

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE CALABAR JUDICIAL DIVISION
HOLDEN AT CALABAR
ON TUESDAY THE 11TH DAY OF JUNE, 2019
BEFORE HIS LORDSHIP, HON. JUSTICE S. A. AMOBEDA
JUDGE

CHARGE NO: FHC/CA/47^C/2019

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

**1. UCHUNOR AWELE ANTHONY
(ALIAS RASHID AL MAKTOUM)**

DEFENDANT

JUDGMENT

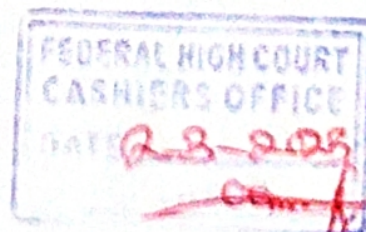


The Defendant was arraigned before this Court on a one count charge dated and filed on the 3/6/2019 for the offence of fraudulently impersonating one RASHID AL MAKTOUM with intent to obtain property from unsuspecting persons, the pretence which he knew to be false, contrary to **Section 22 (2) (b) (ii)** and punishable under **Section 22 (2)(b)(iv)** of the **Cyber Crimes (Prohibition, Prevention etc.) Act, 2015**.

The charge having been read to the Defendant in English language, the Defendant admitting having understood same, and pleaded guilty to the charge.

The attention of the court was also drawn to a Plea Bargain agreement filed on the 3/6/2019 executed by both parties in line with **Section 270** of the **Administration of Criminal Justice Act, (ACJA) 2015**. On the plea bargain, it was agreed as follows:

1. That the Defendant shall plead guilty to the offence with which he is charged.



2. A term of six (6) Months imprisonment or an option of fine which is to be determined by the Court.
3. That the Defendants shall forfeit to the Federal Government of Nigeria, the instruments used in the committing the offence as follows:
- a) HP LAPTOP-6730S
 - b) SAMSUNG S8 mobile phone
 - c) GREY M/BENZ 'C' CLASS with REG. NO. ABH 459 RC
 - d) INTERNET ROUTER/MODEM

All recovered by the Complainant in the course of investigation.

4. That the proceeds for the sale of the Gray M/Benz 'C' Class with Reg. No. ABH RC be remitted to the victim of the Crime.
5. That the Defendant upon his release from prison custody undertakes to the Economic and Financial Crimes Commission to be of good behavior and never to be involved in any form of Economic and Financial Crime within or outside the shores of Nigeria.

By way of allocutus, counsel to the Defendant prayed the Court to temper justice with mercy, as the Defendant is a young person and an undergraduate, that he did not waste the time of this court and he is a first-time offender. Finally, counsel urged the court to allow an option of fine in the interest of mercy.

After the presentation by the Prosecution and pursuant to **Section 270 (4) of ACJA 2015**, an inquiry from the Defendant whether their plea of guilty is as to the fact stated by the Prosecution. The Defendant answered in the affirmative that he understood the fact and the ingredient of the offences and stood by his plea of guilty. I also inquired again from the Defendant further to the same provision of **section 270 (4) of ACJA, 2015**, whether he entered into the plea bargain agreement voluntarily and without undue influence, and he answered in the affirmative that he entered into the plea bargain agreement freely, voluntarily and was not unduly influenced by the Prosecution (EFCC) or indeed anybody.

Learned Counsel to the Defendant similarly affirmed that his clients understood the charge and that he was part of the plea bargain which he duly signed.

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JOYLYNE COLE, ESQ.
SENIOR REGISTRAR

I am in no doubt therefore that the Defendant fully understood the charge, the terms of the plea bargain agreement, he freely entered into same with the Prosecution and his plea of guilty was unequivocal.

In the circumstances, the duty of the court is circumscribed by the clear provision of **Section 356 (2) of ACJA, 2015.**

I hereby accordingly find and pronounce the Defendant guilty on the one (1) count charge and convict him as charged.

The attitude of Courts when it comes to sentencing is basically that it must be a rational exercise with certain specific objective. It could be 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 punishment may vary depending on the need of a particular case.

In discharging this no doubt difficult exercise, the Court has to decide first on which from the above principle or objective applied better to the fact of a case and the quantum of punishment that it will accord with it.

In the same vein, it is a notorious fact that crimes of this nature appeared now to be prevalent in our clime and the Court as preventive tools in the criminal justice system must not be seen to encourage crime of this nature by giving light sentences. The court therefore here, must engage in some tight balancing act.

- (1) To be considerate and fair in enforcing clear provisions of the law.
- (2) To be fair to the Convict where though pertinent as in this case is displayed.

I have considered all these factors particularly the fact that the convicts are first offenders and who has exhibited sincere penitence in the circumstances rather than insist on their inalienable right to a trial, they pleaded guilty thereby saving tax payer's resources and time of court. This attitude must have played a part in the Prosecution agreeing to the plea bargain agreement dated 3/6/2019.

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Having considered all these parts, I am inclined to the view that a lighter sentence appears to me desirable and appropriate in this case and will fully achieve noble goals of deterrence and reforming the convicts towards a precinct part of a moral rectitude.

The charge before this Court is brought pursuant to **Section 22 (2) (b) (ii)** and punishable under **Section 22 (2)(b)(iv)** of the **Cyber Crimes (Prohibition, Prevention etc.) Act, 2015**, which provides a punishment of Imprisonment for a term not more than 5 years or a fine of not more than **₦7,000,000.00** (Seven Million Naira) or to both such fine and imprisonment.

In this case, if the objective is for the deterrence and the reformation of the convict, then the maximum punishment for the convicts as provided for in the Act appeared 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 extant situation, the plea bargain agreement in place as agreed by parties provides for punishment of the convict to six (6) imprisonment or an option of fine of the amount to be fixed at the discretion of the Court. Although the Court cannot impose a higher punishment than that prescribed for the offence neither can a Court impose a sentence which the Statue creating the offence has not provided for. See the case of **EKPO v. STATE (1982) 1 NCR 137**. I do not consider that the offence requires a heavy sentence.

I do hereby sentence the Convict to (6) six Months imprisonment with an option of fine of **₦ 50, 000.00** (Fifty thousand Naira). The Convict shall forfeit to the Federal Government of Nigeria the instruments used in the committing the offence which are:

- a) HP LAPTOP-6730S
- b) SAMSUNG S8 mobile phone
- c) GREY M/BENZ 'C' CLASS with REG. NO. ABH 459 RC
- d) INTERNET ROUTER/MODEM

The proceeds for the sale of the Gray M/Benz 'C' Class with Reg. No. ABH RC shall be remitted to the victim of the Crime

That shall be the Judgment of this court.

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CASHIERS OFFICE
DATE *2-8-2023*
[Signature]

[Handwritten Signature]

Hon. S.A Amobeda
Presiding Judge

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JOYLYNE LOLE, ESQ.
SENIOR REGISTRAR

2/3/2023

Appearances:

- 1. J. O. Abolarin, Esq.
- 2. David Akpan, Esq.

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for the Prosecution
for the Defendant

FEDERAL HIGH COURT
CASHIERS OFFICE
DATE *2-3-2023*
[Signature]

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[Signature] *2/3/2023*