

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP:           HON. JUSTICE S.E. ALADETOYINBO  
COURT CLERK:                   M.S. USMAN & OTHERS  
COURT NUMBER:               HIGH COURT FIVE (5)  
CASE NUMBER:                 FCT/HC/CR/68/2010  
DATE:                            21<sup>ST</sup> JANUARY, 2014**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA                   -                   COMPLAINANT**

**AND**

**ISAH KASIM JAMAÁ                               -                   ACCUSED PERSON**

The Accused person is present in court.

Fatsuma Mohammed appearing for the prosecution.

A.I. Oni for the accused person.

**J U D G M E N T / R U L I N G**

The Accused person Isah Kasim Jamaá was arraigned before this court on the 12<sup>th</sup> Day of May 2010 for the offence of impersonation punishable under Section 132 of the Penal Code Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.

The charge read as follows:

***“That you Isah Kasim Jama’a on or about the 19<sup>th</sup> Day of April 2010 in Abuja within the Judicial Division of the High Court of the Federal Capital Territory being a business man pretended to be an operative of the Economic and Financial Crimes***

***Commission (EFCC) newly transferred from Lagos to Kano Office and demanded for financial assistance from one Umar Faruk when you know your are not an EFCC operative and thereby committed an offence punishable under Section 132 of the Penal Code Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.***

The prosecution called three witnesses and tendered the statement made by the accused under the words of caution as exhibits, including other documents.

The case of the prosecution according to PW1 is to the effect that, PW1 whose name is Umar Faruk arrived at Valencia Hotel Abuja at about 2142 hours on the 19<sup>th</sup> Day of April 2010. The accused person who was then at the premises of the same hotel approached PW1 and introduced himself to PW1 as an EFCC Operative and the son of Late Aliyu Mohammed Jamaá former Secretary to the Government of the Federation. The accused further told PW1 that he was just re-deployed from Lagos to Kano and requested for financial assistance from PW1, PW1 told the accused to allow him to check into the hotel first, he put a call to one of his friend who is working in EFCC Abdulraham Biu, who came to Valencia Hotel along with two other EFCC operatives whereupon the accused was arrested.

PW2 Femi Gbarufu is the Head of Human Resources EFCC; he confirmed to the court that the name of the accused does not exist in the pay roll or data base of EFCC.

PW3 whose name is Ujilibo Stanley is the Investigating Police Officer; he administered the words of caution to the accused person before the accused volunteered to write his statement by himself. When PW3 was about to tender the said statement in evidence, counsel to the accused due to his inexperience objected to the admissibility of the said statement on the ground that same was obtained under duress. It is only a confessional statement that counsel can object to its admissibility, the said statement written by the accused himself is not a confessional statement. There was unnecessary Trial Within Trial conducted by this court because of unnecessary objection emanating from the counsel to the accused; at that point the court cannot rule that the statement was not a confessional statement otherwise the court will be descending into the arena. The only part of the statement which the accused counsel regarded as confessional statement states as follows:

***"I met Umar Faruk told him that please he should assist me with some money that my car has no fuel, he then asked me where I am working and I told him that I am working with EFCC Economic and Financial Crime Commission, that I was just transferred from Lagos Office to Kano Office"***

The court overruled the objection and admitted the statement of the accused as Exhibit C, the admissibility of the statement as Exhibit does not turn it to confessional statement, Exhibit C cannot constitute confessional statement because it lacks the ingredients that constitutes the offence of personating a public servant

punishable under Section 132 of the Penal Code, the said Section reads as follows:

***"Whoever pretends to hold any particular office, as a public servant knowing that he does not hold such office, or falsely personate any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment for a term which may extend to three years or with fine or with both"***

At the end of the case of the prosecution counsel to the accused person made a No Case Submission of which the prosecutor replied him, for the meaning of no-case-submission. See the Case of IGABELE v STATE Nigerian Criminal Cases Vol. 1 Page 59 at 61 where the Court of Appeal held as follows:

***"It is instructive to state it here that in R v COKER & ORS. 20 NLR 62 Hubbard, J. put it clearly that a submission that there is no case to answer means that there is no evidence on which the court would convict even if the court believed the evidence given by the prosecution"***

The same Law Report at the same page stated the conditions under which No Case Submission will be upheld as follows:

***"No case submission will be upheld where:***

- (a) There was no evidence to prove an essential element of the alleged offence, and***
- (b) The evidence adduced has been so discredited as a result of cross-examination.***

- (c) The evidence is so manifestly unreliable that no reasonable tribunal can safely convict on it and, further if, however, a reasonable tribunal can convict on evidence so far led there is a case for the accused to answer"**

These are the evidence the prosecution must established before conviction can be secured under Section 132 of the Penal Code.

- (1) That the accused personated EFCC Officer or that the accused pretended to be an employee of EFCC.
- (2) That the accused is not in the employment of EFCC.
- (3) That the accused acted falsely by claiming to be in the employment of EFCC.
- (4) That when the accused claimed to be in the employment of EFCC he performed or attempted to perform one or more duties of EFCC.

It is not in doubt that accused pretended to be an employee of EFCC who had just been re-deployed from Lagos to Kano Office, it is not also in doubt that the accused person is not in the employment of EFCC, the accused person was dishonest when he pretended to be an employee of the EFCC from the circumstance of this case there was no intention of the accused person to defraud by claiming to be an employee of EFCC. There was no intention on the part of the accused to arrest or attempt to arrest PW1. PW1 did not commit any offence and he has no case pending with the EFCC, the question of the accused arresting PW1 cannot materialize. The accused after presenting himself as EFCC officer requested for

financial assistance from PW1, EFCC is not Alms house and the duty of EFCC enumerated in Section 7 of the EFCC Act does not include seeking for financial assistance; seeking for financial assistance cannot be equated to fraud. One of the essential ingredients of the offence of impersonation contrary to Section 132 of Penal Code is for accused to perform or attempt to perform one or more of the duties of EFCC while claiming to be an employee of EFCC. Accused person merely claiming to be in the employment of EFCC does not constitute an offence; there must be an accompanying act of the accused to perform the duty of the EFCC before prima facie case can be made against him under Section 132 of the Penal Code. The prosecutor failed woefully to make any prima facie case against the accused, the essential ingredients that constitute the offence was never established by the prosecution. The accused person is discharged and acquitted.

**(Sgd)**  
**Hon. Justice S.E. Aladetoyinbo**  
**(Presiding Judge)**  
**21/1/2014**