

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA- ABUJA**

**THIS WEDNESDAY THE 5<sup>TH</sup> DAY OF JULY, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFIA**

**SUIT NO: FCT/HC/CR/68/2023**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT**

**AND**

**CANICE AGABI.....DEFENDENT**

Matter is for arraignment.

Defendant present in court.

Appearance: F.A Arigungun for the prosecution.

Defence: Benedict Amawu for the defendant.

Prosecution: the matter today is for arraignment. Before the court is a two count charge against the defendant. We wish to withdraw the charge dated the 15/5/2023 and to substitute it with the one filed on the 4/7/2023.

Court: Defence counsel do you have any objection?

Defence: we have no objection.

Court: The application made by the prosecuting counsel for the withdrawal of charge No: FCT/HC/GWD/CR/68/2023 dated the 15/5/2023 and filed on the 18/5/2023 is hereby granted.

Accordingly, charge No CR/68/2023 between FRN V Canice Agabi is hereby withdrawn and the defendant discharged.

Prosecution: We pray that the amended charge with No FCT/HC/GWD/CR/68?2023 dated the 4/7/2023 and filed the same date be read to the defendant to enable him take it's plea.

Clerk Read the charge to the hearing of the defendant.

Court: The one count charge is read read and explained to the defendant, the defendant called upon to reply to the said charge.

Court: Defendant, do you understand the charge read and explained to you in English language?

Defendant: Yes I understand.

Court: Are you guilty or not guilty?

Defendant: I am guilty my lord.

Prosecution: We apply that the defendant be be convicted based upon his plea of guilty.

### CONVICTION

Upon the one count charge read and explained to the defendant perfectly, and having pleaded guilty to the charge knowing fully well the gravity of the said offence.

I shall accept the plea made by the defendant and in acting under Section 112(8) of the ACJA, 2015, I shall proceed to convict the defendant for the offence of cheating by personation, contrary to Section 321 and punishable under section 324 of the Penal Code law, triable by this court

Court: Explained to the convict the two options for the plea of allocutus

1. For the convict to call witness as to his good character.
2. To plea the allocutus directly.

Court: the Defendant chose the 2<sup>nd</sup> option

### ALLOCUTUS

That the court should temper justice with mercy, I promise I will stop internet fraud and proceed with my school and also with my handwork which is

tailoring and to be of good behaviour and to be a good example to others in the society.

Counsel: the convict having pleaded for lenience and mercy, we want to humbly further seek for mercy and we predicate the application on the provision of Section 416 (2) (b) (ii) of the ACJA, 2015.

The basis upon our application is that it is the trite principle of reformation, the law is that, in sentencing the law or court takes cognisance of the principle of reformation. Apart from reformation, the law is that sentencing be applied to person who ordinarily are to be isolated from the society. Taking into cognisance the situation of our prisons, in that over time people who go into prison to be reformed came back more destroyed.

The convict is very young, very useful. He will be useful to the society if properly reformed and have informed the court that he will proceed with school and continue with his trade.

On the strength of all that has been stated, humbly and most sincerely appeal for the indulgence of the court that the convict be sentenced to a term that is most liberal and consider the option of fine.

We humbly plead that the court should use his discretion to engage the convict to the community service even if it's to clean the walls of the courtas it will be a of sober period for the convict so that the court/state can monitor him in an event and court is more gracious enough to commit him to community sentence.

From the actions it shows that he is a changed person.

Court: Prosecution, do you have any previous evidence of the convict being convicted before any court of law in Nigeria or other parts of the country?

Prosecution: none to my knowledge.

In the course of our investigation we recovered a Samsung phone Note 10 and has also resituated \$200 dollars out of the \$1000 dollars.

Court: This matter is stood down for sentence for 12noon.

### SENTENCE

The convict one Canice Agabi was alledged to have committed the offence of cheating by impersonation when he presented himself to be an American

Citizen and created an Instagram account with the username “Randy Sylvester” wherein he benefitted a total sum of \$1000 U.S Dollars from one Ann Fuscelaro, a United States citizen which he expended for his personal use under a false representation.

The charge with No: CR/68/2023 was then assigned to this court and was filed on the 18<sup>th</sup> day of May, 2023 arraignment was then fixed for the 4<sup>th</sup> day of July, 2023 however, before arraignment an amended charge was filed on the 4<sup>th</sup> July and arraignment fixed again for the 5<sup>th</sup> day of July due to the absence of the suspect on the 4<sup>th</sup> day of July.

On the day for arraignment, the amended charge was read to the defendant to his understanding, the defendant informed the court that he understood the charge that was read to him and then pleaded guilty to the charge.

The prosecution then applied that the defendant be convicted in line with his plea of guilty. The defendant was then convicted accordingly in line with section 112(8) of the ACJA, 2015 and for the offence of cheating by impersonation contrary to section 321 and punishable under section 324 of the Penal Code Law.

The convict was then properly informed of his right with regards to making a plea of allocutus. Thereafter the convict chose the option of pleading Allocutus by himself, praying the court to temper justice with mercy and that he will proceed with his schooling and also with his handwork which is tailoring. He also informed the court that he will be of good behaviour and that he will be a good example to others in the society.

The Defendants counsel sought further the courts mercy on the convict in sentencing him and referred the court to the provision of section 416(2)(b) of the ACJA 2015, relying on the principle of reformatory justice, defence counsel urged the court to take cognizance of the principle of reformation and the effect of prisons on convicts especially when they finish serving their sentence. Defence counsel opined that convicts that go to prisons mostly end up coming back more destroyed.

Defence counsel further stated that the convict is a very young boy and that he will be useful to the society and if properly reformed, by the court he will proceed with his education and trade. He further pleaded for sentencing on

liberal terms with consideration of an option of fine. He also asked for a non-custodial sentence on the convict if it pleases the mind of the court.

The prosecuting counsel then informed the court that they have no previous record of conviction of the convict. Counsel also stated that the commission recovered a Samsung phone from the convict and that the convict restituted the sum of \$200 U.S dollars.

Having carefully listened to the plea of Allocutus by the convict and also the plea of the counsel to the defence, wherein the convict has urged the court to temper justice with mercy as he is a changed person who is now into tailoring and also he will proceed with his schooling if given a second change to reintegrate into the society. Now, going further into the plea of the defence counsel who appealed for the court to consider reformatory justice in sentencing the convict made reference to section 416 2(b) &(k) of the ACJA 2015. These sections implore the court to pay attention to reformation rather than sentencing to a term of imprisonment. This is in line with the aims and objectives of the ACJA 2015 which intends to achieve justice in the best possible way which includes decongestion of the prison centres which can be achieved by reformatory sentences including fines and non-custodial sentencing which help to also correct the convict in a proper manner.

That being said, justice must take its full course and the convict cannot be left to go unpunished even with the provisions for reformatory justice as this will serve as a deterrent against any further criminal actions in the future.

The convict is hereby sentenced to three(3) months in prison with an option of fine of 100,000 (One Hundred Thousand Naira) only.

In addition, I make the following orders:

1. The convict is to forfeit and pay the remaining sum of Eight Hundred U.S dollars (\$800) equivalent to 623,200 (Six hundred and twenty-three thousand naira, two hundred naira) into the EFCC recovery account which will then be transferred to the victim as this will enhance the reputation of the country in the international scene.
2. The Samsung Note 10 phone should be destroyed and burnt within the court premises and the destruction should be monitored by the prosecution and defence counsel, a police officer and a staff of the court. Evidence of the destruction should be placed in the court file.

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**Hon. Justice A. Y. Shafa**