

CERTIFIED TRUE COPY
FEDERAL HIGH COURT, CALABAR
JOYLYNE COLE, ESQ.
SENIOR REGISTRAR

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE CALABAR JUDICIAL DIVISION
HOLDEN AT CALABAR
ON THURSDAY THE 26TH DAY OF SEPTEMBER, 2019
BEFORE HIS LORDSHIP, HON. JUSTICE S. A. AMOBEDA
JUDGE

CHARGE NO: FHC/CA/66^C/2019

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA } --- COMPLAINANT

AND

PRINCE ANTHONY (ALIAS KELVIN HAMPTON) } --- DEFENDANT

SENTENCE JUDGMENT

The Defendant was arraigned before this court on a one count Charge dated the 17/9/2019 and filed on the 18/9/2019 for the offence of fraudulently impersonating one **KELVIN HAMPTON** with intent to obtain property from unsuspecting persons, a pretence he knew to be false, thereby committing an offence contrary to **Section 22 (2) (b) (ii) of the Cyber Crimes (Prohibition, Prevention, Etc.) Act, 2015** and punishable under **Section 22 (2) (b) (iv) of the same Act.**

The charge was read to the Defendant and having understood the charge read to him in English language, the Defendant pleaded guilty.

The Prosecution thereafter urged this Court to convict the Defendant in view of his plea of guilty. He continued by stating that parties had entered into a plea bargain agreement dated 17/9/2019 and filed 18/9/2019, brought pursuant to Section 270 of the ACJA, 2015. The Plea Bargain agreement was duly executed by the Prosecution on one hand and the Defence Counsel and the Defendant on the other hand.

On the Plea bargain agreement, the Defendant agrees to take a plea of guilty subject to the terms and conditions stated in the Plea Bargain agreement. It is agreed in the said plea bargain agreement as follows:

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1. That the Defendant shall plead guilty to the offence with which he is charged on the charge
2. A term of Six (6) months imprisonment or an option on fine is proposed to this Court.
3. That the Defendant shall forfeit to the Federal Government of Nigeria, the HP LAPTOP and TECNO ANDROID PHONE being the instruments used in the commission of the offence which was recovered by the complainant in the course of investigation.
4. That the Defendant shall upon his release from Prison custody undertake 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.

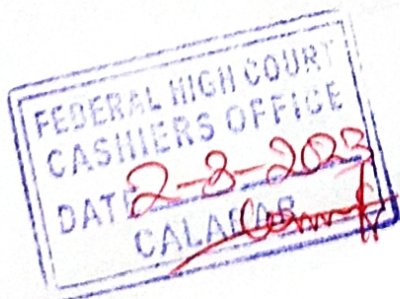
This Court thereafter made an inquiry from the Defendant in line with **Section 270 (4) of ACJA, 2015** whether his plea of guilty is as to the fact stated by the Prosecution and whether he entered into the plea bargain agreement voluntarily and without undue influence. The Defendant answered in the affirmative that he fully understood the ingredients of the offence as stated in the Charge sheet and stood by his plea of guilty. The Defendant also affirms that he was not coerced into signing the plea bargain agreement but entered same voluntarily and was not unduly influenced by the Prosecution (EFCC) or indeed anybody.

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

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

Therefore, upon the plea of guilty of the Defendant, I find and pronounce the Defendant guilty on the one (1) count charge accordingly, he is hereby convicted as charged.

In pleading allocutus, Counsel to the Convict prayed this Court to temper justice with mercy with reference to **Section 270(5) (ii) (iii) of ACJA, 2015**.



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in the circumstances, the duty of the court is circumscribed by the clear provision of Section 356 (2) of ACJA, 2015 which states thus:

(2) Where the Defendant pleads guilty and the Court is satisfied that he intends to admit the offence and shows no cause or no sufficient cause why sentence should not be passed, the Court shall proceed to sentence.

When it comes to sentencing, the attitude of Courts is that it must be exercised rationally with certain specific objective which could be retribution, deterrence, reformation, etc. in the hope that the type of sanction chosen will put the particular objective chosen however roughly, into effect and this may vary, depending on the circumstances and need of each case. To discharge this exercise therefore, 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.

If the objective the Court hopes to achieve is deterrence and the reformation of the convict, then the maximum punishment for the Convict as provided for in the Act would appear to be particularly excessive in the light of the facts of this case alluded to by counsel on both sides of the aisle.

The Court however cannot 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 137.**

In the same vein, the Court as preventive tools in the criminal justice system must not be seen to encourage crimes of this nature, which appear now to be prevalent in our clime, by giving light sentences. The Court must therefore engage in some tight balancing act by being considerate and fair in enforcing the clear provisions of the law as well as being fair to the Convict where though pertinent as displayed in this case.

Considering all of these, particularly the fact that the Convict is a first-time offender who has pleaded guilty rather than insist on his inalienable right to trial, thereby saving the time of the court and taxpayers' resources, I am inclined to the view that a lighter sentence appears desirable and appropriate

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in this case and will achieve the objective of deterrence and reforming the Convict towards a precinct part of a moral rectitude.

The punishment for the offence in the charge as provided for in Section 22 (2) (b) (ii) (iv) of Cyber Crimes (Prohibition Prevention Etc.) Act 2015 states;


22. (2). A person who-

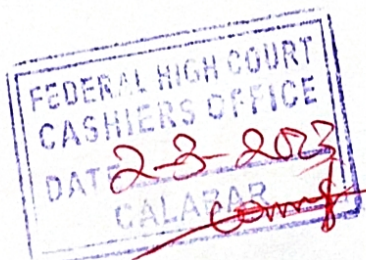
- (b) fraudulently impersonates another entity or person, living or dead, with intent to-
- (ii) obtain any property or an interest in any property, commits an offence and is liable on conviction to imprisonment for a term of 5 years or a fine of not more than N 7,000,000.00 (Seven Million Naira) or both..

In the extant situation however, owing to the plea bargain agreement in place and the peculiar facts of this case, the Court is inclined to exercise its discretion, and as such, I do not consider that the offence require a heavy sentence.

I do hereby sentence the Convict to a term of twelve (12) months imprisonment with an option of fine of N 500,000.00 (Five Hundred Thousand Naira) only. The Convict shall forfeit to the Federal Republic of Nigeria, the HP LAPTOP and TECNO ANDROID PHONE being the instruments used in the commission of the offence which was recovered in course of investigation. The Convict shall, upon his release from Prison custody undertake 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 pending the fulfillment of the sentence conditions above, the convict shall be remanded in prison custody.

That shall be the Judgment of this court.



HON. JUSTICE S. A. AMOBEDA
Presiding Judge
26/9/2019



Appearances:

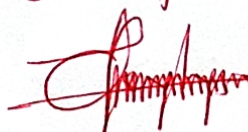
1. Usman Shehu, Esq.
2. C. N. Nweke, Esq.

----- for the Prosecution
----- for the Defendant

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Out of Court Judgment ⁵ ~~At 250000~~


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