure employment for her daughter, one Ugochinyere Adiele, and you thereby committed an offence contrary to **Section 320(a) and Punishable Under Section 322 of the Penal Code Law Cap 532 Laws of the Federation of Nigeria, 1990.**
2. That you Oto-Obong Emmanuel Bassey sometime in 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, fraudulently induced one Mrs. Dorothy Adiele, to pay to you the sum of ₦500,000.00(Five Hundred Thousand Naira Only) by deceiving her to believe that you will secure employment for her daughter, one Ugochinyere Adiele, and you thereby committed an offence contrary to

Section 320(a) and Punishable Under Section 322 of the Penal Code Law Cap 532 Laws of the Federation of Nigeria, 1990.

On 18th May, 2015, the Accused was arraigned in court on the Amended Charge. The two counts charge was fully read to the Accused in English, he understood same to the satisfaction of court and he duly pleaded guilty to the charge. To ensure that the Accused truly intended to plead 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 and urge the court to convict the Accused as charged.

After the presentation by the prosecution, 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.

Learned counsel to the Accused person similar affirmed that his client understood the charge and that he was pleading guilty to the three counts charge.

I am in no doubt therefore that the Accused fully understood the charge 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

ALLOCUTUS

Hirse: On behalf of the Accused Person, we urge the court to temper justice with mercy. The Accused is very contrite and has realised the folly

of his actions and has fully cooperated with the prosecution and this Honourable Court.

In penance also, the Accused has taken steps to start repayment of the amounts to the Petitioner. His employers have been deducting the sum of ~~N~~40,000 from his salary monthly. The Accused is also a family man with three kids of tender age and a loving wife who are dependent on him. The children in particular will require parental guidance and support in their formative years.

The accused is also a public servant in the Ministry of Internal Affairs and that is his only means of livelihood which he uses to cater for his family and dependants.

It is human to err but divine to forgive. It is within my lords powers to take a liberal view of the sentencing and fine the Accused accordingly.

Ndubueze: We don't have any evidence of previous conviction. We also want to confirm that the Accused has already taken steps to repay the amount obtained from the Petitioner. We also want to state that the Accused has shown remorse and taken responsibility for his actions. We urge the court to sentence him on liberal terms.

SENTENCE

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

It is of interest to note that the prosecution has been impressed by the penitent disposition of the Accused from the commencement of the investigation and therefore are similarly on the same page with the counsel to the Accused that the count shows leniency towards the Accused Person on the issue of sentencing.

Let me state at the outset that I am enthused 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 offence charge. The punishment under **Section 322 of the Penal**

Code 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 the 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 is a first offender with a young family and young 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. Furthermore, it is agreed that the amounts collected by Accused is been deducted from his salary at source and paid to the complainant.

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, 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. Now with respect to both counts of the charge, the provision of **Section 322 or the Penal Code** under which the Accused was charged and convicted, imposes a term of imprisonment not exceeding three years or with fine or with both.

Accordingly, **on count one**, I hereby sentence the convict to a term of six(6) months imprisonment but with an option of fine in the sum of ~~₦~~30,000(Thirty Thousand Naira Only).

On **count two**, I hereby sentence the convict to a term of six(6) months imprisonment, but with an option of fine also in the sum of ~~₦~~30,000(Thirty Thousand Naira Only).

The sentences are to run consecutively.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. C.C Ndubueze (Mrs) with Rita Ogar (Mrs) for the Prosecution**
- 2. M.M Hirse with Alfa Dazang for the Accused Person.**