

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

HON. JUDGE HIGH COURT NO. 13

COURT CLERKS: T. P. SALLAH & ORS

DATE: 16/04/18

FCT/HC/CR/99/2017

BETWEEN

FEDERAL REPUBLIC OF NIGERIA -----COMPLAINANT

AND

1.USMAN BABA YUSUF

(A.K.A UsmanDakingari)

2. BALARABE ABDULLAHI

DEFENDANTS

JUDGMENT

On the 29th March, 2018, the 1st Defendant pleaded guilty to the four count amended charge. The 2nd Defendant pleaded not guilty.

The four count amended charge in which the 1st Defendant pleaded guilty are as follows:-

1. That you, Usman Baba Yusuf (a.k.a Usman Dakingari) and Balarabe Abdullahi sometime in June, 2015 in Abuja within the judicial division of the Court of the Federal Capital Territory with intent to defraud did agree to do an illegal act to wit: cheating by personation and thereby committed an offence punishable under section 97 of the Penal Code Cap532 (Abuja) Laws of the Federal Republic of Nigeria, 1990.

2. That you, Usman Baba Yusuf (a.k.aUsmanDakingari) and BalarabeAbdullahi sometime in June, 2015 in Abuja within the judicial division of the High Court of the Federal Capital Territory held out yourselves as Assistant Comptroller of Nigeria Custom Service and in that assumed position directed one ZakariJibrin (a Comptroller of Nigeria Custom Service) to pay the sum of N1,000,000.00 (One Million Naira) to account number 0049663040 in the name of Balarabe Abdullahi domiciled in Access Bank Nigeria Plc and thereby committed the offence of cheating by personation contrary to section 321 of the Penal Code Cap 532 (Abuja) Laws of the Federal Republic of Nigeria , 1990 and punishable under section 322 of the same Act.
3. That you, Usman Baba Yusuf (a.K.aUsman Dakingari) and BalarabeAbdullahi sometimes in June, 2015 in Abuja within the judicial division of the High Court of the Federal Capital Territory held out yourselves as Assistant Comptroller of Nigeria Custom Service and in that assumed position directed one Alhaji M. Bawa to pay the sum of N1,000,000.00 (One Million Naira) to account number 0049663040 in the name of Balarabe Abdullahi domiciled in Access Bank Nigeria Plc and thereby committed the offence of cheating by personation contrary to section 321 of the Penal Code Cap 532 (Abuja) Laws of the Federal Republic of Nigeria, 1990 and punishable under section 322 of the same Act.
4. That you, Usman Baba Yusuf (a.k.aUsmanDakingari) and BalarabeAbdullahi sometime in June, 2015 in Abuja within the judicial division of the High Court of the Federal Capital Territory pretended to hold the office of Assistant Comptroller of Nigeria Custom Service as public servants and in such assumed character cheated by personation under the colour of such office and thereby committed an offence punishable

under section 132 of the Penal Code Cap 532 (Abuja) Laws of the Federal Republic of Nigeria, 1990

Then after the plea of guilty by the 1st Defendant the learned prosecuting Counsel on the 12th April, 2018 submitted that the 1st Defendant had entered a plea bargain with the complainant. According to the learned prosecution the plea bargain agreement was filed on the 11th April, 2018 signed by all parties including victims and investigators. The learned prosecuting Counsel also submitted that the prosecution led evidence in respect of the four count amended charge against the 1st Defendant and also tendered exhibits in this case. The statements of the 1st Defendant were admitted in evidence as exhibits 14, 14 (a), 14(b) and 14(c) respectively through PW4. In conclusion, the learned prosecuting Counsel urged me to accept the plea bargain agreement and convict the 1st Defendant accordingly.

The learned Counsel for the 1st Defendant did not object to the application made by the prosecution to the effect that based on the plea bargain agreement, the 1st Defendant be convicted accordingly.

Having said the above, by section 270 of the Administration of Criminal Justice Act, 2015 it provides:-

- (1) Notwithstanding anything in this Act or in any other law, the prosecutor may;
 - (a) Receive and consider a plea bargain from a Defendant charged with an offence either directly from the Defendant or on his behalf; or.
 - (b) Offer a plea bargain to a Defendant charge with an offence.
- (2) The prosecution may enter into plea bargaining with the Defendant, with the consent of the victim or his

representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence provided that all of the following conditions are present;

- (a) The evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt.
- (b) Where the Defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or
- (c) Where the Defendant, in a case of conspiracy, has fully co-operated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.”

Now I have seen the plea bargain executed between the 1st Defendant and the prosecutor and duly signed by the investigator and the victim dated 10th April, 2018 and filed on the 11th April, 2018.

Thus, by the plea bargain agreement, it was agreed as follows:-

(2). That the 1st Defendant shall plead guilty to the amended charged dated 26th March, 2018 before the Honourable Court.

(3). That upon conviction, the Honourable Court shall sentence the convict to a term of imprisonment or fine in line with the sentencing guidelines of the Federal Capital Territory counts(sentencing Guidelines) Practices Direction, 2016.

Prior to the plea bargain agreement filed on 11th April, 2018, the prosecution had commenced trial by calling four prosecution witnesses and tendered several exhibits. The four statements of the 1st Defendant that pleaded guilty to the four count amended

charge that entered into the plea bargain agreement were admitted in evidence as exhibits 14, 14(a), 14(b) and 14 (c) respectively. And a careful perusal of the facts and evidence of the prosecution's case and the four counts amended charge against the 1st Defendant, the evidence of PW1, AbdulmumuniBako, a Deputy Controller of Customs who was then a special Assistant to the Controller General of Customs of Nigeria gave a graphic testimony in both his oral evidence and his petition to the Economic and Financial Crimes Commission (EFCC) received in evidence as exhibit 1. The evidence of PW2, ZakariJibril, a former Controller of Customs in charge of Tincan Island, Lagos testified to the same effect as PW1. PW2 testified thus:-

"Sometimes in June, 2015, I received a text message from Bako's phone number, the special Assistant to the former Controller General of Customs directing me to call one Dr. Shehu on a particular phone number and gave him N1,000,000.00. After reading the message, I called the phone number and asked if that was Dr. Shehu and he answered "yes" he is Dr. Shehu. I told him that I am directed to call him and send N1,000,000.00 to him. I asked him to send the account number and he sent Access bank account number. PW2 further testified as follows: "the account name is Balarabe A. Abdullahi." PW2 then testified that he paid the sum of N1,000,000.00 into the said account. And the testimony of PW1 and his complaint to the Economic and Financial Crimes Commission (EFCC), exhibit 1, denied ever directing any one to pay such sums to any account and he disown the text message as emanating from him wherein he issued a circular to all area commands to that effect. After the issuance of the circular by PW1, PW1 testified that he further received a phone call from another Deputy Controller that he had received

the message of PW1 and that he has credited into the bank account the sum of N1,000,000.00.

PW3, Naziru Aminushehu is the investigation officer assigned to investigate exhibit 1 together with his team mates. PW3 testified and narrated the activities of their investigation and exhibit 2,3,4,5,6,7,8,9,9(a),9(b) 10,11,12,12(a) and 13 were received in evidence. PW3 confirmed the sum paid into the Access Bank account no. 0049663040.

As pointed out earlier, after the prosecution had adduced evidence, the 1st Defendant approached the complainant and a plea bargain agreement was executed and filed pursuant to section 270 of the Administration of Criminal Justice Act, 2015. As rightly indicated in the plea bargain agreement filed on the 11th April, 2018, the charge against the 1st Defendant that gave rise to the filing of the instant case was as a result of the offences of conspiracy, cheating and impersonation in which the victims parted with the sum of N2,000,000.00. Thus, by the plea bargain agreement, the 1st Defendant had paid or refunded the sum of N2,000,000.00 to the victims and the victims had acknowledged same and indeed endorsed the plea bargain agreement. And by the plea bargain agreement the 1st Defendant had agreed and in fact pleaded guilty to the four count amended charge. Further, the 1st Defendant had agreed with the complainant that he be convicted and sentenced to a term of imprisonment or fine in lieu.

Hence, therefore, pursuant to the evidence on record adduced by the prosecution and the plea bargain agreement entered freely by the 1st Defendant and the parties involved in this case, the 1st Defendant is hereby convicted on the four count amended charge.

HON. JUSTICE D.Z. SENCHI

(PRESIDING JUDGE)
16/04/2018