

IN THE COURT OF APPEAL  
ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

ON WEDNESDAY THE 25<sup>TH</sup> DAY OF MARCH, 2020  
BEFORE THEIR LORDSHIPS

PETER OLABISI IGE  
EMMANUEL AKOMAYE AGIM  
MOHAMMED BABA IDRIS

JUSTICE, COURT OF APPEAL  
JUSTICE, COURT OF APPEAL  
JUSTICE, COURT OF APPEAL

APPEAL NO. CA/A/869<sup>C</sup>/2019

BETWEEN:

TOSAN OGBE .....

APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA.....

RESPONDENT

JUDGMENT

(DELIVERED BY PETER OLABISI IGE, JCA)

The Appellant was charged before the Federal Capital Territory High Court, Abuja on 9<sup>th</sup> day of July, 2019 for an offence of cheating. The Charge against the Appellant is as follows:-

"CHARGE

That you Tosan Ogbe alias John Allen 12<sup>th</sup> July 2018, at Abuja within the jurisdiction of

*this Honourable Court by deceiving while pretending to be on John Allen a male Caucasian from United States of America cheated by inducing Evelyn Sanchez to deliver to you the sum of \$500.00 (Five Hundred Dollars) by falsely representing to her that you are John Allen who is in a romantic relationship with her and that you thereby committed an offence contrary to Section 320(b) and punishable under Section 322 of the Penal Code Act, Laws of the Federation (Abuja), 1990."*

The Charge was accompanied with Summary of Evidence of WITNESSES and PLEA BARGAIN AGREEMENT executed between the parties on 8<sup>th</sup> July, 2019.

On 23<sup>rd</sup> day of July, 2019 the Appellant's plea was taken. The proceeding of 23<sup>rd</sup> July 2019 reads:-

"IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
HOLDEN AT VACATION COURT 2, NYANYA, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE MUAWIYAH BABA IDRIS

SUIT NO. FCT/HC/CR/416/19

BETWEEN  
FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT  
AND  
TOSAN OGBE .....DEFENDANT

23/7/19

Defendant is in Court. He understands English language.

H. M. MOHAMMED Esq. with FATIMA M. MUSTAPHA Esq. and  
S. N. ROBERT Esq. for the prosecution.

ADAJI ABEL Esq. for the defendant.

MOHAMMED

Before the Court is single Court charge filed on 9/7/19.  
Also we have a plea bargain agreement. We apply that the  
charge be read to the defendant.

COURT - REGISTRAR

Read the charge.

Hon. Judge

23/7/19

COUNT 1

COURT

Do you understand the charge"

DEFENDANT

Are you guilty?

DEFENDANT

I am guilty.

MOHAMMED

In view of the plea of the defendant. We have  
entered into plea bargain agreement. We urge  
your Lordship to convict and sentence the  
defendant in accordance with same.

In line With the provision of the ACJA the defendant had made  
restitution of the sum of \$500 to the victim. The submitted



instrument of crime to the Government. The defendant is an event manager. He enrolled in our skill acquisition programme and he is into catering. He has complied with the terms of S.270 ACJA. We plead that the Court tamper justice with mercy and give the defendant the privilege to be a good citizen. The family has also written a letter of good behavior.

The defendant having pleaded guilty to the charge and pursuant to the plea bargain agreement is convicted as charged. The case is adjourned to 30/7/19 for sentencing. The convict shall be remanded in prison custody pending his sentence.

Hon. Judge  
23/7/19"

The Appellant thereafter on 30<sup>th</sup> July, 2019 sought to withdraw his plea of guilty for reasons appearing on the record. For ease of reference it is right to produce the proceeding of the said 30/7/2019 which reads:-

"30/7/2019

Defendant is in Court. Be understands English Language.  
FATIMA M. MUSTAPHA Esq. for the prosecution.  
ADAJI ABEL Esq. for the defendant.

ABEL We Want to draw the Court's attention to 270(15) which gives the defendant's right to withdraw his plea. We have not been informed that whether the Court has a heavier sentence contrary to the plea bargain agreement. In the circumstance we are Withdrawing from the plea of guilty. We refer to S. 416 (2) (D) ACJA. says a trial Court shall not pass maximum sentence on a 1<sup>st</sup> time offender.

We urge the Court avail the defendant the rights as enshrined by the plea bargain agreement.

MUSTAPHA I have no objection.

COURT The known principle of law in that where a Court passed a decision on a matter, that only same Court cannot re-consider its own decision. The only option is for the party that is not satisfied to appeal against it. Thus the Court becomes functus officio. The convicted has pleaded guilty to the charge and was convicted on 23/7/19. There is no evidence before this Court to show that the convict is a first time offender. In any case, it was as the result of the plea bargain agreement that the convict was charged under the penal code instead of the cybercrimes (protection, prohibition etc.) Act. I will proceed to read the sentence.

Hon. Judge 30/7/19"

The learned trial Judge then impose sentence on the Appellant after the Prosecutor had urged the Court *"to sentence the convict in accordance with the plea bargain agreement."*

The learned trial Judge held as follows:-

*"Learned counsel for the convict urged the Court to tamper justice with mercy.*

*I have read the plea bargain agreement. Parties agreed on ridiculous term of one-month imprisonment. Let me say that it is not incumbent on the Court to adopt the agreement intoto. Courts 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 law to charge the convict is the cybercrimes (protection, provision, etc.) Act that has laudable provisions aimed at redeeming the image and integrity of this country. It has appropriate punishment that can deter persons from engaging in cybercrimes. My Lord Hon. Justice Hannatu Jumrjai Sankey, JCA made a striking comment in the case of JUBRIL vs. FRN (2018) LPELR - 43993(CA) where my lord stated:*

*"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 provisions 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.*

*Consequently, the convict is hereby sentenced to a term of 3 years imprisonment on the one count Charge."*

The Appellant was dissatisfied and has appealed against his conviction and sentence vide his Notice of Appeal dated 23<sup>rd</sup> August, 2019 filed on 26<sup>th</sup> August, 2019 on four grounds as follows:-

***"GROUND ONE***

*That 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 convicted the Appellant pursuant to the Plea Bargain Agreement but imposed a heavier sentence other than the one contained in the Plea Bargain Agreement without informing the Appellant of his intention to pass the heavier*



sentence.

#### **PARTICULARS OF ERROR**

- 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 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 (11) (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 Agreement before the Court contrary to Section 270(11)(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 9<sup>th</sup> day of July 2019 at the trial Court registry wherein the Appellant agreed to be sentenced in line with the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016.
- ii. Pursuant to the said Plea Bargain Agreement, the Appellant pleaded guilty and the trial Judge convicted

him but rather than sentence him in line with the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016, the trial Judge sentenced the Appellant to a maximum term of three years imprisonment.

- iii. Paragraph 21 (3) of the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016 provides that where the statute under which an accused is convicted permits the exercise of sentencing discretion the Judge shall proceed to apply the provisions of paragraphs 22 to 29 of the Practice Direction.
- iv. Section 322 of the Penal Code Act which the Appellant was convicted thereunder permits the exercise of sentencing discretion.
- v. Section 322 of the Penal Code Act provides that whoever cheats shall be punished with imprisonment for a term which may extend to three years or with fine or with both,
- vi. Paragraphs 25(1) & (2) of the Federal Capital Territory Courts (Sentencing Guidelines) Practice



*Direction, 2016 provides that where a guilty plea has been made in determining a reduction in the sentence to be imposed, the sentence upon the guilty plea shall not exceed one-third of the applicable punishment prescribed by law.*

- vii. The learned trial Judge failed to take into consideration Paragraph 21(3), 25(1) & (2) of the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016 in exercising his sentencing discretion in line with the spirit of the Plea Bargain Agreement.*
- viii. 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.*
- ix. The learned trial Judge failed to inform the Appellant of the heavier sentence.*
- x. 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 the opportunity to lead evidence and proffer argument relevant to sentencing as provided by the law.*

- xi. 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 (11) (a) & (15) (b) of the Administration of Criminal Justice Act (ACJA) 2015 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 allow 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 30<sup>th</sup> day of July, 2019 sentencing the Appellant to a term of three (3) years imprisonment contrary to the Plea Bargain Agreement and the Federal Capital Territory Courts (Sentencing Guidelines)

Practice Direction, 2016.

- ii. AN ORDER entering judgement 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 23<sup>rd</sup> day of July, 2019 and directing that the trial be commenced de novo before another Judge of the High Court of the 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 filed on 27<sup>th</sup> December, 2019. It is dated 7<sup>th</sup> November, 2019. The Respondent's Brief of Argument was filed on 17<sup>th</sup> February, 2020. It was dated 13<sup>th</sup> February 2020.

The Appellant's Learned Counsel DR KAYODE AJULO formulated two issues 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 his part H. M. MOHAMMED, ESQ for the Respondent nominated an issue for determination namely:-

*"Whether having regards to the Plea Bargain Agreement of the parties before the Court, the learned trial Judge was right to sentence the Appellant to a term of 3 years pursuant to the provisions of section 322 of the Penal Code Act, Laws of the Federation (Abuja), 1990."*

The appeal will be resolved on the two issues formulated by the Appellant. The two issues will be treated together.

**ISSUES (A) and (B)**

*"(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 learned Counsel to the Appellant stated that the two issues bother on the legality of the 3 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 Judge's intention to pass heavier sentence on the Appellant contrary to the Agreement.

He argued that a Judge has discretion to impose punishment provided by the law on a convict but the discretion must be judiciously exercised.

He submitted that offence of cheating for which the Defendant was convicted is not an offence with mandatory punishment. That the statute under which Appellant was charged allows for exercise of discretion in sentencing. He relied on Section 322 of the Penal Code Act Cap 53 LFN



1990 and Section 270(1)(4) of the Administration of Criminal Justice Act 2015 which provides for plea bargain. He relied heavily on Section 270(9) of the Administration of Criminal Justice Act 2015 and the Plea Bargain Agreement that the Appellant ought to have been sentenced in accordance with the Plea Bargain Agreement relying on the cases of:-

1. PML (NIGERIA) LTD V FRN (2014) LPELR - 22767 CA;
2. NWUDE V FRN & ORS (2015) LPELR - 25858 (CA) per NIMPAR, JCA.
3. Section 270(10) Administration of Criminal Justice Act, 2015.

The learned Counsel to the Appellant opined that the learned trial Judge erred in law in failing to pass judgment in accordance with the plea bargain Agreement of the parties as adopted and in breach of Section 270(11)(c) of Administration of Criminal Justice Act which requires the Presiding Judge or Magistrate to inform the Defendant of his intention to impose heavier sentence he considers to be appropriate as required by Section 270(11)(c) of the Administration of Criminal Justice Act 2015. He stated that there is nothing on the record to show that the

learned trial Judge complied with provisions of Section 270(11)(c) of Administration of Criminal Justice Act, 2015.

He submitted that the 3 years sentence passed on the Appellant by the learned trial Judge was contrary to the plea bargain agreement which provides for lesser and lighter sentence.

The learned Counsel to the Appellant also submitted that pursuant to Section 270(15)(b) of Administration of Criminal Justice Act, 2015, the Appellant was entitled to withdraw from the plea bargain hence the need for the learned trial Judge to have complied with Section 270(11)(c) of the said law. He relied on the case of *INAKOJU V ADELEKE* (2007) 2 FR p. 71 B - C. He further submitted that a Judge cannot go contrary to sentence provided in a statute to impose heavier punishment. He relied on the case of *USHIE V STATE* (2012) LPELR - 9705 CA pp. 21 - 22 per *NDUKWE-ANYANWU*, JCA to submit that the sentence imposed on the Appellant is unlawful and ought to be set aside. He is also of the view that the sentence of three (3) years sentence passed on the Appellant contrary to the plea bargain agreement and Section 270(11)(a) and 15(b) of Administration of Criminal



Justice Act 2015 is against the spirit of plea bargain and Criminal Justice Administration and therefore unlawful and liable to be set aside. He urged the Court to rely on Section 21(1) of the Court of Appeal Act to remedy the situation in the appeal. He finally urged the Court to allow the appeal by resolving the two issues in favour of Appellant.

In response to the submissions of the Appellant's learned Counsel, the Respondent's learned Counsel MSUUR DENGA, ESQ who settled the Brief of Argument of the Respondent contended that the proceedings before the lower Court was in accordance with the law in that the adjudicator has discretion to impose sentence prescribed by law. He stated that the offence of cheating for which the learned trial Judge rightly convicted the Appellant is governed by Section 320(b) of the Penal Code Act LFN 1990. He reproduced the provisions of the said law to submit that Section 322 allows the Judge to exercise his discretion as he did. That the law does not prescribe a mandatory punishment but because of the way it was used in the statute, it allows discretion to the trial Judge to impose the sentence meted to the Appellant. According to the learned Prosecutor the trial Judge did not violate

Section 270 of the Administration of Criminal Justice Act, 2015.

According to the learned Counsel to the Respondent he acknowledged that a plea bargain is a negotiated agreement between a Prosecutor and a Defendant whereby he agrees to plead guilty to a lesser offence in exchange for a more lenient sentence. That where a plea bargain did not recommend a sentence to be imposed by the Court upon conviction of the Defendant but rather leave the sentence to the discretion of the Court, the Defendant cannot be heard to complain after the Judge exercise his discretion and impose the sentence in accordance with the law that creates the offence. He relied on the case of NWUDE V FRN (2015) LPELR - 25858 CA.

That the plea bargain in this case left issue of sentencing at the discretion of the Judge upon conviction of the Appellant. He urged the Court to be bound and adopt the reasoning and decision in the case of NWUDE V FRN supra, and to resolve issue one in Respondent's favour.

He submitted that the provisions of Section 270(11)(a) & (c) and 15 of Administration of Criminal Justice Act relied upon by the Appellant's Counsel are not applicable in



this case since the discretion as to sentencing has been conceded to the trial Judge. He also conceded that despite the plea bargain the learned trial Judge imposed the maximum sentence but that having regard to Section 7 of the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction 2016 and Section 416(2)(c) of Administration of Criminal Justice Act 2015, there is no miscarriage of justice. He urged this Court to affirm the conviction but that this Court should invoke Section 416(2)(c) of the Administration of Criminal Justice Act 2015 in reducing the sentence imposed by the trial Court.

Now Plea Bargain is an agreement in criminal proceedings between the Prosecution and Defendant whereby the Defendant would agree to plead guilty to the charge against him and be ready to be convicted in exchange for a lighter or lesser punishment in term of sentence which the Prosecution will offer in return for the acknowledgment or admission of the crime for which the Defendant is arraigned. It brings about early disposal of criminal matters.

The Plea Bargain concept was formally and statutorily introduced into the Nigeria Legal System in criminal

proceedings to which Administration of Criminal Justice Act 2015 is applicable. The procedure for effective plea bargaining, its administration and implementation can be found in Section 270 of the said Administration of Criminal Justice Act 2015 which comprehensively provides as follows:-

*"270. (1) Notwithstanding anything in this Act or in any other law, the Prosecutor may-*

*(a) receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; or*

*(b) offer a plea bargain to a defendant charged with an offence.*

*(2) The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence, provided that all of the following conditions are present-*

*a) the evidence of the prosecution is insufficient to prove the offence charged beyond reasonable doubt;*

*(b) where the defendant has agreed to return the proceeds of the crime or make restitution to the victim or his representative; or*



- (c) where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.
- 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 a plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted on the charge; and
  - (b) an appropriate sentence to be imposed by the court where the defendant is convicted of the offence to which he intends to plead guilty.
- (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
- (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'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.

(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 10 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) (a) or de novo 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 a 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."*

As stated earlier one of the significant aspect of plea bargain is that the Defendant must admit and acknowledge the commission of the offence for which he is charged, plead guilty to it and be convicted.

Its terms and conditions are analogous or coterminous with civil contract or agreement. There must be an offer from the Defendant to the Prosecutor and there must be an acceptance of the offer. The intention to create legal relation must be evident and the willingness on the part of the Defendant and the Prosecution to abide and honour the plea bargain agreement must be certain.

The high point of the plea bargain agreement is that upon plea of guilty to the charge and a conviction a liberal or light sentence would be imposed on the Defendant instead of being punished to the full extent of the punishment or sentence prescribed for the offence committed by the statute creating and punishing the offence.

The plea bargain agreement must be in writing and personally signed by the Defendant along with his Learned Counsel. The Prosecutor must also sign for the State or Federal Republic of Nigeria depending on who the complainant or Prosecutor is.

Where you have more than one Defendant in a charge each of the Defendants must negotiate his/her own plea



bargain agreement and must sign and execute same. No proxy can act for any Defendant in plea bargain agreement.

Upon execution of a plea bargain agreement it becomes binding on the Prosecution and the Defendant to it. The plea bargain agreement must have been consummated or entered into before a plea of guilty is entered at the trial Court. All necessary consultation must be made by the Prosecutor with those who investigated the crime and victim of the offence and the plea bargain must take into consideration the public interest. It must be a voluntary agreement and must be in tandem with all the conditions as contained and laid down in Section 270 of the Administration of Criminal Justice Act 2015.

Now the learned Counsel to the Defendant accused the lower Court of sentencing the Defendant to maximum term of imprisonment prescribed for the offence for which the Defendant was charged under Section 322 of the Penal Code Act which provides:-

*"322 Whoever cheats shall be punished with imprisonment for a term which may*

*extend to three years or with fine or with both."*

The Learned Counsel to the Respondent argued the contrary to justify what the sentence of three years imposed on the Defendant in that there was no sentence agreed upon between the Prosecutor and the Defendant. That the sentence to be imposed upon Defendant was left at the discretion of the Learned trial Judge and to be in line with the sentencing Guidelines of the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016."

The Plea Bargain Agreement entered into between the parties at the lower Court reads:-

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

*CHARGE NO:.....*

*BETWEEN  
FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT  
AND  
TOSAN OGBE.....DEFENDANT*



### PLEA BARGAIN AGREEMENT

This plea bargain is made pursuant to section 270 of the Administration of Criminal Justice Act, 2015, this day of July, 2019 between Federal Republic of Nigeria (represented by the Economic and Financial Crimes Commission) and Tosan Ogbe.

#### WHEREAS

1. The Defendant, Tosan Ogbe is presently standing trial before this Honourable Court in respect of offence of Impersonation and Cheating filed by the Complainant.
2. The Defendant has agreed to forfeit the sum of N50,000.00 being part of the proceeds of the crime for restitution of his victims and a Mac book Laptop used as instrumentalities of the crime to the Federal Government of Nigeria.
3. The Defendant has shown great remorse for his actions and forfeited the above listed items being proceeds of the crime which gave rise to the charge before this Honourable Court to the Federal Government of Nigeria for restitution of his victims.
4. The Defendant by their letter applied to the Prosecution for a plea bargain and the prosecution has agreed to the request as stated.
5. The Defendant has also from the inception of the

*investigation up to the filing in Court cooperated with the Operatives of the EFCC (Nominal Complainant).*

- 6. There is also the need to avoid wastage of the precious judiciary machinery, time and manpower.*
- 7. And whereas the foregoing seeks to achieve the justice desired.*
- 8. The terms of this agreement shall form and constitute the judgment of this Honourable Court.*

*IT IS HEREBY AGREED as follows:*

- 1. That before the conclusion of this agreement the Defendant was informed:*
  - i. That he has a right to remain silent and of the consequences of not remaining silent, and*
  - ii. That he is not obliged to make any confession or admission that would be used in evidence against him.*
- 2. That the Defendant shall plead guilty to the charge before this Honourable Court.*
- 3. That upon conviction, the punishment to be imposed on the Defendant shall be at the discretion of this Honourable Court in line with the Sentencing Guidelines of the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016.*

*IN WITNESS WHEREOF the parties hereto have hereunto*



*set their hands and seal the clay and year first above written.*

**DEFENDANT**

**NAME:.....TOSAN OGBE**

**DATE:.....8/7/19**

**SIGNATURE.....**

**DEFENDANT'S COUNSEL**

**NAME:.....ADAJI ABEL**

**SIGNATURE.....**

**DATE:.....08/07/19**

**PROSECUTOR**

**NAME:.....H. M. MOHAMMED**

**SIGNATURE.....**

**DATE:.....8/7/19"**

To the Learned Counsel to the Respondent the lower Court could not be blamed because the sentence to be meted out on the Appellant was left to the discretion of the learned trial Judge to sentence the Appellant in accordance with FCT Courts Sentencing Guidelines Practice Direction, 2016.

That the trial Judge also justified his action having regard to seriousness and the prevalence of the offence which the lower Court stated had dented the image and integrity of the Nation. He also relied on Section 416(1) of Administration of Criminal Justice Act, 2015, which provides:-

*"416 (1) On conviction, a court may sentence the convict to a term of imprisonment as prescribed by law."*

I am of the firm view that the above provisions of Section 416(1) of administration of Criminal Justice Act is not applicable to the Appellant's situation.

The relevant section for sentence of a Defendant where plea bargain is entered by the parties and filed in Court is Section 270(11) which provides:-

*"(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."*

The Plea Bargain Agreement is bereft of any agreed sentence to be imposed upon the Defendant notwithstanding that Section 270(4) of Administration of Criminal Justice Act allows the parties to state or include in the Plea Bargain Agreement the sentence agreed upon by the Prosecution and the Defendant. The Plea Bargain Agreement ought to have stated the sentence to be imposed upon the Appellant instead of leaving it at the discretion of the lower Court under paragraph 7 of the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction 2016 which provides:-

*"7 Guilty Plea*

- (1) The Judge may consider any guilty plea made by the convict including when such plea was made in determining a reduction in the sentence to be imposed.*
- (2) A consideration for the reduction of a sentence upon a guilty plea shall not exceed a reduction by one-third of the applicable punishment prescribed by law."*

To my mind the provisions of paragraph 7 of the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016 is applicable to Corruption and Related Offences and not to offences committed against individuals which is governed by paragraph 16 of the said Practice Directions which almost word for word as the provisions of paragraph 7 aforesaid:-

*"It provides:-*

*16. Guilty Plea*

*(1) The Judge may consider guilty plea made by the convict including when such plea was made, in determining a reduction in the sentence to be imposed.*

*(2) Consideration for the reduction of a sentence upon a guilty plea shall not exceed a reduction by one-third of the applicable punishment by law."*

The Learned trial Judge greatly erred in law when he refused to follow the plea bargain agreement and in failing to take into account the criteria set out in the Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016 paragraph 16 thereof and sentenced the Appellant to the maximum of 3 years imprisonment term provided by Section 322 of the Penal Code. Even then, there is option of fine in Section 322 of Penal Code Act to which the Appellant could be sentenced instead of three years imprisonment. The sentence is



clearly against the principles and guidelines pertaining to sentence of a convict who has taken the trouble to plead guilty trusting and believing that he would enjoy lesser or lighter sentence having entered into the plea bargain agreement. The Appellant was sentenced to three years imprisonment on sheer sentiments.

The Appellant has already forfeited the 500 dollars which is the proceeds of the crime and restitution has been made to the victim. The Mac Book Laptop found in Appellant's possession has also been forfeited and sold and that the proceeds thereof shall be given to the victim.

The Practice Direction of the lower Court on sentencing was not followed without any reason given by the lower Court. The learned trial Judge also breached Section 270(11)(c) of Administration of Criminal Justice Act when he failed to inform the Appellant of his intention to sentence him to higher punishment in terms of sentence contrary to the scale of sentence provided in paragraphs 7 and 16 of the Federal Capital Territory Courts (Sentencing Guidelines) Practice Directions, 2016.

The Prosecution and the Defendant and the Court are bound by the Plea Bargain Agreement save for the exceptions provided under Section 270(11)(c) of Administration of Criminal Justice Act, which however has a condition precedent that Appellant shall be informed of

the intention of the Court to inflict harsh punishment on the Defendant.

The failure to adhere to the caveat contained in Section 270(11)(c) of the Administration of Criminal Justice Act violates Appellant's right to fair hearing.

The sentence of three years imposed on the Appellant cannot stand. See:-

1. MOBIL PRODUCING NIGERIA UNLIMITED V OKON JOHNSON & ORS (2018) 14 NWLR (PART 1639) 329 AT 359 B - D per OKORO, JSC who said:-

*"As was rightly submitted by the learned counsel for the 1<sup>st</sup> - 15<sup>th</sup> 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 & Anor (1993) 2 NWLR (Pt. 278) 638, (1993) LPELR - 3289 (SC); MPPP 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 N WLR (Pt. 910) 623; Ntiere v. NPA (2008) 10 NWLR (Pt.1094) 129."*

In the result the two issues formulated by the Appellant are hereby resolved in his favour. The appeal is allowed as it has a lot of merit. The sentence of three years imprisonment imposed on the Appellant by the lower Court on 30<sup>th</sup> July, 2019 is hereby set aside.

In its stead, Appellant is hereby sentenced to one (1) month imprisonment with effect from 30<sup>th</sup> July, 2019.

The Appellant TOSAN OGBE shall be released immediately from Prison Custody/Correctional Centre with immediate effect.

  
PETER OLABISI IGE  
JUSTICE, COURT OF APPEAL

APPEARANCES:

DR. KAYODE AJULO with MICHAEL OBEJURIN and ZION SUBAIRU for APPELLANT.

H. M. MOHAMMED, ESQ for RESPONDENT



**APPEAL NO: CA/A/869<sup>C</sup>/2019**  
**EMMANUEL AKOMAYE AGIM, JCA**

I had a preview of the judgment just delivered by my  
Learned brother, ***LORD JUSTICE PETER OLABISI IGE, JCA.***  
I agree with the reasoning, conclusions and orders therein.



**EMMANUEL AKOMAYE AGIM**  
JUSTICE, COURT OF APPEAL

CA/A/869<sup>c</sup>/2019

MOHAMMED BABA IDRIS, JCA

I have had the benefit of reading in draft the lead judgment of my learned brother, **Peter Olabisi Ige, JCA**, just delivered. I agree with the reasoning and conclusion reached. I do not have anything useful to add. I abide by all the orders made therein.

A handwritten signature in black ink, appearing to read 'M. B. Idris', written over a horizontal line.

**MOHAMMED BABA IDRIS  
JUSTICE, COURT OF APPEAL**