IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY THE 26TH DAY OF JUNE, 2020
BEFORE THEIR LORDSHIPS

PETER OLABISI IGE — JUSTICE, COURT OF APPEAL
PATRICIA AJUMA MAHMOUD — JUSTICE, COURT OF APPEAL
FOLASADE AYODEJIOJO — JUSTICE, COURT OF APPEAL

CA/A/871C/2019

BETWEEN:

IBOYI KELLY ========== APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA ========== RESPONDENT

JUDGMENT
(DELIVERED BY PETER OLABISI IGE, JCA)

The Appellant was arraigned on a three Count charge of cheating on 22nd day of July, 2019. The charge which was dated 7th July, 2019 and filed on 12 July, 2019 reads"

"Charge

That you, IBOYI KELLY (a.k.a Taylorsphilip) sometime in 2018 at Abuja within the Jurisdiction of this Honourable Court fraudulently induced one David Wright to deliver the sum of $350 (Three Hundred and Fifty Dollars) to you via www.skrill.com and thereby committed an offence

contrary to section 320 (a) of the Penal Code, Laws of the Federation of Nigeria (Abuja) 1990 and punishable under section 322 of the same law.

COUNT 2

That you, IBOYI KELLY (a.k.a Taylorsphilip) sometime in 2019 at Abuja within the jurisdiction of this Honourable Court fraudulently induced one David Wright to deliver the sum of $100 (One Hundred Dollars) to you via www.skrill.com and thereby committed an offence contrary to section 320 (a) of the Penal Code, Laws of the Federation of Nigeria (Abuja) 1990 and punishable under section 322 of the same law.

COUNT 3

That you, IBOYI KELLY (a.k.a Taylorsphilip) sometime in 2019 at Abuja within the jurisdiction of this Honourable Court fraudulently induced one David Wright to deliver the sum of $50 (Fifty Dollars) to you via www.skrill.com and thereby committed an offence contrary to section 320 (a) of the Penal Code, Laws of the Federation of Nigeria (Abuja) 1990 and punishable under section 322 of the same law.

The Appellant was arraigned at the High of Federal Capital Territory ABUJA.

The Charge was accompanied with summary of Evidence of Witnesses and Plea Bargain Agreement which was executed by the parties to this appeal on 10th day of July, 2019.

The entire proceedings of 22nd July, 2019 reads thus:

"IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
HOLDEN AT VACATION COURT 2, NYANYA, ABUJA

SUIT NO: FCT/HC/CR/423/19

BEFORE HIS LORDSHIP: HON. JUSTICE MUAWIYAH BABA IDRIS

BETWEEN
FEDERAL REPUBLIC OF NIGERIA..... APPELLANT

AND

IBOYI KELLY ..... DEFENDANT

22/7/2019

Defendant is not in Court. He speaks and understands English language. (Sic)

MARYAM ANWAN AHMED Esq. for the prosecution.

ADAJI ABEL Esq. for the defendant.

AHMED The matter is for arraignment. The charge is dated 7/7/19 and filed on 12/7/19. We apply that the charge be read to the defendant.

COURT-REGISTRAR Read the charge.

COUNT 1

COURT	Do you understand the charge?
DEFENDANT	Yes.
COURT	Are you guilty?
DEFENDANT	I am guilty.

COUNT 2

COURT	Do you understand the charge?
DEFENDANT	Yes.
COURT	Are you guilty?
DEFENDANT	Guilty my Lord.

COUNT 3

COURT	Do you understand the charge?
DEFENDANT	Yes.
COURT:	Are you guilty
DEFENDANT	I am guilty.

AHMED: We have filed a plea bargain agreement on 12/7/19. It is executed by the parties. I adopt the plea bargain agreement and urge the Court to convict and sentence the defendant on terms agreed.

ABEL: We adopt plea bargain. The defendant made confessional statement. We applied for a plea bargain. The proceeds of the crime had been returned to the victims. He has no past criminal record except this one. We urge the Court to tamper justice with mercy and give the defendant who is the bread winner of the family a very rare privilege of turning a new leave in his life. Due to health challenge of the defendant we urge the Court to remand him in EFCC facility pending sentence.

COURT: Pursuant to the plea of guilty by the defendant and the plea bargain agreement, the defendant is convicted as charged. There is no material placed before this Honourable Court to show that the defendant has any health challenge to warrant the order of Court for the remand of the defendant in EFCC facility. Consequently, the defendant shall be remanded in prison custody pending sentence. The case is adjourned to 29/7/19.

Hon. Judge
22/7/19

As can be seen above the Appellant was on 22nd July, found guilty as charged as follows:

"Pursuant to the plea of guilty by the defendant and the plea bargain agreement, the defendant is convicted as charged."

The proceedings of 29th July 2019 reads:

"29/7/19

Defendant is in Court. He understands English language

ADAJI ABEL Esq. for the defendant.

ABEL S. 270 (15) ACJA states the where the defendant has been impudence of the heavier sentence. The defendant may abide by his plea or the defendant may withdraw from his plea of guilty and in which event the trial may or shall start denovo before another judge. Failure to abide by that renders the proceedings a nullity. We apply to withdraw our plea to a plea of not guilty.

AHMED — The subsection said the 'May' and that means it is not mandatory. We urge the Court to exercise its discretion and proceed with the sentence.

ABEL — S. 270 (15) ACJA.

COURT — The defendant in this case has already been convicted pursuant to his plea of guilty on 22/7/19. The question is at what point can the convict withdraw from the plea bargain agreement. S. 270 (15) (b) ACJA says a defendant may withdraw from the plea agreement. It is my humble view that the defendant may withdraw before his conviction. It is trite that where an accused person is convicted as this instant case he cannot withdraw his plea because he has now transformed from a defendant to a convict. Even the Court has no power to revisit its ruling/judgment convicting the accuse. What remains is for the Court to impose sentence on the convict. The only option opened to the convict is to appeal against the decision of the Court. I therefore hold that withdrawal of the plea of guilty is belated for the simple fact that the accused is now a convict before the Court. I proceed to read the ruling of the Court.

Hon. Judge
29/7/19

The above reproduced proceedings show that the Learned trial Judge held that Appellant was estopped from withdrawing the plea bargain already entered into and the trial Judge's Ruling on sentence upon the Defendant thereafter is as follows:

"IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
HOLDEN AT VACATION COURT 2, NYANYA, ABUJA

SUIT NO: FCT/HC/CR/423/19

BEFORE HIS LORDSHIP: HON. JUSTICE MUAWIYAH BABA IDRIS

BETWEEN
FEDERAL REPUBLIC OF NIGERIA..... APPELLANT

AND

IBOYI KELLY ..... DEFENDANT

29/7/2019

RULING ON SENTENCE

The convict pursuant to plea bargain agreement made on 10/7/19 and the plea of guilty to the one count charge was convicted in 22/7/19.

The prosecution counsel urged the Court to sentence the convict in accordance with the plea bargain agreement.

In line with the plea bargain agreement an order of forfeiture of the sum of $500 USD proceed of crime recovered from the convict is made. Same shall be paid to the victim as restitution.

The convict pleaded guilty to one count charge punishable under S.322 Penal Code, S.322 provides"

> "Whoever cheats shall be punished with imprisonment for a term which may extend to three years or with fine or with both"

In the case of ZACHEOUS vs. PEOPLE OF LAGOS STATE (2015) LPELR-24531 (CA) it was held that in sentencing a convict, the judge is bound to consider factors, such as the seriousness or otherwise of the offence, the prevalence of the offence whether the convict is a first time offender and prevailing attitude of the

populace to the offence. Learned counsel for the convict urged the Court to taper justice with mercy.

I have read the Plea bargain agreement. Let me say that it is not inconsistent in the Court to adopt the agreement in Toto. Court have a duty to enforce the provisions of the Act under which an accused is charged.

It is not in doubt that cybercrimes dent the image and affect the integrity of our dear nation. I must say that the appropriate way to charge the convicts is the cybercrimes (protection, provision, etc) Act, that has laudable provisions aimed at redeeming the image and integrity of this country.

It has harsh and appropriate punishment that can ....person from engaging in cybercrimes. My lord Hon. Justice Hannatu Jummai Sankey JCA made a striking comment in the case of JUBRIL vs. FRN (2018) LPELR 43993 (CA).

> "It must be disheartening to all right thinking Nigerians that the rampant, atrocious and egocentric crime has unleashed dire consequences on the integrity and image of the country. This has both short and long term effects on the society and the nation as a whole. Therefore, although the punishment prescribed by law--- may appear harsh and draconian, it is hoped that it will deter like-minded persons from embarking on such criminal ventures."

Cybercrimes are flourishing amongst the youth to the extent that even secondary school students engage in it. As a result of cybercrimes may have become hypertensive or mentally unstable with no resources to attend to their health.

It is most appropriate that our prosecuting agencies arraignment accused persons under the provision of the relevant law, before the Court that has jurisdictional competence to try the case. I say no more.

S.270 (II) (c) ACJA, 2015 gives the court the power to impose heavier sentence other than the one agreed by the parties and I

intend to go by that provision. It is my humble view that by charging the convict under the Penal Code Law, the convict had reaped the benefit of the bargain.
Consequently, the convict is hereby sentenced to a term of 3years imprisonment on the count charge.

SIGNED
HON. JUSTICE MUAWIYAH BABA IDRIS
PRESIDING JUDGE

APPEARANCE
MARYM AMINU AHMEN Esq. for the Prosecution.
ADAJI ABEL Esq. for the defendant."

The Appellant was dissatisfied with the sentence of three years imprisonment inflicted on him and has by his NOTICE OF APPEAL dated 23rd August, 2019 and filed on 26th August, 2019 appealed to this Court on four (4) grounds as follows:

"NOTICE OF APPEAL

"I, IBOYI KELLY, having been convicted of the offence of Cheating in the High Court of the Federal Capital Territory, Abuja on the 22nd day of July, 2019 and sentenced on the 29th day of July, 2019 AND NOW BEING a prisoner at Nigerian Prison, Kuje, Federal Capital Territory, Abuja or Whose Address for service is C/O his Counsel, Kayode Ajulo & Co. Castle of Law of No. 21 Amazon Street, Ministers Hill, Maitama, Abuja do hereby give Notice of Appeal against my conviction and sentence (particulars of which are hereafter stated)

and hereby appeal to the Court of Appeal on the following grounds:

GROUND ONE

The decision of the High Court is unreasonable and cannot be supported having regards to the weight of evidence.

GROUND TWO

The learned trial Judge erred in law and misdirected himself when he held that:

> "Section 270 (II) (c) ACJA 2015 gives the court the power to impose a heavier punishment other than the one agreed by the parties and I intend to go by that provision. It is my humble view that by charging the convict under the Penal Code Law, the convict had reaped the benefit of the bargain.
>
> Consequently, the' convict is hereby sentenced to a term of 3 years imprisonment on the one count charge."

i. The learned trial Judge failed to impose the sentence contained in the Plea Bargain Agreement already adopted by the parties and the Court without, informing the Appellant.

ii. The learned trial Judge imposed a heavier sentence other than the one agreed by the parties pursuant to the plea bargain agreement without informing the Appellant of such heavier sentence contrary to Section 270 (J

I) (c) of the Administration of Criminal Justice Act (ACJA) 2015.

iii. The learned trial Judge convicted the Appellant pursuant to the Plea Bargain Agreement but erroneously sentenced the Appellant to a term heavier than that contained in the Plea Bargain before the Court contrary to Section 270 (II)(c) of Administration of Criminal Justice (ACJA) 2015.

iv. The learned trial Judge failed to follow the procedure stipulated under Section 270(15) (a) and (b) of the Administration of the Criminal Justice Act (ACJA) 2015.

GROUND THREE

The learned trial Judge erred in law and misdirected himself when he convicted the Appellant pursuant to the Plea Bargain Agreement but imposed a sentence heavier than that contained in the Plea Bargain Agreement without affording the Appellant the opportunity to open his defence pursuant to Section 270 (15) (a) of the Administration of Criminal Justice Act (ACJA) 2015 thereby violating his right to fair hearing guaranteed by Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

PARTICULARS OF ERROR

i. The Respondent filed the Plea Bargain Agreement on the 12th day of July 2019 at the trial Court

registry wherein the Appellant agreed to enter a plea of guilt upon which he agreed to accept a sentence to a term of 6 months imprisonment or be given an option of fine of N300,000.00.

ii. Pursuant to the said Plea Bargain Agreement, the Appellant pleaded guilty and the trial Judge convicted him but rather than sentence him to the term contained in the Plea Bargain Agreement, the trial Judge sentenced the Appellant to a maximum term of three years imprisonment.

iii. That the leaned trial judge failed to take into consideration the Plea
Bargain Agreement.

iv. The law is that where the Court intends to pass a sentence heavier than that contained in the Plea Bargain Agreement, the Appellant ought to be informed by the Court of such heavier sentence and given adequate time to lead evidence and present argument relevant to sentencing.

v. The learned trial Judge failed to inform the Appellant of the heavier sentence.

vi. That the learned trial Judge violated the Appellant's right to fair hearing guaranteed by Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) by refusing the Appellant a chance to lead evidence and proffer argument relevant to sentencing as provided by the law.

vii. That the act of the trial Judge has occasioned a miscarriage of justice to the Appellant.

GROUND FOUR

That the learned trial Judge erred in law and misdirected himself when he overruled the application of the Appellant to be informed of the sentence to be passed and also to withdraw his plea of guilt pursuant to Section 270 (II) (a) &(15) (b) of the Administration of Criminal Justice Act (ACJA) 20 I 5 thereby violating his right to fair hearing guaranteed by the provisions of Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

PARTICULARS OF ERROR

i. The learned trial is bound by law to inform the Appellant of his intention to impose a sentence heavier than the sentence contained in the Plea Bargain Agreement.

ii. The Appellant is entitled under the law to withdraw his plea of guilt upon being informed by the Court of its intention to impose a heavier sentence or once a heavier sentence is envisaged.

iii. The Appellant's application to withdraw his plea of guilt was made before sentence was passed on him.

iv. The failure of the learned trial Judge to inform the Appellant of the heavier sentence other than the one contained in the Plea Bargain

Agreement and his refusal to a by.v.t the Appellant withdraw his plea of guilt according to the law has occasioned a grave miscarriage of justice to the Appellant who is currently languishing in prison.

More grounds of appeal will be filed upon the receipt of the record of appeal.

RELIEFS SOUGHT FROM THE COURT OF APPEAL

i. AN ORDER setting aside the decision of the High Court of the Federal Capital Territory, Abuja delivered by Honourable Justice MUAWIYAH BABA IDRIS on the 29th day of July, 2019 sentencing the Appellant to a term of three (3) years imprisonment contrary to the Plea Bargain Agreement.

ii. AN ORDER entering judgment as per the Plea Bargain Agreement filed before the lower Court. OR IN THE ALTERNATIVE;AN ORDER setting aside the conviction of the Appellant by the lower Court on the 22nd day of July, 2019 and directing that the trial be commenced de novo before another Judge of the High Court of Federal Capital Territory, Abuja.

iii. Any other Order(s) that this Honourable Court may make in the interest of justice."

The Appellant's Brief of Argument was dated 7th November, 2019 and filed on 27th December, 2019 and was deemed properly filed on 27th day of April, 2020 while the

Respondent's Brief of Argument dated 18th day of May, 2020 was filed on 20th May, 2020. The appeal was heard on 21st May, 2020 when the Learned Counsel to the parties adopted their respective Brief of Argument.

The Learned Counsel to the Appellant DR. KAYODE AJULO distilled two issue for determination viz:

a. **"Whether having regard to the Plea Bargain Agreement of the parties filed before the trial Court, the sentence of the Appellant to a maximum term of 3 years imprisonment is according to the law." (Distilled from Grounds 1, 2 and 3 of the Notice of Appeal).**

b. **Whether having regard to the provisions of Section 270 (11) (c) & (15) (b) of the Administration of Criminal Justice Act 2015, the Appellant is not entitled to be informed of the heavier sentence of 3 years imprisonment before being sentenced by the trial Court and to thereafter withdraw his plea of guilt." (Distilled from Ground 4 of the Notice of Appeal."**

On her part the Learned Counsel to the Respondent MARYAM AMINU AHMED Esq. formulated three issues and are follows:

1. **Whether the Notice of Appeal filed by the Appellant is competent having regard to the fact that fraud was not**

raised in view of S. 270 (18) of the Administration of Criminal Justice Act, 2015.

2. Whether or not the Honourable Court acted within the confine of the law.
3. Whether or not a plea bargain agreement can be withdrawn after the conviction of the Appellant.

Sight must not be lost of the preliminary objection raised by the Learned Counsel to the Respondent on page 3 of his Brief of Argument which reads:

> "PRELIMINARY OBJECTION
>
> The Respondent intends to raise a Notice of Preliminary Objection to the competence of the whole appeal as filed by the appellant on the ground that the Appellant did not raise any element of fraud encountered in the course proceedings in charge No.FCT/ABJ/CR/423/19 as provided by Section 270 (18) of Administration of Criminal Justice Act, 2015."

The settled position of the law is that where a Respondent files or incorporates in his Brief of Argument Notice of Preliminary Objection to the hearing of appeal against him on ground that the appeal is incompetent and by extension that the Appellate Court has no jurisdiction, there is duty on the Appellate Court to first consider the objection before venturing into the hearing of the appeal on the merit. The reason is not farfetched. Where it is found that the appeal is incompetent that signals the end of the appeal and

this Court will be bound to put an end to or terminate the appeal in limine.

See (1) HARUNA ALHAJI GALADIMA V. THE STATE (2018) 13 NWLR (PART 1636) 357 at 369 D -E per ARIWOOLA JSC who held:

> "Generally the rules of this court allow a respondent to rely on a preliminary objection to the hearing of the appeal. The purpose of the objection is to bring the appeal to an end after being discovered to be incompetent and or fundamentally deceptive. In either case, it will be unnecessary to continue with the appeal once an objection is raised, without disposing of same. In other words, the court is expected to deal with and dispose of a preliminary objection once raised by a respondent before taking any further step in the appeal. See: General Electric Company v. Harry Ayoade Akande & Ors (20 I 0) 12 (Pt. 2) SCM 96; (2012) 16 NWLR (Pt. 1327) 593; Lamidi Rabiu v. Tala Adebajo (2012) 6 SCNM 201; (2012) 15 NWLR CPt. 1322) 125; Udenwa & I Ors v. Uzodinma & 1 Ors (2012) 12 CPt. 2) 472 at 483; (2013) 5 NWLR (Pt. 1346) 94."

2. NONYE IWUBZE VS THE FEDERAL REPUBLIC OF NIGERIA (2014) 6 NWLR (PART 1404) at 596 D - E per RHODES-VIVOUR, JSC, who said:

> "The Constitution confers on the Court of Appeal jurisdiction to hear and determine appeals. The jurisdiction is statutory and also controlled by rules of

court. The Court of Appeal would lack jurisdiction to hear an appeal if an appellant fails to comply with statutory provisions or the relevant rules of the court.

The originating process in all appeals is the notice of appeal. Once it is found to be defective the Court of Appeal ceases to have jurisdiction to entertain an appeal in whatever form. See Olowokere v. African Newspapers (1993) 5 NWLR (Pt. 295) p. 583."

Now what is the argument is respect of the alleged incompetence of the entire appeal?

The Learned Counsel to the Respondent submits that the Appellant's appeal stems out of a plea bargain agreement. She stated that the procedure relating to the plea bargain agreement could be found in section 270 of the Administration of Criminal Justice Act, 2015. According to her the Appellant was arraigned on 22nd July, 2019 and he pleaded guilty to the charge upon the necessary pre-conditions stated in section 270 (10) and that Appellant understood the charge and pleaded to it and he was represented by Counsel during arraignment. It is her submission that the only condition to appeal against such judgment upon conviction must be in line with section 270 of Administration of Criminal of Justice Act where fraud is the issue, that is if the plea bargain had been obtained by fraud. She relied on section 270 (18) of the Administration of

Criminal Justice Act on how an appeal on plea bargain can be lodged.

She submitted that in the proceeding leading to this appeal, the issue of fraud was not raised and therefore the Appellant cannot challenge his conviction and sentence in this case.

Though Dr. Kayode Ajulo for the Appellant did not file Appellant's Reply Brief in respect of the objections aforesaid he was allowed to react to it orally before this court on 21st May, 2020 when the appeal was argued.

Dr. Ajulo submitted that the Appellant has right of appeal in respective of section 270 (18) of Administration of Criminal Justice Act. He urged the Court to discountenance the objection.

Provisions of section 270 (10) (a) (b) and (18) provide:

270 "(10) The presiding judge or magistrate shall ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where-

(a) he is satisfied that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty to that offence, and shall award the compensation to the victim in accordance with the term of the agreement which shall be delivered by the court in accordance with section 308 of this Act: or

(b) he is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant's right referred to in subsection (6) of this section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed

Subsection 18 of section 270 of ADJA relied upon by the Respondent says "**The judgment of the Court Contemplated in subsection 10 (a) of this section shall be final and no appeal shall lie in any Court against such judgment except where fraud is alleged.**"

I am of the firm view that the above provisions of Administration of Criminal Justice Act, 2015 cannot curtail or delimit the right of any Defendant in any proceedings to which Administration of Criminal Justice Act, 2016 is applicable, to appeal any decision of a magistrate Court or a High Court including High Court of Federal Capital Territory. The right to appeal and decision of which a Defendant in a Criminal Proceeding is aggrieved is a constitutional right and a Defendant cannot be denied such constitutional right or be shortchanged by stultifying his right of appeal vide an Act of National Assembly in violent breach of the constitutional right of appeal contained in section 241 of the constitution of the Federal Republic of Nigeria 1999 as amended which provides:

"241.-(1) An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases-

(a) final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;

(b) where the ground of appeal involves questions of law alone, decision in any civil or criminal proceedings;

(c) decisions in any civil or criminal proceedings on questions as the interpretation or application of this Constitution;

(d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being is likely to be, contravened in relation to any person;

(e) decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed: 1 sentence of death;

(f) decisions made or given by the Federal High Court or a High Court-

(i) where the liberty of a person Or the custody of an infant is concerned.

(ii) where an injunction or the appointment of a receiver is granted or refused,

(iii) in the case of a decision determining the ease of a creditor or the liability of a contributory of other officer under any enactment relating to companies in respect of misfeasance or otherwise,

(iv) in the case of a decree nisi in a matrimonial cause or a decision in an Admiralty action determining liability, and

(v) in such other cases as may be prescribed by an Act of the National Assembly,

(2) Nothing in this section shall confer any right of appeal-

(a) from a decision of the Federal High Court or any High Court granting unconditional leave to defend an action;

(b) from an order absolute, tor the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded had not appealed from that decree nisi; and

(c) without the leave of the Federal High Court or a High Court or of the Court of Appeal from a decision of the Federal High Court Or High Court made with the consent of the parties or as to costs only."

Section 257 of the said Constitution also empowers and bestows jurisdiction on the High Court of Federal Capital to

sit in Appellate jurisdiction over matters in which appeals emanates from courts below the FCT High Court.

Section 257 aforesaid reads:

"257(1) Subject to the provisions of section 251 and any other provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the Federal Capital Territory. Abuja shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right power duty liability privilege interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture punishment or other liability in respect of an offence committed by any person.

(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of the Federal Capital Territory, Abuja and those which are brought before the High Court of the Federal Capital Territory, Abuja to be dealt with by the Court in the exercise of its appellate or supervisory jurisdiction."

The said constitution has also provided boldly in section 1 (3) thereof that:

> "If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other Law shall to the extent of the inconsistency be void."

There is no doubt that section 270 (18) of Administration Criminal Justice Act 2015 is glaringly in conflict with section 241 of the CFRN 1999 as amended.

Section 270(18) of the Administration of Criminal Justice Act 2015 is hereby declared void to the extent of its inconsistency with the provisions of section 241 and 257 of the constitution of the Federal Republic of Nigeria 1999 as amended. See

1. UDE JONES UDEOGU VS. FRN & ORS SC. 622C/2019 unreported judgment of Supreme Court pages 14 and 35 thereof.
2. BBRIG. BUBA MARWA V. ADMIRAL MURTALA NYAKO (2012) 2 SCM 67 at 120 F -I per CHUKWUMAN ENEH JSC who said:

> "In espousing its supremacy it has provided in Section 1(1) to (3) of the Constitution that its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. It has also made provisions for supervising as per by checks and balances of all the democratic institutions of government under it including the Executive the Legislature and the Judiciary i.e. democratic institutions created by it. See

Governor of Lagos State v. Ojukwu (1986) 1 NWLR (Pt.18) 621; (1986) 17 NSCC (Pt.1) 304. One crucial provision is that any law inconsistent with it is void to the extent of its inconsistency."

3. INEC & ANOR V. ALIHAJI A. BALARABE MUSA & ORS (2003) 3 NWLR (PART 806) 72 at 199 F -G per NIKI TOBI JSC of blessed memory who said:

"The supremacy of the National Assembly is subject to the overall supremacy of the Constitution. Accordingly, the National Assembly which the Constitution vests powers cannot go outside or beyond the Constitution. Where such a situation arises, the courts will, in an action by an aggrieved party pronounce the Act unconstitutional, null and void. See A.-G., Abia State v. A.-G., Federation (2002) 6 NWLR (Pt. 763) 264."

The Appellant's appeal is competent and the Respondent Notice of Preliminary Objection is hereby dismissed.

Now to the merit of the appeal.

I have earlier on set out the two issues distilled by the Appellant's Learned Counsel. The appeal will be determined on the two issues formulated by the Appellant namely.

a. "Whether having regard to the Plea Bargain Agreement of the parties filed before the trial Court, the sentence of the Appellant to a maximum term of 3 years imprisonment is according to the law." (Distilled from Grounds 1, 2 and 3 of the Notice of Appeal).

b. **Whether having regard to the provisions of Section 270 (11) (c) & (15) (b) of the Administration of Criminal Justice Act 2015, the Appellant is not entitled to be informed of the heavier sentence of 3 years imprisonment before being sentenced by the trial Court and to thereafter withdraw his plea of guilt." (Distilled from Ground 4 of the Notice of Appeal."**

The issues will be taken together.

The Learned Counsel to the Appellant stated that two issue bother on the legality of the three years sentence passed on the Appellant by the trial Court contrary to the plea bargain Agreement and the right of the Appellant to be informed of the Learned Trial Judge's intention to pass heavier sentence on him contrary to the Agreement.

He submitted that the law is settled that a trial court has discretion in the type of sentence or extent of punishment provided by law on an Accused or Defendant. That the discretion must be exercised judiciously and judiciary. He relied on the cases of ALFRED V. STATE 2017 LPELR -42612 CA and TORTIM V. THE STATE (1997) 2 NWLR (PART 490) 771 among numerous cases cited.

He submitted that the offence of cheating for which the Appellant was convicted does not carry mandatory sentence or punishment. He relied on section 332 of the Penal Code Act (Cap 53) LFN 1990 and Section 270 (1) and 270 (4) of the

Administration of Criminal Justice Act on plea bargain and sentence to be meted upon a Defendant who pleaded guilty on account of the Plea Bargain Agreement. He also relied on section 270 (9) of the ADJA and the Plea Bargain Agreement contained on pages 22 - 24 of the record of appeal to submit that upon verification by the trial Judge that the Defendant voluntarily entered into the plea bargain Agreement then the presiding judge shall in accordance with the provision of section 270 (10) (a) of Administration of Criminal Justice Act 2015 sentence the Defendant in accordance with the plea bargain agreement. He relied on the following cases:

1. PML NIGERIA LIMITED V. FRM (2014) LPELR - 22767 CA
2. NWUDE V. FRN & ORS (2015) LPELR -25858 CA, per NIMPPAR, JSC.

Dr. KAYODE AJULO for the Appellant submitted that the lower court erred in law by not passing sentence on the Appellant in accordance with the plea Bargain Agreement of the parties already adopted by the Court.

He submitted that section 270 (II) (a) of ADJA enjoins the judge to impose punishment as agreed by the parties concerning punishment and that section 270 (II) (C) of ADJA also enjoins the trial Judge to inform the Defendant if he (the Judge) intends to impose heavier punishment on the

Defendant in excess of punishment agreed to in the Plea Bargain by the Parties. That in this case the trial judge failed to follow the procedure before imposing three years sentence on the Appellant contrary to the Plea Bargain Agreement which provides for 6 months imprisonment or fine of N300,000 in gross violation of section 270 (II) (a) & (c) of ADJA and therefore unlawful.

The Learned Counsel to the Appellant further submitted that it is a miscarriage of justice and therefore unlawful and in breach of the Agreement of the parties.

He submitted that the Appellant ought to be informed before the heavier punishment was imposed so that he could reconsider his position on the Plea Bargain and decide whether to withdraw from it so the trial will start denovo as if there was no plea bargain. He relied on section 270 (II) (c) and (15) (b) of ADJA.

He relied on the case of INAKOJU v. ADELEKE (2017) 2 FR p. 71 BC. That this Court ought to intervene and set aside the sentence imposed on the Appellant relying on the case of USHIE v. STATE (2012) LPELR -9705 CA pages 21 - 22 B -A. the reason provided by the learned trial judge to the effect that cybercrimes are flourishing amongst our youths to the extent that even secondary school students engaged in it is not supported by law.

He opined that the learned trial Judge had denied the Appellant the fruit of his plea bargain agreement. He urged this court to rely on section 21 (1) of the Court of Appeal Act. He finally urged the Court to allow the appeal and set aside the sentence passed on Appellant and instead impose the punishment agreed to in the Plea Bargain agreement.

In response to the Appellant's submissions the Respondent's Learned Counsel stated what corruption entails and the duty of every public officer to expose and cause investigation to be carried out. That it is a crime against Nigeria as a country, against humanity and the future of our country. That the Court as a major stakeholder in the war against corruption would do justice to eliminate from our public life, what Learned Counsel called "**this tag corruption**" He relied on the case of AG ONDO STATE v. AG FEDERAL (2009) NWLR (Pt. 772) 22 at 306. He then stated the background facts.

That the Appellant was charged under section 320 (a) of the Penal Code Law of the Federation and that complainant exercised its powers in charging the Defendant under the Penal Code Law. That the Defendant applied for plea bargain under section 270 of the Administration of Criminal Justice Act 2015 and the complainant accepted same. That the plea bargain agreement was executed by the parties. The

Respondent's Learned Counsel stated that on 29-7-2019 the Court informed the Defendant that the Court is inclined to impose heavier sentence and Defendant's Counsel. Barrister Abel relied on 270 (15) of the Administration of Criminal Justice Act and urged the Court to withdraw the plea of the Defendant in that he was of the view that the court has not become functus officio. The lower Court then refused to revisit its ruling because the Court already convicted the Defendant after his plea of guilty on 22-7-2019.She stated that the position of the law is that once a court has convicted the Defendant it became functus officio.

Learned Counsel to the Respondent relying on section 270 (15) ACJA stated that the record of appeal pages 25 and 26 showed that the Defendant has already been convicted before he raised issue of withdrawing the charge. He also relied on section 270 (11) of ADJA to contend that the lower Court rightly informed the Defendant of its intention to impose heavier sentence.

The Learned Counsel to the Respondent then raised question as to the appropriate time to apply to withdraw the plea of guilt and the plea bargain agreement.

To Learned Counsel to the Respondent having convicted the Appellant on 22-7-2019 the trial Judge cannot go back on

the conviction and the sentence in that he is functus officio. He relied on the cases of:

1. EDMOND EBIWARE V. FRN (2017) LPELR -42806 CA
2. NAPOLEON OSAYANDE & ANOR VS. THE STATE (1985) LPELR -2793
3. NIGERIAN ARMY V. IYELA (2008) 18 NWLR (PART 1118) 115.

She quoted page 27 of the record wherein the lower Court found that the Appellant having been convicted cannot withdraw from the plea bargain agreement. That Defendant could withdraw his plea and from plea bargain before conviction. The lower court also said it cannot revisit the Ruling/Judgment convicting the Appellant.

The Learned Counsel to the Respondent relied on section 270 (15) of ADJA to submit that section 270 (15) of ADJA is impliedly saying that the Defendant should argue as to whether the learned trial Judge should agree with the sentencing agreed upon by him and the prosecution and the lower court did not agree, the Court has discretion to proceed and sentence the Defendant on the appropriate punishment under section 270 (15) (a) of ACJA. That the learned trial Judge was of the view that sentencing on the plea bargain Agreement was not commensurate with the offence

committed. He referred to section 322 of Penal Code to submit that the word "may" used in section 322 of Penal Code gave the trial Judge the power to exercise his discretion in sentencing the Defendant.

According to Learned Counsel to the Respondent the Learned trial judge sentenced the Appellant to 3 years imprisonment without option of fine. That the sentencing Guidelines of FCT High Court empowers trial Court to exercise its discretion in sentencing the Defendant. He relied on FCT Courts (Sentencing Guidelines) Practice Direction, 2016 part one paragraphs 1 (I) and 3 thereof. That in this case the plea bargain agreement was left at the trial Court's discretion. He relied on paragraph 2 (2) (a) & (b) of FCT Guidelines aforesaid and section 416 of ADJA. He also relied on YAHAYA HARUNA v. THE STATE (2019) LPELR- 47568 CA.

Further on whether the plea bargain can be withdrawn after conviction of the Appellant, the Learned Counsel to the Respondent dwell on section 270 (15) (b) of ADJA to submit that Appellant had discretion to withdraw plea bargain agreement but that no such discretion is given to a Defendant to withdraw his plea of guilty after conviction by the Court.

In conclusion of the Respondent's Learned Counsel repeated his challenge to the Notice of Appeal which the Respondent has earlier on in this appeal agitated in the Respondent's Brief.

He submitted that in view of the defect in the Notice of Appeal this Court lacks the jurisdiction to entertain the appeal. He relied on the cases of:

1. NDAEYO TRIBUNAL V. OKOROAFOR (2001) 18 NWLR (PART 745) 295.
2. UTIH VS. ONOYIVWE (1991) NWLR (PART 166) 166

She finally urged the Court "**to hold that the lower court was right to have convicted the Appellant based on plea bargain adopted before it.**"

This is yet another appeal in which the vex issue of plea bargain and its connotations have reared its head. The whole essence and or denotation of a plea bargain agreement in criminal trial to which ADJA is applicable is encapsulated and enacted into section 270 of the Administration of Criminal Justice Act 2015 as follows:

"270. (1) **notwithstanding anything in this Act or in any other law, the Prosecution 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 al1 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 or 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.

(3) 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.

(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 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.

5. The prosecutor may only enter into an agreement contemplated in subsection (3) of this section-

(a) after consultation with the police responsible for the investigation of the case and the victim or his representative; and

(b) with due regard to the nature of and circumstances relating to the offence, the defendant and public interest;

Provided that in determining whether it is in the public interest to enter into a plea bargain, the prosecution shall weigh all relevant factors. Including-

(i) the defendant's willingness to cooperate in the investigation or prosecution of others,

(ii) the defendant's history with respect to criminal activity,

(iii) the defendant is remorse or contrition and his willingness to assume responsibility for his conduct,

(iv) the desirability of prompt and certain disposition of the case.

(v) the likelihood of obtaining a conviction at trial and the probable effect on witnesses,

(vi) the probable sentence or other consequences if the defendant is convicted.

(vii) the need to avoid delay in the disposition of other pending cases,

(viii) the expense of trial and appeal, and

(ix) the defendant's willingness to make restitution or pay compensation to the victim where appropriate.

(6) The prosecution shall afford the victim or his representative the opportunity to make representations to the prosecutor regarding-

(a) the content of the agreement: and

(b) the inclusion in the agreement of a compensation or restitution order.

7. An agreement between the parties contemplated in subsection (3) of this section shall be reduced to writing and shall-

(a) state that, before conclusion of the agreement, the defendant has been informed

(i) that he has a right to remain silent,

(ii) of the consequences of not remaining silent, and

(iii) that he is not obliged to make any confession or admission that could be used in evidence against him:

(b) state fully, the terms of the agreement and any admission made:

(c) be signed by the prosecutor, the defendant, the legal practitioner and the interpreter, as the case may be: and

(d) a copy of the agreement forwarded to the Attorney-
General of the Federation.

(8) The presiding judge or magistrate before whom the criminal proceedings are pending shall not participate in the discussion contemplated in subsection (3) of this section.

(9) Where a plea agreement is reached by the prosecution and the defence, the prosecutor shall inform the court that the parties have reached an agreement and the presiding judge or magistrate shall then inquire from the defendant to confirm the terms of the agreement.

(10) The presiding judge or magistrate shall ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where-

(a) he is satisfied, that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty to that offence, and shall award the compensation to the victim in accordance with the term of the agreement which shall be delivered by the court in accordance with section 308 of this Act: or

(b) he is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement, was reached and to which the defendant has pleaded guilty or that the agreement is in conflict with the defendant; is right referred to in subsection (6) of this section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed.

(11) Where a defendant has been convicted under subsection (9) (a), the presiding judge or magistrate shall consider the sentence as agreed upon and where he is-

(a) satisfied that such sentence is an appropriate sentence, impose the sentence

(b) of the view that he would have imposed a lesser sentence than the sentence agreed, impose the lesser sentence; or

(c) of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such

heavier sentence he considers to be appropriate.

(12) The presiding Judge or Magistrate shall make an order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible.

(13) Notwithstanding the, provisions of the Sheriffs and Civil Process Act, the prosecutor shall take reasonable steps to ensure that any money asset or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it.

(14) Any person who, willfully and without just cause, obstructs or impedes the vesting or transfer of any money, asset or property under this Act commits an offence and is liable on conviction to imprisonment for 7, years without an option of fine.

15. Where the defendant has been informed of the heavier sentence as contemplated in subsection (11) (c) of this section, the defendant may-

(a) abide by his plea of guilty as agreed upon and agree that, subject to the defendant's right to lead evidence and to present argument)relevant to sentencing, the presiding judge or magistrate proceed with the sentencing: or

heavier sentence he considers to be appropriate.

(12) The presiding Judge or Magistrate shall make an order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or his representative or any other person as may be appropriate or reasonably feasible.

(13) Notwithstanding the, provisions of the Sheriffs and Civil Process Act, the prosecutor shall take reasonable steps to ensure that any money asset or property agreed to be forfeited or returned by the offender under a plea bargain are transferred to or vested in the victim, his representative or other person lawfully entitled to it.

(14) Any person who, willfully and without just cause, obstructs or impedes the vesting or transfer of any money, asset or property under this Act commits an offence and is liable on conviction to imprisonment for 7, years without an option of fine.

15. Where the defendant has been informed of the heavier sentence as contemplated in subsection (11) (c) of this section, the defendant may-

(a) abide by his plea of guilty as agreed upon and agree that, subject to the defendant's right to lead evidence and to present argument)relevant to sentencing, the presiding judge or magistrate proceed with the sentencing: or

(b) withdraw from his plea agreement, in which event the trial shall proceed de novo before another presiding judge or magistrate, as the case may be.

(16) Where a trial proceeds as contemplated under subsection (15) (b) or denovo before another presiding judge or magistrate as contemplated in subsection (15) (b)-

(a) no references shall be made to the agreement;

(b) no admission contained therein or statements relating thereto shall be admissible against the defendant: and

(c) the prosecutor and the defendant may not enter into similar plea and sentence agreement.

(17) Where a person is convicted and sentenced under the provisions of subsection (1) of this section, he shall not be charged or tried again on the same facts for the greater offence earlier charged to which he had pleaded to a lesser offence.

(18) The judgment of the court contemplated in subsection 10(a) of this section shall be final and no appeal shall lie in any court against such judgment except where fraud is alleged

The law is trite that in the interpretation of the provisions of a statute the Court must not construe or interpret the law in a manner that will defeat the real intention and the desire of the lawmaker. In other words the Court should not interpret the provisions of the statute to defeat the obvious end the statute or its provisions as a whole

are meant to serve otherwise it will lead to injustice. It is also the canon of interpretation that where the words in statute are plain and unambiguous the literal interpretation should be adopted.

Thus in ascertaining the true meanings of the provision of the constitution and statute, the constitution or the statute must be construed or interpreted as a whole. See

THE HONOURABLE A. G. OF LAGOS STATE VS. THE HON. A-G. OF THE FEDERATION & ORS (2014) 9 NWLR (PART 1412) at 255 C - H per M. D. MUHAMMAD, JSC who said:

> "It is a settled principle of interpretation that whenever a Court is faced with the interpretation of a constitutional provision the constitution must be read as a whole in determining the object of the particular provision. This requirement places a duty on the Court to interprete related sections of the Constitution together. See Nafiu Rabuiu v. The State (1980) 8 - 11 SC 130 at 148; (1980) 8 - 11 SC (Reprint) 85 and Bronik Motors & Anor. V. Wema bank Ltd. (supra). In Hon. Justice Raliat Elelu-Habeeb (Chief Judge of kwara State) v, A - G., Federation & 2 Ors. (2012) 2 SC (pt. 1) 145: (2012) 13 NWLR (pt. 1318) 423 at p. 521, para. B - D, this court stated thus:
>
> > "Thus duty of the Court when interpreting a provision of the Constitution is to read and construe

together all provisions of the Constitution unless there is a very clear reason that a particular provision of the Constitution should not be read together. It is germane to bear it in mind the objection of the Constitution in enacting the provisions contained therein. A section must be read against the background of other sections of the Constitution to achieve a harmonious whole. This principle of whole statute construction is important and indispensable in the construction of the constitution so as to give effect to it"

The determination of the preliminary objections against plaintiff's action requires the application of the principle of community construction of the provision of section 232 (1) of the 1999 Constitution that may be helpful in the proper understanding of the particular provision in contention."

2. ALHAJI ATUSU ABUBAKAR & ORS VS. ALHAJI UMARU MUSA YAR'ADUA & ORS (2008) 19 NWLR (PART 1120) 1 at 94 F per KATSINA - ALU JSC later CJN of blessed memory who said:

"It is trite law that the court has a duty to interprete a statute or provision thereof by giving them their plain, ordinary and literal meaning except where such an interpretation will lead to manifest absurdity."

3. APC & ANOR V. ENGR. SULEIMAN ALIYU LERE & ANOR (2020) 1 NWLR (PART 1705) 254 AT 284 F -G per RHODES-VIVOUR, JSC who said:

> "Where the words used in a statute are clear and free from ambiguity they should be read and construed as it is without any interpretations or embellishments.
> The words should be given their' ordinary meaning except where such a construction would be ridiculous, not logical and sensible. See A.-G., Anambra State v. A. - G.,
> Federation (1993) 6 NWLR (Pt. 302) p. 692; Mobil v. F. B.I.R. (1977) 3 $C p.53, Toriola v. Williams (1982) 7 SC p. 27.The words used in the statute: supra are clear and unambiguous. They should be given their plain ordinary meaning which is not in doubt."

4. HON. HENRY SERIAKE DICKSON VS. CHIEF TIMIPRE MARKIN SYLVA & ORS (2017) 8 NWLR (PART 1567) 167 at 233 D - F per KEKERE-EKUN, JSC who said:

> "The law is settled that in the interpretation of Statutes, where the words are clear and unambiguous, they must be given their natural and ordinary meaning. See: Ibrahim v. Borde (1996) 9, NWLR (Pt. 474) 513 @ 577 B-C: Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377 @ 402 F-N. The exception is where to do so would lead to absurdity. See: Toriola v. Williams (1982) 7 SC 27 @ 46: Nnonye v. Anyichie (2005) 1 SCNJ 306 @ 316, (2005) 2 NWLR (Pt. 910) 623. Where an

interpretation will result in breaching the object of the statute, the court would not lend its weight to such an interpretation. See: Amalgamated Trustees Ltd. v. Associated Discount House Ltd. (2007) 15 NWLR (Pt. 1056) 118."

The incentive for a plea bargain as can be gathered from calm reading and interpretation of section 270 of the Administration of Criminal Justice Act, 2015 enables the Prosecutor and the Defendant to enter into a plea bargain agreement that is mutually beneficial to the interest of the Prosecutor and the Defendant in a criminal trial to which Administration of Criminal Justice Act is applicable. The bottom line is that the Defendant must be ready and willing to plead guilty to the offence or offences for which he is charged and arraigned in exchange for a lesser punishment of imprisonment or fine or other agreement that is mutually agreeable to the Parties to the proceedings.

The Agreement must evince legal intention to accommodate the Defendant to obtain lesser punishment in terms of sentence to imprisonment or a fine against the Defendant. Some of the essential ingredients of plea bargain are that Defendant must acknowledge commission of the crime charged, plead guilty to it and must be convicted by the presiding judge whether at magisterial level or a High Court.

It is equally important that upon execution of the plea bargain agreement, the prosecutor would at trial inform the Court or the trial judge of the agreement and requests the trial Court to sanction or enforce the agreement and make the terms and conditions therein the judgment of the Court in the trial particularly the lighter sentence offered to Defendant by the Prosecution, having regard to the fact that the Defendant has saved the prosecution and the Court valuable time that would have been expended in trying the offence(s) for which the Defendant is charged.

It is an innovation brought about by the said law for the benefit of the Defendant, the prosecutor, the victim of the offence and the society at large. In most cases the Accused/Defendant would forfeit all proceeds of the Crime and where the properties acquired with the proceeds of crime for which the Defendant is arraigned have not been dissipated they would be forfeited to the state and given back to the victim of the crime in restitution and such victim may be the government authority, organization or individuals. The Plea bargain must be mutually agreed to by the Prosecutor and Defendant duly signed or executed by the parties.

The whole essence of a plea bargain has been defined and explained in BLACK'S LAW DICTIONARY 10TH EDITION) page 1338 as follows:

"Plea bargain, n. (1963) A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty or no contest to a lesser offense or to one of multiple charges in exchange for some concession by the prosecutor, usu. a more lenient sentence or a dismissal of the other charges. - Also termed plead agreement; negotiated plea; sentence bargain.- plea bargain, vb - plea-bargaining."

The apex Court in the land has also stated and explained the implication or incidence of a plea-bargain agreement in some cases. Suffice to refer to the following viz:

1. PML (SECURITIES) COMPANY LIMITED VS. FRN (2018) 13 NWLR (PART 1635) 157 at 175 E - F per AUGIE, JSC who said:

"All the same, the first question that must be resolved is whether there was a plea bargain agreement between the appellant and the respondent at appeal per Lokulo-Sodipe, JCA, who wrote the lead judgment observed -

In the criminal jurisprudence in this country, it would appear that plea bargain as a prosecutorial strategy or tool is an emerging phenomenon, thus, there would appear to be no codified guidelines in relation to it as it obtains in some other jurisdictions.

It would also appear that there is a dearth of authorities of our courts therein as it is an emerging phenomenon.

The first legislation to bring in plea bargain into our criminal jurisprudence is the Administration of Criminal

Justice Law of Lagos State (ACJL), 2011. The second is the Administration of Criminal Justice Act. 2015, (ACJA) which provides in its section 20 (1) that:

"notwithstanding anything in this Act, or in any other law, the prosecutor may 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",

At pages 180 H - 181 A - D my Noble Lord continues:

"But the essence of a plea bargain agreement is not just to conclude a trial. There has to be a negotiated agreement between the prosecution and the person accused of a crime, whereby the accused agrees to plead guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecution, which is usually in the form of a more lenient sentence or a dismissal of the other charges see Black's Law Dictionary, 9th Ed.

In this case, prosecution counsel told the FHC Enugu on 17112/2008 that the accused persons approached us for "settlement". But there is no evidence on record to indicate that the appellant was one of the "accused persons", who approached the prosecution, for "settlement" on 17/12/2008.

The proceedings of the next day - 18/12/2008 reinforces the fact that there was no plea bargain agreement between the prosecution and appellant because

its name had been removed from the further amended charge, and there was no mention of the appellant in the proceedings. The appellant says its name was removed because they agreed that Lucky Igbinedion "should take fall" and that Kiva Corporation should plead guilty to some counts.

However, "agreement" to plead guilty is "the essence of a plea bargain, and even if there was an agreement for one of the accused "to take the fall" as the appellant argued, the Court of Appeal was absolutely right that:-

A plea bargain must be a deliberate and conscious act taken by the prosecutor and a particular accused wherein the accused - must suffer a conviction - - no matter how insignificant or trivial the offence to which the conviction relates ... The appellant personally never suffered a conviction of any kind in respect of any of the charges....This condition is sine Qua non for plea bargain to being place between the prosecutor and an accused relying on plea bargain."(Underlined mine)

On pages 191 H to 192 A my noble lord PETER ODILI, JSC had this to say:

"for a jolting of the memory, the National Assembly enacted the Administration of Criminal Justice Act ACJA), 2015 which also provides for a plea bargain agreement, which must be reduced into writing, However at the time the facts leading to this appeal took place the ACJA was not in existence.

The first legislation in Nigeria to localize and import plea bargain into Nigeria's Criminal jurisprudence is the Administration of Criminal Justice Law of Lagos State ACJL, 2011 which can be considered the forerunner of the present ACJA of the National Assembly.

The court below followed the definition of plea bargain as stated in Black's Law Dictionary which makes it clear that a plea bargain con only be a conscious and deliberate act between the prosecution and an accused with a plea of guilty being an overt act on the part of the accused in evidence of the plea bargain. In the instant situation what: is evident is that the prosecution entered into a plea bargain with the 1st accused person in the Enugu Federal High Court at the proceeding of 18th December 2008, which is that the accused approached the prosecution for settlement and that necessitated the amendment of the charge. In that amendment of charge of 1st December 2008 the number of accused persons were reduced from seven to two and the appellant was not one of the two and its name was not reflected in the amended charge." (Underlined mine)

2. ROMRIG (NIGERIA) LIMITED VS. FRN (2018) 15 NWLR (PART 1642) 284 at 304 C - E per SANUSI JSC who said:

"My lords, permit me to even observe at this stage, that none of the parties at both the trial court and the lower court produced any term of agreement relating to

the "Plea Bargain Arraigned" or "settlement". This observation was validly made at page 2426 of volume V of the record of appeal. Therefore, it is also my opinion that by presenting or canvassing the issue of plea bargain, which was not backed by any written term/agreement, the appellant only wanted to call upon the two lower courts to act within the realm of conjecture or to speculate which is not the duty or function of a Court of law.

It is even instructive to note that the concept of plea bargain become part of the federal law only in 2015 when the National Assembly enacted the Administration of Criminal Justice Act in which in part 28 of that Act, section 270(7) made provision for plea bargain agreement which it even had emphasized that such agreement must be reduced into writing. Only Lagos State Government had earlier in 2011 enacted Administration of Criminal Justice Law in which provision of plea bargain was made under section 75 of that Law in which it also insisted in section 76 (4) that agreement between the parties must be in writing and shall be agreed upon by the parties."

(Underlined mine)

My lord OGUNBIYI JSC on page 318 A - C of the Report said as follows:

"Suffice it to say at this point that the concept of plea bargain agreement itself originated from the American jurisprudence and became established in 'the case of Robert M. Brady v. United States 397

U. S. 742 (90 S.Ct.1563, 25 L.Ed 2d 747). It dated as far back as 1959 wherein the accused was charged with kidnapping and faced maximum penalty of death. He pleaded guilty to the B charge and was sentenced to 50 years imprisonment. In 1967, he sought for relief under 28 U.S.C 2255 claiming that his plea of guilty, was not voluntary but that his counsel mounted impermissible pressure on him to plead guilty. The District Court for the District of New Mexico denied him the relief. The Court of Appeal affirmed the decision of the district court. The Supreme Court of, the United States also affirmed the decision of the Court of Appeal. Since the seal of approval by the US Supreme Court therefore the courts have treated plea bargain as contracts between the prosecutors and defendants."

(Underlined mine)

See the unreported judgment of this Court in CA/A/873c/2019. OLUMIDE AGBI V. FRN delivered on 25th day of March, 2020 per PETER OLABISI IGE, JCA.

In effect when a plea bargain Agreement is executed or signed by the parties in a Criminal Proceeding to which Administration of Criminal Justice Act is applicable it becomes binding on the parties and statutorily enforceable.

The Plea Bargain agreement between the Prosecutor/ Respondent and the Appellant on this case can be found on pages 22 - 24 of the record of appeal and it is as follows:

"IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLD AT ABUJA

CHARGE NO. CR/423/19

BETWEEN
FEDERAL REPUBLIC OF NIGERIA..... APPELLANT

AND

IBOYI KELLY ..... DEFENDANT

PLEA BARGAIN AGREEMENT

This Plea Bargain agreement is made pursuant to Section 270 of the Administration of Criminal Justice Act, 2015 this ..... day of ..... 2019 between Federal Republic of Nigeria (represented by the Economic and Financial Crimes Commission) and IBOYI KELLY (a.k.a Talorsphilip).

WHEREAS:

1. Following surveillance carried out on intelligence report of cybercrime and internet fraud activities by the Economic and Financial Crimes Commission, one IBOYI KELLY was arrested by the Commission.
2. Investigation carried out by operatives of the Commission revealed that IBOYI KELLY falsely represented himself as Taylorsphilip and opened several accounts on www.instagram.com, www.facebook.com, www.daddyhunt.com, www.manhunt.com using a

Whiteman's picture bearing the name of Taylorship and fraudulently induced one David Right to deliver the sun of $500 (Five Hundred Dollars) via www.skrill.com.

3. During the course of investigation by the Commission, Iboyi admitted commission of the internet scan and agreed to forfeit the sum of $500 (Five Hundred Dollars) he benefitted from the scam.
4. The Defendant through his counsel has applied to the Prosecution for plea bargain and the Prosecution after consultation with the investigating officer hereby accepts as stated herewith.

IT IS HEREBY AGREED AS FOLLOWS:

1. That before the conclusion of this agreement, the Defendant was informed:
    i. That he has the right to remain silent
    ii. Of the consequences of not remaining silent.
    iii. That he is not obliged to make any confession that could be used in evidence against him.
2. That the Defendant shall plead guilty to the charge of Cheating dated 11th July, 2019 and filed on same day before this Honourable Court.
3. That upon conviction, sentencing of the Defendant by this Honourable Court shall be six months imprisonment or option of fine of N300,000 to be paid to the Federal Government of Nigeria.
4. That the sum of $500 USD recovered from the Defendant during investigation shall be paid to the victim David Right (David Wright) by the Economic and Financial Crimes Commission through the Italian Embassy as restitution.
5. That the Defendant shall depose to an affidavit of undertaking to be of good behavior before this Honourable Court.

1. DEFENDANT'S COUNSEL

NAME: ADAYI ABEL

ADDRESS: SUITE A1 MAITAMA

SIGNATURE SGD

DATE: 10/07/19

2. PROSECUTOR

NAME: MARYAM AMINU A.

ADDRESS: EFCC Headquarters Abuja

SIGNATURE: SGD

DATE 11/7/19

3. DEFENDANT

NAME: IBOYI KELLY

ADDRESS: SUITE A1 MAITAMA

SIGNATURE: SGD

DATE: 10/07/19

INVESTIGATION OFFICER

NAME: ABDULLAHI MAMMAN

ADDRESS: EFCC Headquarters Abuja

SIGNATURE:.....

DATE 10/7/19"

It must be noted that when the lower Court convicted the Appellant on 22-7-2019, the Appellant was not informed by the Learned trial Judge that he was going to impose heavier punishment than the punishment agreed by the parties in the Plea Bargain Agreement paragraphs 3 and 4 of the Agreement page 23 of the record which read:

> "That upon; conviction, sentencing of the Defendant by this Honourable Court shall be six months imprisonment or option of fine of N300, .000 to be paid to the Federal Government of Nigeria. That the sum of $500

LJSD recovered from the Defendant during investigation shall be paid to the victim David Right (David Wright) by the Economic and Financial Crimes Commission through the Italian Embassy as restitution."

As a matter of fact Judge from his Ruling convicting the Defendant/Appellant made it appeared that the trial Court was fully acting on the Plea Bargain Agreement for the learned trial Judge said:

Pursuant to the Plea of guilty by the defendant and the Plea Bargain agreement, the defendant is convicted as charged."

What should follow was for the trial Court to sentence the Appellant in accordance in the sentence agreed to in the Plea Bargain Agreement.

This was on 12/72019 before adjourning to 29-7-2019 to pronounce sentence. On that date, 29/7/2019, Appellant applied to withdraw from the Plea Bargain Agreement. The Learned trial Judge was of the view that the Defendant ought to have applied to withdraw from the plea bargain agreement before conviction. The trial Judge said:

"It is my humble view that the defendant may withdraw before his conviction. It is trite that where an accused person is convicted as this instant case he cannot withdraw his plea because he has now transformed from a defendant to a convict. Even the Court has no power to revisit its Ruling/judgment convicting the accuse.

> What remains is for the Court to impose sentence on the convict. The only option opened to the convict is to appeal against the decision of the Court. I therefore hold that withdrawal of the plea of guilty is belated for the simple fact that the accused is now a convict before the Court. I proceed to read the ruling of the Court."

The Respondent has latched on the decision of the lower Court to submit that the Learned trial Judge was functus officio in that having convicted the Appellant he was bereft of jurisdiction to vacate the order or decision convicting the Appellant.

A Judge is said to be functus officio in a matter or cause in the Course of a judicial function or duty when he has accomplished or concluded the hearing and determination in the cause or matter or an essential aspect of the matter by pronouncing on the rights of the parties before him. It means a task concluded and final decision taken by the Judge seised of the matter. It means the decision taken in judicial capacity cannot be revisited by the trial Judge see

1. ALHAJI MUHAMMADU MAIGARI DINGYADI & ANOR VS. INEC & ORS (2011) 18 NWLR (PART 1224) 154 at 184 E -H per CHUKWUMA -ENEH, JSC who said:

> "In other words, the big deal is whether this Court has become functus officio, thus lacking the power of entertaining this case. In this regard having had another look at the principle of functus officio it connotes that a

Court as this Court having given its decision in a matter before it ceases to have the power to reopen the same matter all over again in the same proceedings. See: Mohammed v. Husseini (1998) 11- 12 SCNJ 136 at 163-164; (1998) 14 NWLR CPt. 584) 108. Albeit, where a court has duly performed its duty by handing down its decision/ruling, as in this case it has exhausted as it were, all its powers with regard to that matter. And so, the court becomes functus officio and incapable of giving any decision or making any competent orders with regard to the same matter it has previously decided for want of the jurisdiction to do so. See: Olowu v. Abolore (1993) 1 SCNJ CPt. 1) I at pp. 10-11; (1993) 5 NWLR CPt.293) 255, Ikpong v. Udobong (2007) 2 NWLR (Pt. 1017) 184 and Mohanuned v. Husseini (1998) 11-12 SCNJ 136at 163-164, (1998) 14 NWLR (Pt. 584) 108. Going by the foregoing principle vis-a-vis the facts on the ground in this matter, any defects in regard of his Court's jurisdiction to deal with the matter will render the proceedings a nullity, the court having then become functus officio."

2. NOCLINK VENTURES LTD VS. CHIEF OKEY MUO AROH & ANOR (2020) 7 NWLR (PART 1722) 63 at 85 C -D per ABBA AJI, JSC who said:

"The trial court having taken the evidence of PW1 before it gave its judgment cannot be termed a default judgment. It was a judgment on its merit that is only

> appealable to the intermediate court. The trial court was therefore functus officio to have entertained an application to set aside its judgment even on the face of apparent lack of jurisdiction when leave for extension of time was not sought. There is the well settled elementary and fundamental principle of law that a court on disposing of a cause before it renders itself functus officio. It ceases to have jurisdiction in respect of such case. It cannot assume the status of an appellate court over its own decision, except there is statutory power to do so, which lies in Order 9 rule 42(2) & (3) of the High Court (Civil Procedure) Rules of Anambra State, 1988."

However I am of the firm view, with the greatest respect, that a community reading of the entire provisions of section 270 of the Administration of Criminal Justice Act, 2015 particularly subsections 9, 10, 11 and 15 thereof they eminently show that the principle or doctrine of being functus officio will NOT apply to plea bargain agreement until sentence has been validly inflicted upon the Defendant by the trial Court upon fulfillment of the statutory procedures laid out in subsections 9 - 11 and 15 of section 270 of the Administration of Criminal Justice Act, 2015.

It can be seen from section 270 (10) of the said ADJA that notwithstanding that the trial Court is not a party to a plea bargain agreement, the Administration of Criminal Justice Act, 2015 nonetheless empowers and endowed a trial

Court with limited jurisdiction and powers to examine critically the plea bargain agreement pursuant to section 270 (10) of the Administration of Criminal Justice Act, 2015 in order to ascertain whether the defendant admits the allegation contained in the charge to which he has pleaded guilty and whether the Defendants entered into the agreement voluntarily and without undue influence.

The Presiding Judge or Magistrate in addition to his power to convict the Defendant also has authority to award compensation to the victim as per the terms of the plea bargain agreement.

All these are to ensure that there is no collusion between the Prosecutor and Defendant to defeat the purpose and intendment of section 270 of Administration of Criminal Justice Act 2015. It is also to ensure that the parties do not enter into unconscionable bargain that will be in injurious or inimical to the interest of the victim of the offence and must ensure there is provision in the Agreement for restitution. It is also designed to forestall any bargain that is illegal or against public policy.

The Presiding Judge or Magistrate is also entitled to examine, consider and evaluate the sentence agreed upon by the Prosecutor and the Defendant and where it appears to the Presiding Judge or Magistrate that the sentence agreed upon

is not commensurate with the gravity of the offence committed, the Presiding Justice or Magistrate could impose heavier punishment subject to the condition prescribed or laid down in section 270 (11) (C) of the Administration of Criminal Justice Act, which states:

> "270(11) (c) Where a defendant: has been convicted under subsection 9(a) the Presiding Judge or Magistrate shall consider the sentence as agreed upon and where he is -
>
> (c) of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be appropriate."

(Underlined mine).

As stated earlier if the above is taken or read along with sub-section 15 of section 270 of Administration of Criminal Justice Act 2015 which specifically provides that:

> (15) Where the defendant has been informed of the heavier sentence as contemplated in subsection (11)
>
> (c) of this section, the defendant may-
>
> (a) abide by his plea of guilty as agreed upon and agree that, subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing; or
>
> (b) withdraw from his plea agreement, in which event the trial shall proceed de novo before

another presiding judge or magistrate, as the case may be."

shows glaringly that the right of the Defendant to opt out of the plea bargain agreement even after a plea of guilty accompanied by conviction by the trial Court, Defendant's right to apply to the trial Court to plead NOT GUILTY to the charge against him remains unaffected and inviolate.

The above subsection 15 of section 270 of ADJA also makes it clear that the trial Court even after pronouncing the Defendant guilty and convicting him, the trial Judge must fulfill or comply with conditions precedent stipulated in sub-section 11(c) of ADJA which provides:

(11) Where a defendant has been convicted under subsection (9) (a), (10)(a) the presiding judge or magistrate shall consider the sentence as agreed upon and where he is-

(a) satisfied that such sentence is an appropriate sentence, impose the sentence;

(b) of the view that he would have imposed a lesser sentence than the sentence agreed, impose the lesser sentence; or

(c) of the view that the- offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be appropriate.

All the specific provisions and conditions enacted in subsections 11 and 15 of the Administration of Criminal Justice Act cannot be waived or circumvented. The Lower Court owed the Defendant the duty to inform the Defendant of the decision or intention of the trial Court to impose heavier sentence upon the Defendant as considered appropriate in place of the Sentence or punishment as agreed by the prosecutor and the Defendant. See NOCLINK VENTURES LIMITED & ANOR VS. CHIEF OKEY MUO AROH & ANOR (2020) 7 NWLR (PART 1722) 63 at 89 E - H per KEKERE-EKUN JSC who said:

> "On the position of the law where general and specific provisions are seen to apply to a subject matter, see: Ardo v. Nyako (2014) LPELR - 22878 (SC) @ 47 A - D; (2014) 10 NWLR (Pt.1416) 591, where it was held thus:
>
> > "It is the law that in considering situations where general and specific provisions are seen to apply to a subject matter, the law takes the course which does not permit a general provision to derogate from a special provision. It follows that where a subject matter is covered by both general and special provisions, the special provision applies to it in such a way that one general provision does not derogate from its effect. The Latin maxim is *generalia specialibus non derogant*. In short, a special provision is interpreted as taking away the

effect of a general provision: *Specialia generalibus derogant*. See Schroder v. Major (1989) 2 NWLR (Pt.101) 1 @ 13."

A trial Court retains powers and jurisdiction to revisit pronouncement of guilt and conviction passed on a Defendant in Proceedings where there is plea bargain agreement, and where it subsequently decides or intends to inflict a heavier punishment on Defendant instead of the mild or lesser punishment contained in the plea bargain agreement between the Prosecutor and the Defendant and the Defendant objects or disagrees with the decision or intention of the trial Judge to inflict or mete out a heavier punishment upon the Defendant in place of the punishment agreed by the parties.

In other words where the trial Court as directed by section 270 (11)(c) of ADJA informs a Defendant of its intention to impose heavier punishment upon Defendant and the later refuses, the provisions and the intendment of the statute as contained in section 270(15) (a) or (b) is automatically invoked. The Defendant is entitled to withdraw his plea bargain agreement and trial shall commence de novo before another Judge.

The argument of the Respondent that the trial Court was functus officio upon conviction of Appellant is grossly misplaced and is not supported by law.

The Respondent in breach of the agreement it has with the Appellant tried profusely to justify the maximum punishment imposed on the Defendant/Appellant under section 322 of the Penal Code Act. To the Learned trial Judge the sentence agreed upon will not serve as enough deterrent to fraud Artists compared with the enormous and incalculable damage it will cause the image of the country and unsolicited embarrassment such crimes have caused the Nation and its people.

It is however important to stress that no matter the enormity of disturbance or concern a Court may feel concerning sentence agreed to be imposed upon a Defendant upon plea of guilty and conviction as contained in the plea bargain agreement, the Presiding Judge or Magistrate must act at all times within the confines of the Administration of Criminal Justice Act 2015 particularly the procedure laid down and pre-conditions put in place to the effect that a Defendant must be informed before a heavier punishment or sentence could be meted upon the Defendant and bearing in mind provisions of section 270(15) of ADJA 2015.

The Presiding Justice is under a statutory and constitutional duty to first draw or call attention of the Defendant or his Learned Counsel to the trial Court's resolve

to impose heavier punishment over and above the sentence agreed upon by the parties in the plea bargain agreement.

The Defendant must be informed as provided in section 2 70 (11) (c) of the ADJA supra.

See MOBIL PRODUCING NIGERIA UNLIMITED VS. OKON JOHNSON & ORS (2018) 14 NWLR (PART 1639) 329 at 359 A - D per OKORO, JSC who said:

> "As was rightly submitted by the learned counsel for the 1st - 15th respondents, where a statute has provided for the method of doing anything, it must be done in accordance with the express provision of the statute. It is trite law that when a law provides a particular way/method of doing a thing, and unless such a law is altered or amended by a legitimate authority, then whatever is done in contravention of those provisions amounts to a nullity and of no effect whatsoever. See Ude v. Nwara & Anal (1993) 2 NHILR (Pt. 278) 638, (1993) LPELR - 3289 (SC); M.PPP v .. I.N. E.C. &Ors (2015) LPELR - 25706 (SC), (2015) 18 NWLR (PT. 1491) 251; Federal Republic of Nigeria v. Wabara & Ors (2013) LPELR - 20083 (SC), (2013 5 NWLR (Pt. 1347) 331; Nnonye v. Anyichie (2005) 2 FWLR (Pt. 268) 121, (2005) 2 NWLR (Pt. 910) 623; Ntiere v. NPA (2008) 10 NWLR (pt 10094) 129.
>
> As rightly pointed out by the court below, there is nothing on record to show that tile appellant ever applied to the Inspector General of Police in accordance with

> section 18(1) of the Police Act of its desire to have the services of Supernumerary Police Officers. Neither is there evidence of any approval by the President to that effect. There is yet no evidence of any directive by the Inspector General to "the appropriate authority" to appoint these officers. Moreso, the appellant failed to show evidence of the payment of cost of uniform to the Accountant General including the quarterly payment of the salaries of the 1st - 15th respondents."

There is nothing in the record of appeal to show that the Learned trial Judge complied with section 270 (11) (C) of the - Administration of Criminal Justice Act 2015 which mandatorily enjoined the Presiding Judge or Magistrate to inform the Defendant of such heavier sentence he considers to be appropriate.

The provision is not enacted for the fun of it. It is designed to protect and enable the Defendant to be heard if such heavier punishment will be convenient or alright by him. The condition is also put in place to afford the Defendant the opportunity of changing his plea of guilty or to completely bow out of the plea bargain, bearing in mind that it is the lesser punishment offered by the prosecution for his plea of guilty and conviction that goaded the Defendant to voluntarily agree to plead guilty. That was the understanding that made the parties consummated the plea bargain Agreement.

The trial Judge cannot out of his abhorrence or shock that a six month sentence was agreed between the parties jumped the gun in gross violation of the Defendant's right to fair hearing as enshrined in the Constitution of the Federal Republic of Nigeria 1999 as amended section 36 (1) thereof which provides:

> "In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to Fair hearing within a reasonable time by a Court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

The decision to sentence the Defendant to three years heavier punishment as opposed to the Plea Bargain Agreement is clearly a breach of Appellant's right to fair hearing.

The Respondent Learned Counsel had argued that:

> "The Federal Capital Territory Courts {Sentencing Guidelines} Practice Direction, 2016. Part Two under Paragraph 3 of that rule explains how a sitting Judge can exercise his powers for discretionary and non-discretionary punishments.
>
> Paragraph 3{1} of the above Sentencing Guidelines of the FCT provides that:
>
> The judge shall determine whether the statute allows for exercise of sentence discretion on the offence under consideration.

S. 322 of the Penal Code Law, Laws of the Federation of Nigeria, 1990 provides that:

> "Whoever cheats shall be punished with imprisonment for a term which may extend to three years or fine or with both."

The provision of the word "May" in the above provision gave the judge the power to exercise his discretion in sentencing the Defendant.

From the above judgement of the Lower Court, it is clear that my Lord exercised his discretion under the provision of part one paragraphs 2(2) (a) and (b) of the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016 which is akin to Section 416 of the Administration of Criminal Justice Act, 2015 which gave him the power to exercise his discretion in sentencing the Defendant to serve as deterrence and restraint to others in the society as he rightly said."

The above submission and the sentencing Guidelines of FCT High Court cannot displace statutory provisions contained in section 270 (11) and 15 of ADJA.

The decision of the lower Court is no doubt perverse and has led to miscarriage of justice. See

(1) STATE VS. TIYIN OKAY (ACMS JOROMI) in (2020) 7 NWLR (PART 1722) 130 at 151 D - F per M.D. MUHAMMAD, JSC who said:

> The lower court and indeed this court, where the trial court's findings are perverse, have the duty to re-

appraise the evidence on record in order to obviate the miscarriage of justice the trial court's wrong evaluation of the evidence occasioned. See C.P.C. v. INEC & Ors. (2011) LPELR - 8257 (SC), (2011) 18 NWLR (Pt. 1279) 493 and Effiong Odiong Mkpinang & Ors v. Chief Effiong Ndem & Ors (2012) LPELR-15536 (SC), (2013) 14 NWLR (Pt. 1344) 302.

And simply put, a perverse decision of a court which the appellate court is duty bound to set aside is one that is not based on evidence, or has evolved following the wrongful application of the law to the facts in evidence. See Baridam v. State (1994) LPELRU 753(SC), (1994) 1 NWLR CPt. 320) 250 and Abdulmumini v. F.R.N (2017) LPELR - 43726 (SC), (2018) 13 NWLR (PT. 1635) 160."

2. FRANCIS OLANIYI OGUNTADE VS. JOSEPH OYEWALE OYELAKIN & ORS (2020) 6 NWLR (PART 1719) 41 at 62 MUHAMMAD JSC, who again said:

"A perverse finding or decision of a court, learned counsel to the 2nd respondent is particularly right, is one in which the court's finding or inference being appealed against is completely unsupported by evidence or that it is so manifestly unreasonable that no reasonable tribunal could have arrived at such a finding or conclusion on the evidence. A court's finding contrary to a principle of law and/or procedure that equally occasions miscarriage of justice falls within the category

of perverse decisions the appellate court interferes with. See Nqfiu Rabiu v. Kana State (1980) LPELR- 2936 (SC), (1980) 2 NCLR 293 and Atalagbe v. Sharun (1985) LPELR - 592 (SC); (1985) 1 NWLR (PT. 2) 360."

Issues 1 and 2 distilled for determination are hereby resolved in Appellant's favour.

The Appellant's appeal is allowed. The sentence of three years maximum term to which the Appellant was sentenced is contrary to law and the Plea Bargain Agreement between the parties. The judgment of the lower Court in respect of the sentence (only) to three years imprisonment imposed on the Appellant is HEREBY set aside.

In its stead I hereby sentence the Appellant to six (6) months imprisonment and the sum of $500 USD recovered from the Defendant during investigation shall be paid to the victim (David Wright) by the Economic and Financial Crimes Commission through the Italian Embassy as restitution as agreed by the parties to this appeal in the Plea Bargain Agreement executed or entered into by them on 10th July, 2019 and filed at the lower Court on 12th July, 2019. The six (6) months imprisonment shall run from 12th July, 2019.

The Appellant IBOYI KELLY shall be released from correctional Centre/Prison Custody immediately.

PETER OLABISI IGE
JUSTICE, COURT OF APPEAL

APPEARANCES:

AJULO OLUKAYODE AJULO, Esq. with *MICHAEL OKEJIMI Esq.* for Appellant.

A. A. AMINU for Respondent.

APPEAL NO: CA/A/871C/2019

I had the opportunity of reading in draft form the lead judgment of my learned brother, **Peter O. Ige, JCA** just delivered. I agree with his reasoning and conclusion which I adopt in holding that this appeal is meritorious and ought to be allowed. I accordingly allow it.

I abide by all the consequential orders made in the lead judgment.

PATRICIA AJUMA MAHMOUD
JUSTICE, COURT OF APPEAL

APPEAL NO. CA/A/871^{C}/2019

FOLASADE AYODEJI OJO (JCA)

I have had the privilege of reading the Judgment delivered by my learned brother, **Peter Olabisi Ige, JCA.** I agree with him that the provisions of Section 270(11) and (15) of the Criminal Justice Act, 2015 is designed to protect and afford a Defendant in a plea bargain the opportunity of changing his plea of guilty or to completely bow out of the plea bargain if the trial Court wish to impose a heavier sentence contrary to what was agreed.

Section 270(11)(C) of the Administration of Criminal Justice Act therefore provides as follows:

> ***"(11) Where a defendant has been convicted in terms of subsection (9)(a), the presiding Judge or Magistrate shall consider the sentence as agreed upon and where he is:***
>
> ***(C) Of the view that the offence requires a heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be appropriate."***

It is clear from the above provision that the Defendant shall be informed of the decision of the trial Court to impose a heavier punishment than what was agreed in the plea bargain and he has the choice to withdraw from the agreement earlier reached.

In the instant appeal, the Appellant who sought to withdraw from the plea bargain was denied the opportunity to so do. To my mind, the refusal of the trial Court to allow the Appellant change his plea is a

breach of Section 270(11) and (15) of the Administration of Criminal Justice Act and occasioned a miscarriage of justice to him.

In ***TYONEX (NIG) LTD V PFIZER LTD (2020) 1 NWLR (PT. 1704) 125 AT 163, PARAS. D-F***, the Supreme Court, per **Augie, JSC** held as follows:

> ***"The term "miscarriage of justice" is defined as "a grossly unfair outcome in a judicial proceeding" - see Black's Law Dictionary 9th Ed. See also OJO V. ANIBIRE (2004) 10 NWLR (PT.882)571, wherein this court held as follows:***
>
> > ***"Miscarriage of Justice simply means a failure of Justice. What will constitute miscarriage of justice varies from case to case depending on the facts and circumstances. But to reach the conclusion that such a miscarriage occurred, it does not require a finding that a different result necessarily would have been reached in the proceedings to be affected by the miscarriage. If it is enough if what has happened is not justice according to law."***

The refusal of the Appellant's application to withdraw from the plea bargain agreement by the trial Judge is inconsistent with his right under the law and occasioned a miscarriage of justice. This decision should not be allowed to stand.

It is for the above and the fuller reasons given by my learned brother in the lead Judgment that I also find merit in this appeal and allow same. I abide by all the consequential Orders made in the lead Judgment.

FOLASADE AYODEJI OJO
JUSTICE, COURT OF APPEAL