

Plea Bargaining under Administration of Criminal Justice Act: How Best in Fighting Financial Crimes in Nigeria

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Abstract

This paper considered the negative effect of lack of facilities for speedy judicial functions, long adjournment of cases and technicalities on the administration of criminal justice in Nigeria which has necessitated the adoption of plea bargaining as a legal concept in the administration of criminal justice. It also considered the need to improve effectiveness and efficiency in our judicial system with a view to quickening the administration of criminal justice through the enactment of new statutes and establishment of law enforcement agencies. It adopted the doctrinal method of legal research whereby primary, secondary and tertiary materials were gathered and analysed. It was observed that plea bargaining has become a global legal concept used by advanced jurisdiction to fight corruption, economic and financial crimes, money laundering and other fraudulent transactions. It was concluded that the adoption and practice of plea bargaining in Nigeria will aid quick dispensation of criminal justice despite some criticisms of the concept, inter alia, that it would work against public interests and encourage Treasury looters to perfect their trade. It was recommended that before plea bargaining agreements are entered between the prosecution and the defendant, the defendant must be prepared to return all the proceeds of his criminal act. It was further recommended that special courts be established to handle corruption cases as the regular courts are highly congested.

1.1 Introduction

Globally, pursuit for speedy trials in any court of justice has been in existence from time immemorial.¹ Plea bargaining is one of the major aids employed when fighting financial crimes to ensure free and

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¹ Nsirim, Elisabeth and Onyige, Chioma Daisy, 'The Use of Plea Bargaining in Reduction of Economic and Financial Crimes in Nigeria' *International Journal of Recent Scientific Research* Vol. 11, Issue, 04 (B), pp. 38055-38065, April, 2020

quick dispensation of justice.² It is trite that Nigerian criminal justice system is being affected by delay of justice, lack of facilities for speedy judicial functions, long adjournments of cases and technicality which buttresses the saying that justice delayed is a justice denied. The Federal Government in a bid to curb the menace of embezzlement of public funds, fraudulent practices, terrorism financing and other corrupt practices together with the need to improve the effectiveness and efficiency of the judicial system with a view to quick administration of justice, has necessitated the inclusion of plea bargaining in the Administration of Criminal Justice Act 2015 in concomitant with section 14(2) of the Economic and Financial Crimes Commission³ to deal with financial misappropriations because these crimes have drained billions of naira from Nigerian economy and has reduce the availability of public resources.⁴ Plea bargaining is a negotiated agreement between a prosecutor and a defendant who pleads guilty to lesser offence or to one or more multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of the charges.⁵

Plea bargaining has also been defined as a process where a criminal defendant and a prosecutor reach a mutually satisfactory disposition of a criminal case subject to the approval of the court.⁶ Plea bargaining is a process where the defence strikes a deal with the prosecution or the judge to plead guilty in exchange of some penal concessions or the dropping of some charges. Proponents of this idea argue that it brings efficiency to a system bedevilled with slow and protracted court processes. The concept of plea bargaining has however attracted critics amongst lawyers, law enforcements agencies, the academic community and the general public at large. It

² Okwori, N. A, 'Plea Bargaining: A Trial Procedure that Negates Fundamental Rights of the Accused Person' <<https://doi.org/10.2139/ssrn.1629255>> (2010) p. 1-12

³ (EFCC) Act, 2004

⁴ Bolaji Damilare, 'The Desirability of Plea bargaining in the Nigerian Criminal Justice System' <www.thelawyerschronicle.com/the-desirability-of-plea-bargain-in-the-nigerian-criminal-justice-system> (2017) Accessed October 4 2021

⁵ Bryan A. Garner, 'Black's Law Dictionary' (8th ed) (Minnesota: Thompson Web Publishers, 2004) p. 1189

⁶ Legal Dictionary, [thefreedictionary.com/plea bargain](http://thefreedictionary.com/plea+bargain) (accessed 18/9/2021)

is argued that offenders can evade the law, provided they are willing to bargain. Equally, some have opined that the practice circumvents the rigorous standards of proof required during criminal trials. The concept is observed as a protective measure to white collar criminals from serving long jail terms and also protecting the proceeds of corruption. Some group have called for eradication of plea bargain, because it is evil, nonsensical, archaic and detrimental to our avowed fight against corruption. They advocate the China option of capital punishment for corruption, in which the family of the convicted and executed persons pay the bill for execution.⁷

It is against this background that this paper traces the conceptual birth of plea bargain, the response of global world at different jurisdictions to plea bargaining either same is accepted or frowned at, examine the provision of Plea bargain under Administration of Criminal Justice Act 2015, position of Plea bargaining while fighting financial crimes and challenges faced by law enforcement agencies in their efforts to curb financial crimes in Nigeria.

1.2 Conceptual Analysis of Plea Bargaining

The concept of plea bargaining in the modern world has been traced to the early 19th century. It is essentially derived from the principle of '*Nolo Contendere*' which literally means 'I do not wish to contend' and became established in the celebrated case of *Robert M. Brady v. United States*⁸. Once there is any failure on the part of the prosecution from the laid down rules and regulations that guide criminal justice system, same would be capitalised on by the opposing party making it cumbersome for prosecution to establish essential elements required to prove the guilt of an accused person. Legal technicalities that accompanied the adversarial system of jurisprudence complicated the simple criminal justice system leading to delays in the dispensation of criminal justice.⁹ Thus, to secure a conviction for an otherwise guilty defendant became difficult for

⁷ Adebayo A M, 'Administration of Criminal Justice Act, 2015 Annotated with Cases and Comprehensive Notes' Princeton Publishing Co. Ltd, (2016) P 399.

⁸ 394 vs 742.90. S.C.T 1463, 25 L.ED 21747 (1970)

⁹ A O Alubo 'Plea Bargaining: History and Origin in Plea Bargaining in Nigeria Law and Practice' in E Azinge, E and L Ani, , (NIALS, Abuja 2012)

many prosecutors to achieve. Sometimes, a defendant may remain under detention unnecessarily as a result of legal technicalities occasioning delays in the conclusion of criminal cases.¹⁰ In order to forestall this, Plea bargaining emerged as a compromise to ensure that criminal cases were dealt with timeously.

Since the birth of plea bargaining is traceable to America, an average criminal case is disposed through plea bargaining. In *Santobello v. New York* (1971), the American Supreme Court held as that the disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called plea bargaining, is an essential component of the administration of justice. Properly administered, it must be encouraged.¹¹ This is a process in criminal proceedings wherein the defendant and the prosecution enter into a mutual agreement to dispose of the case appropriately. In some cases, the defendant may plea for a lesser offence other than the one charged in return for a lighter sentence than that for the higher charge subject to the overall approval of the trial judge.¹² The idea is that where a person who has embezzled public wealth/treasury agrees to negotiate and return what he has stolen, society would be better off receiving back what it has lost in terms of property.

It has been argued that plea bargaining has a semblance of a contract¹³ to some extent, as it contains require ingredients of a valid contract, viz; offer, acceptance, consideration, intention to create legal relationship and contractual capacity. Offer comes in form of concession when the prosecution and the defendant agree that some charges will be dropped against the defendant. Once the offer is

¹⁰ Saka Olokooba and Abdulmalik Adebayo, 'Plea Bargaining: A Panacea Towards Prison Decongestion in Nigeria' Access to Global Online Research Agriculture *International Journal of Juridical Sciences*, Number 4, Part 139-148, (2014) <www.juridicaljournal.univagora.ro> Accessed on 27th September, 2021.

¹¹ AA Lateef, 'The Practice of Plea Bargaining in Nigeria: Antithesis of The Broken Windows Theory of Corruption Abstract' available at <https://www.researchgate.net/publication/335524123> accessed on 3rd October, 2021.

¹² Nicholson A. Okwori, 'Plea Bargaining: A Trial Procedure that Negates Fundamental Rights of the Accused' SAGE Publication, 2010.

¹³ A A Lateef (n 12)

accepted there could be cross or counter offer from the prosecutor. Consideration is the plea of guilty by the defendant himself, it is safer because the burden of establishing the guilty of the defendant lies on the prosecutor and it saves him the energy and time of proving the accused guilty. Intention to create legal relation is also established because the defendant must have accepted to pay agreed sum or even raised bank draft to that effect in favour of the prosecution.¹⁴

The concept is not known to Nigeria legal system until recently with the establishment of the Economic and Financial Crimes Commission (EFCC) by virtue of Section 14(2) of the Act¹⁵ following increased level of corruption in the country together with enactment of the Administration of Criminal Justice Act (ACJA) 2015. The ideal is however frowned at by some antagonist claiming that the concept tend to encourage criminals who looted the societal treasury. It has been said that Plea bargaining is a novel concept of dubious origin. It has no place in our law substantive or procedural. It was invented to provide soft landing to high-profile criminals who loot the treasury entrusted to them. It is an obstacle to our fight against corruption. It should never again be mentioned in our jurisprudence¹⁶. According to him the practice makes the public to be sceptical of the integrity and sincerity of the criminal justice system and promotes a cynical view of the entire legal system.¹⁷ Since the introduction and application of plea bargaining in the country, the commission has however recorded success¹⁸ timeously in some criminal cases with the aids of plea bargaining.

¹⁴ Ibid

¹⁵ Economic and Financial Crimes Commission (Establishment) Act 2004 Section 14 (2)

¹⁶ Honourable Justice Dahiru Musdapher at the fifth annual general conference on the section on legal practice of the Nigerian Bar Association held in Abuja in 2011, reported by Nigeria Tribune of 16th November 2011

¹⁷ Ibid

¹⁸ An example of a plea bargain case by the Economic and Financial Crimes Commission is *FRN v Ibru* Charge No. FHC/L/297C/2009 (unreported). The defendant was arraigned for contravening section 15 (1) of Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, 2004, The law stipulates an imprisonment for the term not exceeding five years without the option of a fine. The defendant was however sentenced to 18 months imprisonment without an option of fine

1.3 Response of Global World to Plea Bargain

The practice of plea bargaining for the resolution of criminal cases has been in existence from time immemorial and it has become widely accepted in most of the developed nations across the globe. It is therefore imperative to highlight some of the jurisdictions such as United States of America, Canada, India, and South Africa where the concept is being practised and adopted as aids in dispensation of criminal cases in order to juxtapose the principles applicability in the Nigeria legal terrain.

For instance, Plea bargaining has played a vital role in the Criminal Justice System in the United States of America, majority of criminal cases are being dispensed through plea bargaining rather than full trial by a jury¹⁹. Thus, different jurisdictions in the United States have different procedures for the application of plea bargaining procedure in the United States. The Federal

Centenary adopted a guideline to be applied in relation to Federal offences. These guidelines were created to ensure that a uniform standard is applied by the Federal Courts in the adoption of plea bargaining in criminal proceedings. A two-or-three offence level reduction is usually available for those who accept responsibility by not holding the prosecution to the burden of proving its cases. This most times amount to about a 35% sentence reduction.²⁰ This is achieved by the prosecutor handling a particular case making offers to an accused person mostly through his lawyers or vice versa. That offer comes in the form of concessions to the accused that a lesser charge will be substituted for the one he is currently charged with or that some of the charges brought against him are dropped or still if he pleads guilty, the prosecution will not pray for maximum punishment before the court²¹. This agreement between the prosecution and defendant is not binding on the court, so the court is at liberty to go ahead and impose the maximum sentence despite the

¹⁹ A.O Alubo (n10)

²⁰ Ibid

²¹ Ted. C Eze and Eze G Amaka (n 9)

recommendations from the prosecutor. If the court accepts the agreement, it is mandatory to sentence in line with the agreement.²²

In another jurisdiction such as the states of California, plea bargaining has assumed such a popular acclaim that the parties and their attorneys are at liberty to reduce the plea bargain agreement into a prescribed written format that can be filed in court for the court to adopt same as its consent judgment in a criminal proceeding.²³ This therefore buttresses the fact that in the United States of America plea bargaining plays pivotal roles in ensuring quick dispensation of justice.

Similarly, the practice of plea bargaining was incorporated into the India Administration of criminal Justice System by the criminal procedure (amendment) Act, 2005. The law made plea bargaining procedures applicable in criminal proceedings involving only minor offences which do not attract a punishment of more than 7 years upon conviction. However, offences that relate to economic crimes such as the looting of the public treasury, money laundering and offences committed against women or children less than 14 years of age are excluded from the application of plea bargain procedure.²⁴

Again, in Canada plea bargaining practice is an accepted part of the Criminal Justice System, wherein crown prosecutor liaise and agree with the defendant to plead guilty and get lesser punishment. The Canadian judges are however not duty bound by the crown prosecutor sentencing recommendations and could impose appropriate penalties using his discretion. Therefore, the crown and defence will often make a joint submission where they will both recommend the same sentence, or a relatively narrow range so as to maintain the visibility of the judge's ability to exercise discretion.²⁵

Crown prosecutors can also agree to withdraw some charges against the defendants in exchange for a guilty plea depending on the circumstance of each case.

²² Ibid page 12

²³ Ibid

²⁴ Criminal Law (Amendment) Acts, 2005,

²⁵ Gabriel Adeleke, 'Prosecuting Corruption and the Application of Plea Bargaining in Nigeria: A Critique' [2012] (3) (1) *International Journal of Advance Legal Studies and Governance* 61.

Furthermore, plea bargain agreements are widely accepted and practised in South Africa being one of the common law countries. The prosecutor can reach an agreement with the defence before arraignment of the defendant in court on the sentence to be imposed. Though, the judge has discretion to consider if the agreed sentence is adequate in the circumstance of the case wherein the court convicts the accused and sentences him as agreed upon.²⁶ If the court is not so satisfied, it informs the parties of the sentence which the court deemed fit. The defendant is however at will to back out from the agreement if he is not satisfied with the just sentence in the mind of the judge, in which case the matter will be started afresh before another judge.²⁷ Plea bargain was introduced into French law in 2004 in a form known as “pleader” capable in respect of very minor offences. In this system, the public prosecutor offers to suspect of relatively minor offences, a penalty not exceeding one year imprisonment in return for a plea of guilty. The Judge will accept the deal if the suspect agrees to the proposal.²⁸

As states across different jurisdictions take position on the use of plea bargaining for quick dispensation of criminal cases, so also is the justification of researchers and legal scholars with different opinions either in favour or against plea bargaining concept. The process is seen as a practice that is just and fair in reduction of the rate of crimes in countries because it more cost efficient than having all cases go to full trial.²⁹ Others have argued extensively on the pros and cons of the adoption of plea bargaining because it helps to overcome the challenges of unnecessary delays and uncertainties of trials and appeals.³⁰ Thus, this will enable the prosecutor to return proceed of the crime or make restitution to the victims of his representation.

²⁶ Scott Howe, ‘The Value of Plea Bargaining’ Oklahoma Law Review, Volume 58:599, 635, <<http://adams.law.ou.edu/olr/articles/vol58/howe584.pdf>> (2005), Accessed on 30th September, 2021

²⁷ Ibid

²⁸ Les Chiffres – des de la Justice at <http://www. Justice. Your fr/art—pix1-chipresddes06.pdf>) French Ministry of Justice, October, 2006.

²⁹ J Bowers, ‘Punishing the Innocent’[2008](156) *University of Pennsylvania Law Review* 1117–1179.

³⁰ C O Ogudare ‘Analyzing the provision for Plea Bargaining under the Administration of Criminal Justice Act 2015, and its Likely Impact on the Trial

1.4 Plea Bargaining under ACJA 2015

Plea bargaining under the Administration of Criminal Justice Act, 2015 means the process in criminal proceedings where the prosecution work out a mutually acceptable agreement with the defendant as to a lesser offence than what was actually charged in the complaint or information and in conformity with other conditions imposed by the prosecution where the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt, in return for a lighter sentence than for a higher charge subject to the courts approval.³¹ Plea bargaining has become a legal practice in most advanced nations whereby an accused pleads guilty in return for reduced charges or a lighter sentence.³² By this practice, both the accused and prosecutor concede certain incentives by making compromises for a mutually agreeable bargain.

Before the enactment of ACJA, the law that was closely related to plea bargaining in Nigeria is section 14(2) of the Economic and Financial Crimes Commission Act 2004. The section provides that:

Subject to the provision of section 174 of the constitution of the federal republic of Nigeria 1999 as amended, the commission may compound any offence punishable under the Act by accepting such sums of money as it thinks fit, exceeding the maximum amount to which that person would have been liable if he had been convicted of the offence.³³

The phrase “compounding of offences” as used in the Act refers to the power of the Commission to drop some of the charges if the defendant is prepared to return such sum of money as the commission may deem fit in the circumstance of the case. In the exercise of such powers to compound offences under section 14 (2)³⁴ the commission

of Corruption and Other Cases’ [2015] A Paper Presented at the Annual General Conference of the Nigerian Bar Association, at the International Conference Centre Abuja.

³¹ Section 494 (1) of the Administration of criminal justice Act, (ACJA) 2015

³² Gabriel Adeleke (n 26)

³³ Economic and Financial Crimes Commission (Establishment) Act, 2004 Section 14(2),

³⁴ Ibid

in the case of Mrs. Cecelia Ibru, a Former Managing Director of Oceanic Bank who was arraigned in court on the 31st day of August, 2009 on a 25 count charge, all bothering on corrupt practices in office the charge was subsequently reduced to 3 court charge wherein the accused pleaded guilty to the amended charge bothering on abuse of office and mismanagement of depositors fund, she accepted to forfeit the assets worth over N150 Billion which she fraudulently acquired by her office. As a result of a plea bargaining agreement, she received a light punishment of six months imprisonment.³⁵

Under the Administration of Criminal Justice Act 2015, section 270 which provides as follow:

- (1) Notwithstanding anything in this Act or in any other law, the Prosecutor may: (a) receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; or (b) offer a plea bargain to a defendant charged with an offence.
- (2) The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence, provided that all of the following conditions are present: (a) the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt; (b) where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or (c) where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.³⁶

As pointed out earlier plea bargaining resembles contract because it attracts the essential elements of a valid contract which empowers the prosecution either to make offer or to accept same from the defendant

³⁵ N Akeem and O Tuned, 'Cecilia Ibru Jailed, to Lose 191 Billion' *Saturday Tribune*, 9th October, 2010.

³⁶ (n 33)

with intent to compromise and impose lighter punishment on the defendant subject to approval of the court.³⁷ However, there are provisos in sub-Section (2) which must be met before the prosecution can exercise power to negotiate with the defendant. The most vital one among the conditions that needed to be addressed is section 270 (2) (a) wherein the prosecution can only enter into plea bargaining with a defendant if the available evidence is not enough to prove the offence charged beyond reasonable doubt as required. The question is, in all the cases where the commission had engaged plea bargaining to settle scores are there no sufficient evidence to prove the case beyond reasonable doubt. Thus, in the case Emmanuel Nwude and Nzeribe Okoli³⁸, the accused's were charged with defrauding one Nelson Sakaguchi with the sum \$242 million dollars. The accused were initially charged with offences under the Advance Fee Fraud and other Related Act, 1995³⁹ which provided for a term of ten (10) years imprisonment upon conviction without option of fine. When the trial began, the case suffers series of delay tactics to frustrate the case. The accused later opted for a plea bargain wherein the charges were consequently amended and brought under section 419 of the Criminal Code which provides for a term of seven (7) years imprisonment. They pleaded guilty to the amended charge and were sentence accordingly. the court further ordered that the sum of N110 million to be paid to the said Nelson Sakaguchi and forfeiture of the accused assets in major cities in Nigeria and United Kingdom including his equity holdings in Union Bank Plc. and the Nigeria Bottling Company Plc.

Again, sub section (3) provides that:

Where the prosecutor is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process, he may offer or accept the plea bargain'.⁴⁰

³⁷ AA Lateef (n 12)

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³⁹ Now repealed by the Advance Fee Fraud and other Fraud Related Offences Act, 2006

⁴⁰ Administration of criminal justice Act, (ACJA) 2015Section 270 (3).

Another condition precedent for the prosecution to enter into plea bargaining agreement is that he must consider public interest and policy i.e. society view/perception and circumstances that surround each case⁴¹, especially when it involves looting of our collective treasury by some privileged individuals. Where this is not put into consideration, the prosecution cannot unilaterally exercise his discretion to offer or accept plea bargaining agreement. Hence, in the case of *FRN v. Oyewale Wasiu Adetunji & 1 Ors*,⁴² the defendants who are students of Kwara State University, Malete and Kwara State Polytechnic, Ilorin, respectively were charged with offences bordering on cybercrime. The defendants during trial pleaded guilty to their respective charges. The two Counsel urged the court to adopt the plea bargaining agreements and sentence the defendants accordingly.⁴³ Delivering judgment on the case on Monday September 13, Justice Oyinloye said that, he took cognizance of the plea of guilt entered by the defendants and plea bargaining agreement entered into by the parties. Consequently, the court sentenced the defendants to one year imprisonment with option of fine of N500, 000 (Five Hundred Thousand Naira only) each together with order to forfeit Toyota Corolla Car acquired with proceeds of unlawful activities.⁴⁴

Furthermore, the parties are obliged to enter into plea bargaining agreement prior the arraignment of the defendant before the court recommended sentence within the appropriate range of punishment stipulated for the offence.⁴⁵ In determining whether the prosecution considered public interest and policy prior to a plea bargaining negotiation with the defendant, the prosecution shall weigh all relevant factors such as willingness of the defendant to cooperate in the investigation, criminal record of the defendant, the attitude of the defendant during and after the alleged offence (s), the likelihood of obtaining a conviction at trial and the probable effect on witnesses,

⁴¹ Administration of criminal justice Act, (ACJA) 2015 Section 270 (5).

⁴² *FRN v. Oyewale Wasiu Adetunji & 1 ors* (unreported) delivered by Justice Sikiru Oyinloye of the Kwara State High Court sitting in Ilorin. Available on www.efcc.gov.ng accessed on 30th September, 2021

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid sub 4 para (a) & (b)

the need to avoid rigorous trial, delay in the disposition of other pending cases and the defendant's willingness to make restitution or pay compensation to the victim when necessary.⁴⁶

The law⁴⁷ also stipulated the extent of participation by the court in the plea bargain agreement and the residual powers that the court can exercise. The prosecutor is duty bound to inform the court that the agreement has been reached between the parties and the presiding judge or magistrate shall inquire from the defendant to confirm the terms of the agreement, to ascertain that defendant admits all the allegations contained in the charge and to determine whether the defendant entered into the agreement voluntarily without any influence or threat before acting upon the terms as contained in the agreement. Mr. John Yakubu (*supra*) who was alleged to have stolen billions of naira from the pension fund got a punishment of two years imprisonment or the option of a fine of seven hundred and fifty thousand naira (N750, 000,000) under a plea bargaining agreement with the EFCC. Also, in *FRN v. Onyenwe Toluwalase Onyeka & 4 Ors*⁴⁸, the defendants were arrested in different parts of Lagos by operatives of the EFCC and subsequently arraigned on separate charges bordering on possession of documents containing false pretences. When the defendants were arraigned before the court they initially pleaded not guilty, but subsequently approach the prosecutor for plea bargaining agreement and changed their plea to guilty accordingly. The court consequently sentenced the defendants to one year imprisonment, with an option of fine of N500, 000.00 (Five Hundred Thousand Naira) each. The baffling thing in all these sentences however is that the general public interest as envisaged by the drafter is kept detached as to what was stolen and what was recovered from the defendants so as to justify the deterrence which the sentences stand to serve.

Similarly, the prosecutor must further ensure that any money, asset or property ordered to be forfeited or returned by the convict is given

⁴⁶ Ibid sub 5 para i-viii

⁴⁷ Ibid subsection (8), (9), (10), (11) and (12)

⁴⁸ *FRN v. Onyenwe Toluwalase Onyeka & 4 Ors* (unreported) delivered by Justice Sherifah Solebo of the Special Offences Court sitting in Ikeja, Lagos. Available at <www.efcc.gov.ng> accessed on 2nd October, 2021

back to the victim or his representative and failure to do so by the officer in charge attracts seven (7) years imprisonment without option of fine.⁴⁹ However, where the judge or magistrate is not in agreement with plea bargaining punishment by proposing a higher one than the one agreed upon, the defendant has choice either to agree with the higher punishment or withdraw from the plea bargain agreement wherein the case will be transfer to another judge and start *de novo* with mandate that reference shall not be made to previous plea of guilty or earlier plea bargaining agreement, no admission contained therein or statement relating thereto shall be admissible against the defendant.⁵⁰ Once the parties agreed on the content of plea bargaining and the trial judge satisfied with same, the defendant cannot be tried for the same offence again to avoid double jeopardy.⁵¹ The decision of the court thereon is final without any right of appeal against same save where fraud or illegality is alleged or established⁵² that will warrant appeal or set aside of the decision. Therefore, the provision of the Act as it relates to plea bargaining is a step further in the advancement of our criminal justice system in order to aid and assist quick dispensation of justice and to avoid unnecessary delay of criminal matters, even though, the Act fails to specifically mention offences that parties can enter into plea bargaining agreement and those that could not. Most importantly, the provisions are silent on the procedures to be adopted to ensure that victims' rights are enforced and complied with.

1.5 Plea Bargain and Financial Crimes

Since the provision of the entire section 270 ACJA 2015 as discussed above is silent or failed to specifically mention offences that plea bargaining can be accommodate the EFCC saddled with the responsibility to fight financial crimes explored the opportunity by using plea bargaining arrangement to settle most of their cases involving misappropriation of public funds by some individuals or organisations entrusted with public fund, coupled with the provision

⁴⁹ Section 270 (13) & (14) of the Administration of criminal justice Act, (ACJA) 2015

⁵⁰ Ibid subsection (15) & (16)

⁵¹ Ibid subsection (17)

⁵² Ibid subsection (18)

of section 14 (2) of the Act⁵³ that empowers the commission to compound offences. This necessitated the criticisms that plea bargain was introduced into our law to favour few rich people who are treasury looters. Some have even suggested that plea bargain should be used only in financial crimes and minor offences, other offences that attract seven (7) years imprisonment and above should be excluded from plea bargaining arraignment⁵⁴ which I disagree with because same will negate the purpose why plea bargain was deployed into our general criminal justice system i.e. to fast track criminal cases and avoid unnecessary delay. It is important to state further that plea bargaining arraignments have not violated fundamental human rights⁵⁵ of the defendant as canvassed⁵⁶ because the defendant must have consented before plea bargaining agreement could be valid. Thus, financial crimes is defined as:

Nonviolent criminal and illicit activity committed with the objective of earning wealth illegally either individually or in a group or in an organized manner, thereby violating existing legislation governing the economic activities of government and its administration”.⁵⁷

There are other several ways through which economic and financial crimes can be committed such as manipulation of records, abuse of office, misappropriation and diversion of funds, smuggling, illegal arms deals, foreign exchange malpractice, counterfeiting of currencies theft of intellectual property and piracy, false declarations,

⁵³ Economic and Financial Crimes Commission (Establishment) Act, 2004 Section 14(2).

⁵⁴ MM Mwuese & Bem Aboho, 'Plea Bargain as an Instrument of Fast-Tracking Criminal Justice Delivery under the State Administration of Criminal Justice Law of Benue State, 2019' [2019/2020] *Benue State University Law Journal* 247-262.

⁵⁵ Constitution of Federal Republic of Nigeria 1999 as amended Section 36 (6) (c).

⁵⁶ Adekunbi Imosemi & Miss Bisola Ogundare, 'Plea Bargaining in Nigeria: an Aftermath of the Administration of Criminal Justice Act 2015' [2017] *International Journal of Business & Law Research* Oct.-Dec., available at <www.seahipaj.org> p. 93-105.

⁵⁷ Economic and Financial Crimes Commission (EFCC) publication units (2003).

money laundering, conventional and fraudulent trade practices, embezzlement, tax evasion, bribery of government officials⁵⁸ etc.

Public interests have however been frustrated when it comes to prosecuting high-profile cases of financial crimes and corruption in Nigeria as most have been plea bargained. This frustration derives from disparate punishment between classes of citizens.⁵⁹ Hence, in the case of Mrs. Cecelia Ibru⁶⁰, she received a light punishment of six months imprisonment for a 25 court charge of different offences even though she accepted to forfeit the assets worth over N150 Billion which she fraudulently acquired while in the office. Also, in the recent case of *FRN v. Charles Jide-Oni & 12 Ors*,⁶¹ a professor at the Obafemi Awolowo University, Ile Ife, Osun State, was arraigned for allegedly obtaining money under false pretence and engaging in Advance Fee Fraud sequel to the EFCC's damning findings about the activities of an illegal financial outfit he floated through which he allegedly swindled his victims of several millions of naira. They however, opted for a plea bargaining and pleaded guilty to a one-count amended charge and subsequently sentenced to one year imprisonment each and one of the defendants also ordered to return the sum of \$500 (Five Hundred United States Dollars) through the Federal Republic of Nigeria to his victim.⁶² Likewise in *FRN v. Augustine Ekeson & 2 ors*,⁶³ the defendants were brought before the court for the offence of criminal impersonation. The defendants hacked into email account of one Mobolade Dele Akinbuluma, a Doctoral student of the University of Ibadan to misrepresent themselves as staff of a Kenyan university where she was to

⁵⁸ Olu Awolowo, 'Nigeria's plea Bargaining a mockery of criminal justice administration' *Journal of law, policy & government* Vol 65, <www.iiste.org> (2017)

⁵⁹ Nsirim O, & others(n 1).

⁶⁰ Cecelia Ibru case (supra).

⁶¹ *FRN v. Charles Jide-Oni & 12 others* (unreported) delivered by Justice Nicholas Oweibo of the Federal High Court Ikoyi Lagos State, on Wednesday, September 4, 2019. Available at www.efcc.gov.ng accessed on 10th day of September, 2021.

⁶² Ibid

⁶³ *FRN v. Augustine Ekeson & 2 Ors* (unreported) delivered by Justice Patricia Ajoku of Federal High Court, Ibadan, Available at <www.efcc.gov.ng> accessed on 10th day of September, 2021

undertake a study as part of her doctorate programme and in the process, defrauded her sum of N875, 490 (Eight hundred and seventy-five thousand four hundred and ninety Naira). The defendants later approached the EFCC for a plea bargaining and the court consequently sentenced them to two years imprisonment each based on the terms of the plea-bargaining agreement.⁶⁴ It is therefore apposite to state that despite the achievement of the Commission saddled with responsibility to fight financial crimes and other related offences using plea bargaining arrangement, there are other challenges hindering the work of the Commission in fighting financial crimes.

1.6 Challenges

Most of the challenges are systematic, ranging from method of investigation and judicial system codified in our statute books which establish the investigation and prosecution of suspect, delay of justice, lack of facilities for speedy dispensation of justice, long adjournments of cases.⁶⁵ Sometimes it takes one or two months for the Commission to complete investigations while the suspects are still in custody. It is also observed that there is no time frame for the completion of plea-bargaining agreement in the ACJA 2015. Often times, it took a while to negotiate between the prosecution and the defendant thereby causes delay in the dispensation of justice. Again, offences that are subject of plea-bargaining agreement are not specifically mentioned in the Act and those that could not be negotiated or compounded. There are no enforcement procedures to the victims of financial crimes to realise their lost wealth or property when need arise. The likelihood of prosecutor getting sufficient evidence to prove his case beyond reasonable doubt against the defendant is totally negated when plea bargaining is to be used which is a condition precedent to the exercise of plea bargaining agreement by the prosecution.⁶⁶ Corruption is another obstacle facing the Commission in its quest to fight financial crimes because bribe may

⁶⁴ Ibid

⁶⁵ Adegbite K. Plea Bargaining in Nigeria: Any Legal Foundation? '<<http://www.thelawyerschronicle.com/plea-bargaining-in-nigeria-any-legal-foundation>>' (2015) Accessed 5th day of September, 2021.

⁶⁶ Section 270 (3) of Administration of Criminal Justice Act 2015.

be offered or requested during the pendency of investigation.⁶⁷ There is the possibility of abuse of plea bargaining privileges given to both the prosecution and the defendant when same is not carefully exploited.

1.7 Conclusion and Recommendations

Plea bargain is a tool introduced into criminal justice system in order to aid quick dispensation of justice. It is been used in most of developed countries across the globe. Plea bargaining was never part of the Nigerian Criminal Justice System until 2004 when the Economic and Financial Crimes Commission (EFCC) was established which gave the commission powers to compound economic and financial crimes cases if need be. The enactment of the Administration of Criminal Justice Act (ACJA) 2015 made the term to be institutionalized as part of the legal practice in Nigeria. Thus, the emergence of the (ACJA) 2015 is a panacea to advance a new law to ensure quick dispensation of justice in trials under Nigeria's criminal justice system. Hence, this paper traced the conceptual birth of plea bargaining, the response of global world at different jurisdictions to plea bargaining either same is accepted or frowned at, analyse the provision of Plea bargaining under Administration of Criminal Justice Act 2015, then the effect of Plea bargaining on financial crimes and other related offences with particular reference to financial crimes cases and challenges faced by law enforcement agencies in their efforts to curb financial crimes in Nigeria.

The paper therefore suggests that before plea bargaining agreement could be entertained by the prosecution what was stolen must be conclusively verified/ascertained and for any defendant to benefit from the procedure, he must be prepared to return all that he stole. There is need to create specialised anti-corruption courts for economic and financial crimes for the expeditious disposition of cases on the basis of plea bargaining especially as it related to corruption cases. Again, where the defendant is a public officer, he should be dismissed from that public office. A publicised sentencing

⁶⁷ SI Abdullahi, 'Islamic Law, Plea bargaining and the Criminal Justice System in Nigeria' [2012] (1) (2) *At-Tibiyaan- Journal of Law and Religion: NAMLAS Obafemi Awolowo University Ile-Ife* p. 88.

criterion should be ensured to reduce the possibility of abuse by operators of plea bargaining in the Nigeria criminal justice system. Plea bargaining should be dispensed in ways that are fair and just to all suspects irrespective of their status in the society that is, not just a few influential and rich citizens ought to benefit from the practice of plea bargaining so as to strike the balance and strictly comply with public interest as envisaged.