IN THE COURT OF APPEAL
KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON FRIDAY THE 14TH DAY OF JUNE, 2019
BEFORE THEIR LORDSHIPS

OBIETONBARA O. DANEIL-KALIO	**JUSTICE, COURT OF APPEAL**
SAIDU TANKO HUSAINI	**JUSTICE, COURT OF APPEAL**
OLUDOTUN A. ADEFOPE-OKOJIE	**JUSTICE, COURT OF APPEAL**

CA/K/148/C/2017

BETWEEN

NUHU ABDU IBRAHIM MUHAMMED----------APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA----------RESPONDENT

JUDGMENT
(DELIVERED BY SAIDU TANKO HUSAINI, JCA)

There is before this court an appeal and cross appeal both of which emerged from the decision of the Federal High Court, Kano delivered on the 16th December, 2016 in Suit No. FHC/KN/185/2016 by which judgment the appellant was convicted and sentenced to 2 years term of imprisonment with an option of fine of ₦100,000.00 (One Hundred Thousand Naira). The appellant was also ordered to forfeit to the FRN the sum of $260,350.00 (US Dollars) representing 50% of the undeclared sum recovered from him.

The information or charge framed against the appellant, then the accused person at the Federal High Court, Kano, has it that he committed the offence by reason of his failure to declare to the Nigerian Custom Services at the Mallam Aminu Kano International Airport, Kano, Nigeria, the sum of

$520,700.00 US Dollars (Five Hundred and Twenty Thousand, Seven Hundred United State Dollars) by concealing the funds in 3 blankets and transporting same into Nigeria from Saudi Arabia on Board Sudan Air Flight No. SD422, in April, 2016, an act said to be contrary to Section 2(3) of the Money Laundering (Prohibition) Act, 2011 (as amended) in 2012 and Punishable under Section 2(5) of the same Act.

The lone count or charge was read and explained to the appellant at the commencement of his trial wherein, his plea of "not guilty" was initially recorded for him. After taking his plea on 24th October, 2016 the trial court thereafter adjourned further proceedings to another date for the prosecution to call evidence of witnesses to prove their case.

During the interval, the appellant, through his counsel reached out to the Prosecution and made an offer to change his plea of "not guilty" to one of "guilty" on the terms listed and contained in the written proposals dated the 1st December, 2016 and filed on 2nd December, 2016 as well as the proposals dated the 9th December, 2016 and filed on 13th December, 2016. See the record of appeal at pages 34-35 and pages 38-39 respectively.

On the strength of the application of the offer for "plea bargain", the appellant, on the 16th December, 2016 at the sitting of the court below, now entered a plea of "guilty" after the same charge or count was read or reread and explained to him. On the basis of this plea of "guilty", the trial court convicted the appellant and sentenced him accordingly, after taking evidence of Prosecution Witness No. 1 (PW1) through whom certain Exhibits were also admitted in evidence and marked as Exhibits A-F.

The trial court in sentencing the appellant made an order at page 74 of the record of appeal as follows:

> ***"The convict is sentence (sic) to 2 years of imprison (sic) or an option of five of ₦100,000.00 (One Hundred Thousand Naira). The convict shall forfeit 50% i.e $260,350.00 US Dollars to the Federal Government of Nigeria. Same to be paid into the Federal Government account by the EFCC within 14 days of this Judgment and evidence shown. The remaining 50% $260,350.00 US Dollars is hereby ordered to be released to the convict immediately."***

Against this order and sentence, the appellant lodged his appeal to this court on the 27th February, 2017 vide the Notice of Appeal containing 2(Two) grounds of appeal. It is worthy of note that this appeal or complaint is against **the sentence** imposed on the appellant at the trial court. The 2 (two) grounds of appeal and their particulars are reproduced below:-

"GROUND 1

The court erred in law when it convicted the appellant on the basis of plea bargain and went ahead to sentence him against the terms of the bargain.

PARTICULARS OF ERROR

That despite deciding the case based on the agreement of the parties which the court also concur with but it convicted him to forfeit more than the 30% of the money agreed upon in the plea bargain.

GROUND 2

The court erred in law when it convicted the defendant based on plea bargain but convicted the defendant against the spirit of the law.

PARTICULARS OF ERROR

That the lower court, despite agreeing with the parties on their consensus on plea bargain, sentenced the defendant to forfeit 50% of the entire sum of money found with the defendant far above the minimum statutory requirement of the law."

In the brief of argument filed for the appellant on the 12th April, 2017 he raised the following 3 (three) issues for determination thus:

> ***"(1) Whether in the light of the provisions of Section 270(9) and (11) (a), (b) and (c) of the Administration of Criminal Justice and Cybercrimes (prohibition, preventions etc) Act (ACJA) and the provisions of S. 2 (5) of the Money Laundering (Prohibition) Act No. 11 of 2011 as amended, the lower court was right in sentencing the appellant to forfeit 50% of the money.***
>
> ***(2) Whether the lower court has complied with the provisions of S. 270 (11) (c) of the Administration of Criminal Justice Act, 2015; and if the answer is No.***
>
> ***(3) Whether noncompliance with the said provision has not violate the right of the appellant as provided under S. 270 (15)(a) &(b) of the Administration of Criminal Justice Act 2015 and as such will allow***

this court to temper with the sentencing of the appellant by the lower court."

The said 3 (three) issues were adopted by the Respondent at page 3 of the Respondent's brief of argument dated the 30th May, 2017 and filed on the 1st June, 2017 without any reservation, not even minding the fact that the appellant had raised in his brief more issues for determination than there are grounds of appeal. Respondent perhaps saw nothing wrong with that.

To me, everything is wrong in a situation where issues for determination outnumber the grounds of appeal from which the issues, supposedly, were drawn or derived. On no account must issues raised surpasses the grounds of appeal. An issue may encompass one, two or three grounds of appeal. But it is incompetent, inelegant and improper to distill and formulate more issues than there are grounds of appeal. All appellate courts distaste and frown on proliferation of issues to be more than the grounds of appeal. See **Ogunbiyi v. Ishola (1996) 6 NWLR (Pt. 452) 12; Paye v. Caji (1996) 5 NWLR (Pt. 450) 589; Enigbokan v. Baruma (1998) 8 NWLR (Pt. 560) 96**. When situations like this occur, some issues may have to give way or be struck out. See: **Dung v. Gyang (1984) 8 NWLR (Pt. 362) 315.** The court also, on its own can merge together issues which are similar in character. See: **Pedawe v. Jatan (2003) 5 NWLR (Pt. 813) 247 (CA)**.

Having therefore considered the 3 issues so distilled as above, I am prepared to merge issue No. 3 with issue No. 2 and proceed with the case in the interest of justice and determine this appeal on the bass of two (2) issues reformulated below:-

(i) Whether in the light of the provisions of Section 270 (9) and (11) (a) (b)and (c) of the Administration of Criminal Justice Act, 2015 and the provisions of Section 2(5) of the Money Laundering (Prohibition) Act No. 11 of 2011, as amended, the lower court was right in Sentencing the appellant to forfeit 50% of the money.

(ii) Whether the lower court has complied with the provisions of Section 270(11)(c)of the Administration of Criminal Justice Act, 2015 and whether non-compliance with the said provision has not violated the right of the appellant as provided under section 270(15) (a) and (b) of the Administration of Criminal Justice Act, 2015.

Learned appellant's counsel in his brief argued the 2(two) issues together. He answered the two questions in the negative. In reference to provisions of Sections 270(1)(2)(a) 11(a)(b)(c)(15) of the Administration of Criminal Justice Act, 2015, Section 2(5) of the Money Laundering (Prohibition) Act, No. 11 of 2011, the appellant and the respondent had negotiated an agreement by way of a plea bargain based on certain terms and conditions, hence the court below was wrong to impose a sentence which was not borne out of those terms in the negotiated agreement reached by the parties as contained at page 35 lines 6-11 of the record of appeal. Based on this negotiated agreement, it is argued, the appellant chose to enter a plea of "guilty" to the charge filed against him and to forfeit 30% of the entire undeclared sum recovered from him. In return, the appellant was also to be given an option of fine. It is equally submitted that the sentence imposed by the trial Court did not accord with the sentence prescribed under S. 2(5) of the Money Laundering (prohibition) Act 2011. Rather the conviction

and sentence was based on Section 270(11) (c) of the **ACJA**, 2015, hence the trial court, it was argued, was wrong when it imposed the sentence as it aid. In relying on **Okiye v. State (2014) ALL FWLR (Pt. 756) 584** in that the court below, did not follow the method prescribed by the statute on the manner sentence was to be imposed. He argued that by the imposition of heavier sentence on the appellant under S. 270 (11)(c) of **ACJA** without first informing him of it, was a violation of the appellant's Statutory and Constitutional right to either choose to proceed or renege from his plea of "guilty". We were urged to resolve the two (2) issues argued together in favour of the appellant and allow this appeal.

In response to the 2 (two) issues argued together, learned respondent's counsel referred us to the 2 (two) proposals submitted by the appellant, by which he would be allowed to forfeit 30% of the undeclared funds, in the case of the first proposal; OR 50% in the case of the 2nd proposal. Learned respondent's counsel has argued that the respondent declined both proposals by their refusal to sign and authenticate any of those documents. He argued that their refusal to sign the two (2) proposals sent to them was because of the existence of some mandatory provisions contained at Section 2(3) and (5) of the Money Laundering Prohibition Act, 2011 (as amended) in 2012 under which the appellant was charged. He argued that those provisions cannot be varied by the court in the exercise of its discretion to reduce the sentence imposed on the appellant. He relied on **Amoshina v. State (2001) ALL FWLR (Pt. 597) 601**, for this submission. On this account it is argued, that the Respondent did not sign the terms of the plea bargain wherein the appellant had requested for either 30% or 50% of the

undeclared funds to be forfeited to the Federal Government. It is argued that since the two (2) documents were not signed by the respondent, it has no binding effect on them. He relied on **Chrisdon Industrial Co. Ltd. v. A.I.B Ltd (2002) FWLR (Pt. 128) 1355 (CA).**

On the question whether the trial court was right in convicting the appellant and sentencing him, as it did, learned respondent's counsel was affirmative in his answers since, according to him the trial court acted on the available evidence before it i.e Exhibits A-F as well as the Plea bargain paper presented by the Appellant hence the appellant was properly convicted as charged. This conviction and sentencing of the appellant, it is argued, did not occasion any miscarriage of justice. We were urged to so hold.

In his reply brief on points of law, we were invited by appellant's counsel to the records of proceedings, particularly, portions of the record where the respondent, said, they agreed with the appellant to "plea bargain", in reference to page 71 lines 1-2 of the record. He argued that the respondent cannot at this stage shy away from facts which they had admitted as to the existence of a "plea bargain" between the parties hence the appellant is free to seek that relief from the court. He relied on **FRN v. Igbinedion (2014) ALL FWLR (Pt. 734) 101, 145.**

RESOLUTION OF ISSUES

The concept of "Plea bargain" is comparatively a new development in the our jurisprudence but with the incorporation of this concept into our statute Books as at section 270 of the Administration of Criminal Justice Act, 2015, and decisions in cases such as **Romrig Nigeria Ltd v. FRN (2014)**

LPELR-22759 (CA); Igbenedion v. FRN (2014) LPELR-22766 (CA); PML Nig. Ltd v. FRN, (2014) LPELR-22767 (CA), etc, the concept of "plea bargain" has come to stay as part of our criminal process and procedure. Plea bargain as a concept has been defined **in Romrig Nigeria Ltd v. FRN (2014) LPELR-22759(CA)**, following **Bryan Garner's law Dictionary (8th edition) at page 1090** to mean "a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange of some concession by the Prosecutor, usually a more lenient sentence or a dismissal of the other charges" per Ogunwumiju, JCA.

The court below in its judgment at pages 77-78 of the record of appeal acknowledged the existence of the plea bargain concluded between the prosecution and the defendant and based on which the defendant/appellant changed his plea of "not guilty" to "guilty". That was the finding made at the trial court. It was a finding that there was in existence, a "plea bargain" agreement between the parties and the findings have not being challenged by any of the parties either in this appeal or Cross-appeal before us. It follows that the argument now being rendered by the respondent stating the contrary that they are not party to the arrangement in the "plea bargain" cannot be taken as a serious argument. It must be ignored. A finding of court over which there is no appeal remains binding valid and conclusive. See: **Okotie Oboh v. Manager (2005) ALL FWLR (Pt. 241) 277; Iyogo v. Effiong (2007) ALL FWLR (Pt. 2007) ALL FWLR (Pt. 374) 204; FIB Plc v. Pegassu Trading Office (2004) 4 NWLR (Pt. 863) 369.**

Talking about the existence of a plea bargain as found by the trial court brings to mind, provisions of section 270 of the Administration of Criminal Justice Act, 2015. Plea bargain as a concept established under this provision of the Act, can be understood and applied from 3 (three) different perspectives, namely:

(i) The plea bargain from the perspectives of section 270(2) of ACJA, 2015;

(ii) The plea bargain as understood from the perspectives of section 270(3) and (5) of the ACJA, 2015;

(iii) The plea bargain as understood from the perspectives of Section 270(4) of the ACJA, 2015.

From the facts placed before us in this appeal, I think we are more concerned with the plea bargain covered by provisions of section 270 (4) of the Administration of Criminal Justice Act, 2015, and the proper application of those provisions to the situation on hand. S. 270(4) provides thus:-

> ***"(4) The Prosecutor and the defendant or his legal practitioner may, before the plea to the charge, enter into an agreement in respect of:-***
>
> ***(a) The term of the plea bargain which may include the sentence recommended within the appropriate range of punishment stipulated for the offence or a plea of guilty by the defendant to the offence charged or a lesser offence of***

which he may be convicted on the charge; and

(b) An appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty."

On the 24th October, 2016, when the appellant first appeared at the court below, his plea of "not guilty" to the charge was taken and recorded. See pages 65-60 of the record of appeal.

Subsequent to that i.e on the 16th December, 2016, the appellant having also reviewed his position, now changed that plea of "not guilty" to one of "guilty". See proceedings of the 16th December, 2016 at pages 70-71 of the record.

This change of plea, no doubt informed the 2(two) proposals made by him of his willingness to enter a "plea bargain" with the respondent upon the conditions given by him, to include, for the first proposal, as follows:-

"(i) The accused shall plead guilty to the charge filed against him as contained in charge No. FHC/KN/CR/166/2016.

(ii) The accused shall forfeit 30% of the entire undeclared sum (representing the grand sum of $156,210 One Hundred and Fifty Six Thousand Two Hundred and Ten US Dollars).

(iii) The accused shall be given an option of fine."

In the 2nd proposal dated 9th December, 2016 and filed on the 13th December, 2016 (Pages 38-39 of the record), the appellant gave conditions similar to those in the first proposal except for his willingness to forfeit up to 50% of the entire undeclared sum as against 30% on the previous offer made to the Federal Government.

The trial court, sitting on the 16th December, 2016 convicted and sentenced the appellant upon his own plea of "guilt", to the charge framed against him. As indicated elsewhere in this judgment, this appeal thus, is against sentence only. Appellant's grudges are mainly two (2), namely:-

(i) The trial court ordered forfeiture of 50% of the undeclared sum as against the 30% agreed and negotiated by parties in the plea bargain.

(ii) The order of forfeiture of 50% of the undeclared sum, far exceed the minimum statutory requirement of the law.

The law under which the appellant was tried, convicted and sentenced is Section 2(3) (5) of the Money Laundering (Prohibition) Act, 2011 (as amended) in 2012. Sub-sections 3 and 5 of section 2 of the Money Laundering (Prohibition) Act, 2011 (as amended) in 2012 provide thus:-

> ***"(3) Transportation of cash or negotiable instruments in excess of US$10,000 or its equivalent by individuals in or out of the country shall be declared to the Nigerian Customs services.***
>
> ***(5) Any person who falsely declares or fails to make a declaration to the Nigerian Customs Service pursuant to Section 12 of***

the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, commits an offence and shall be liable on conviction to forfeit the undeclared funds or negotiable instrument or to imprisonment of not less than 2 years or to both. (As amended by Money Laundering (Prohibition) (amended) Act, 2012."

The punishment on conviction under Section 2(5) of the Money Laundering (Prohibition) Act, is the forfeiture of all the undeclared funds or a term of imprisonment of not more than 2 years or both. It follows therefore that the appellant or the person whose appeal was founded on plea bargain, to succeed, must be able to establish that the terms of the plea bargain as it relates to sentence, were terms consistent and in conformity with the stipulations contained in the statute under which the defendant/appellant was punished.

Where therefore the terms and conditions under which the negotiated agreement were reached, were not in conformity with the relevant penal laws or statutes, an appeal on that account against conviction and sentence cannot succeed.

It is not being suggested in this appeal that the appellant pleaded to a lesser charge as a condition in the negotiated agreement. Rather, on the facts and evidence presented at the trial court, the charge to which the appellant gave his plea is still the same charge framed under S. 2(5) of the Money Laundering Act. For the plea bargain on the issue of sentencing to be relevant, it must in all cases be in conformity with the provisions of the penal law under which the appellant was charged. It is not so with the appellant in

this appeal case, hence the claim or contention that the court below ordered forfeiture of a sum other than the sum agreed upon in the negotiated arrangement, is not the law. The law provides for order of forfeiture of all the undeclared funds or sums of money in the event of conviction and sentence hence the order of forfeiture of 50% of the undeclared sum made at the trial court is adjusted accordingly. It is for this reason I find no merit in this appeal and same is dismissed by me.

I will now take a look at the Cross-appeal to which the appellant, Nuhu Abdu Ibrahim Muhammed in the main appeal, is the Cross-Respondent and the Federal Republic of Nigeria, the Cross-Appellant, by virtue of the Notice of cross-appeal filed on the 23d May, 2017 and deemed properly filed and served on the 8th November, 2018.

This court had at its sitting of the 28th January, 2019 made an order and directed same on the cross-appellant to transmit a separate record of appeal in relation to the Cross-appeal. This order of court has not been complied with, rather on the date this appeal came up for hearing, counsel for the cross-appellant, Mr. Idris Haruna sought to rely on the main record before the court for the purpose of the cross-appeal. I do not think, he could properly do so in the face of an existing order of court requiring of him to transmit a separate record of appeal for the purpose of hearing the cross-appeal. That order of court not having been set aside still remain valid and extant. No appeal can be argued in the absence of the relevant record of appeal. This, unfortunately is what the cross-appellant sought to do on the 14th March, 2019 when the Cross-appeal came up on the said date for hearing. The cross-appeal, indeed, in the absence of the relevant record of

appeal to which the cross-appeal relates, is incompetent and perforce, the same should be struck out and I so order. It is a bad thing to hear appeals based on incomplete records as held in **APC v. Ganiyu Tunfi (2012) LPELR-9461 (CA),** it is worse still to hear appeals in absence of any record to which that appeal relates. This cross-appeal is thus, struck out. The judgment of the Federal High Court delivered on the 16th December, 2016 in Suit No. FHC/KN/CR/185/2016 as varied, or adjusted, in the exercise of the powers conferred on this court under Section 15 of the Court of Appeal Act, 2004, is affirmed.

That is the judgment of court.

SAIDU TANKO HUSAINI
JUSTICE, COURT OF APPEAL

COUNSEL

M. S. Garba, Esq., - For the Appellant.

S. H. Sa'ad, Esq., - For the Respondent.

CA/K/148/C/2017

JUDGMENT

(DELIVERED BY OBIETONBARA DANIEL – KALIO, JCA)

I have read the judgment of my learned brother **SAIDU HUSSAINI, JCA.** I agree.

OBIETONBARA DANIEL-KALIO

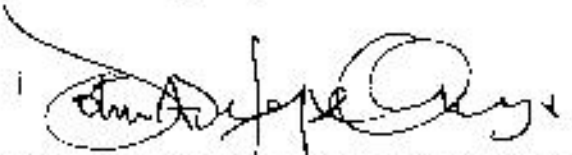
JUSTICE, COURT OF APPEAL

CA/K/148/2017

OLUDOTUN ADEBOLA ADEFOPE-OKOJIE JCA

I have read in draft the judgment of my learned brother, **Saidu Tanko Husaini, JCA,** who has very thoroughly encapsulated the issues in dispute and resolved them.

I concur with the orders made by my learned brother in the lead judgment.



OLUDOTUN ADEBOLA ADEFOPE-OKOJIE

JUSTICE, COURT OF APPEAL