

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

THIS TUESDAY THE 28TH DAY OF APRIL, 2015.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI -- JUDGE

CHARGE No CR/12/14

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

OBAEMEKA IFEANYI AUGUSTINE.....ACCUSED PERSON

JUDGMENT

The Accused Person is standing trial by virtue of an amended charge dated 18th November, 2014 and filed same date in the court's registry. The three counts charge reads as follows:

1. That you Obaemeka Ifeanyi Augustine (M) in the month of October, 2013 in Abuja made a false document to wit: a "**Letter of introduction**" purportedly from DE BRANCO ENGINEERING NIG LTD, dated 22nd October, 2013 addressed to the Entry Clearance Office, High Commission of India, Abuja; with the intent of using it as genuine document for procuring India Visa for yourself and three others and you thereby committed an offence contrary to **Section 363 of the Penal Code Act and Punishable Under Section 364 of the Penal Code Act, Cap 532, Laws of Northern Nigeria 1990.**
2. That you Obaemeka Ifeanyi Augustine (M) in the month of October, 2013 in Abuja made a false document to wit: a letter titled "**Request for a Medical Attention**" purportedly from General Hospital, Enugu dated 16th October, 2013 addressed to the India High Commission, Abuja: with the intent of using it as genuine document for procuring India Visa for yourself and three others and you thereby committed an offence

contrary to **Section 363 of the Penal Code Act and Punishable under Section 364 of the Penal Code Act, Cap 532, Laws of Northern Nigeria 1990.**

3. That you Obaemeka Ifeanyi Augustine (M) in the month of October, 2013 in Abuja falsely personated as a public servant holding the office of the “**Senior Special Assistance on Projects, Federal Capital Territory Administration**” and in that assumed character you filled and attempted to submit a Visa Application Form to the High Commission of India, Abuja; with a view to procuring India Visa for yourself under the guise of accompanying a patient and you thereby committed an offence contrary to and punishable under **Section 132 of the Penal Code Act, Cap 532, Laws of Northern Nigeria 1990.**

On 28th April, 2015, the Accused was arraigned in court. The three 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 three counts charge. To ensure that the Accused truly intended to plead to the three 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.

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 similarly 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 three counts charge and convict him as charged.

Hon. Justice A.I. Kutigi

ALLOCUTUS

Ogar: On behalf of the Accused, we urge the court to temper justice with mercy. In making this plea, we submit that the Accused does not have any form of criminal history. We know history could be made in a day. The Accused did not however intend to make such history. What happened in October, when he set out to the India embassy, he had only one goal in his mind which was to help his best friend, Mr. Chinedu Wanata. Mr. Chinedu's father was critically ill. He had been written off by medical doctors in Nigeria, who said he was going to die in two weeks. It was based on this sad news that Mr. Chinedu ran to the Accused Person to tell him to do all he can to get a visa for himself and his dad and even the Accused because it is only in India that they could get treatment.

It was to do good that he did what he did. He never collected money or anything from anybody. Most importantly, when the Accused was taken into custody, his best friend's father died because they could not get the treatment done in India. Furthermore, his friend who he tried to help has abandoned him.

We also want to add that he never contested this charge. He has a young wife, two little children and dependants. He also has a mother who is ill and fragile and depends on the Accused person.

Finally, the Accused is hypertensive. We most humbly urge the court to temper justice with mercy and order him to pay a fine.

Enosa: My response to the Allocutus is as follows: I am really touched by it. In my 10 years of prosecution, this is first time I am meeting a man who despite what has happened has a conscience. Consistently after the case was filed, he has come to state the truth. He has said he won't waste the time of court or the prosecution. If we have Accused Persons like him, we

will have a very good criminal justice system where trials are not unnecessarily delayed. I will also share the submissions of the learned counsel to the Accused that he be ordered to pay a fine. The punishment of fine would be appropriate in the circumstances.

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 till date and therefore are similarly on the same page with the counsel to the Accused Person that the court shows maximum leniency towards the Accused Person by sentencing him to payment of fine as provided for by law.

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 charge. The punishments under **Sections 363 and 132** 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 three 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 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 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.

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 N40,000(Forty 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 N40,000(Forty Thousand Naira Only).

On **count three**, the convict is hereby sentenced to a term of four(4) months imprisonment but with an option of fine in the sum of ~~N~~20,000 (Twenty Thousand Naira).

The prison terms are to run concurrently while the fines are to run consecutively.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. Enosa Omoghobo, Esq., for the Complainant.**
- 2. Okonachi Ogar, Esq., with Elsie Ogar for the Accused Person.**