IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON FRIDAY, THE 24TH DAY OF JULY, 2020

BEFORE THEIR LORDSHIPS:

STEPHEN JONAH ADAH	JUSTICE, COURT OF APPEAL
RIDWAN MAIWADA ABDULLAHI	JUSTICE, COURT OF APPEAL
ABUBAKAR SADIQ UMAR	JUSTICE, COURT OF APPEAL

APPEAL NO: CA/A/1033^{C}/2019

BETWEEN:

KARO IJIRE == APPELLANT

A N D

FEDERAL REPUBLIC OF NIGERIA == RESPONDENT

JUDGMENT
(DELIVERED BY: STEPHEN JONAH ADAH, JCA)

On the 23rd day of July, 2019; the appellant was arraigned before the High Court of the Federal Capital Territory, sitting at Nyanya, Abuja, on a Three Counts Charge bothering on the commission of the offences of inducement, cheating and impersonation, punishable under Sections 322 and 324 of Penal Code by the Respondent. The Charge is dated 15th July, 2019 but filed on the 16th day of July, 2019, while a Plea Bargain Agreement of the parties was filed on the 23rd July, 2019.

The charges are at pages 1 and 2 of the Record of Appeal transmitted to this court on 06/11/2019. The charges are hereunder reproduced as follows:

Count 1:

That you, KARO IJIRE, sometime in 2019 in Abuja within the jurisdiction of this Honourable Court fraudulently induced one Louise Freeman a citizen of United States of America to deliver the sum of $200 (Two Hundred United State Dollars) via iTunes cards to you and you thereby committed an offence contrary to Section 320 of the Penal Code Law, Cap 532 Laws of the Federation of Nigeria, 2004 and punishable under Section 322 of the same Law.

Count 2:

That you, KARO IJIRE, sometime in 2019 in Abuja within the jurisdiction of this Honourable Court fraudulently induced one Clarisa Hosina, a citizen of United States of America to deliver the sum of $1000 (One Thousand United State Dollars) via Western Union to you and you thereby committed an offence contrary to Section 320 of the Penal Code Law, Cap 532 Laws of the Federation of Nigeria, 2004 and punishable under Section 322 of the same Law.

Count 3:

That you, KARO IJIRE, sometime in 2019 in Abuja within the jurisdiction of this Honourable Court did cheat by personation when you presented yourself to be Richael Mula an Engineer residing in United States of America through your email address – dreamslovely@gmail.com with the intent to

induce one Clarisa Hosina to transfer $1000 (United States Dollars) via Western Union to you and you thereby committed an offence contrary to Section 321 of the Penal Code Law, Cap 532 of the Federation of Nigeria, 2004 and punishable under Section 324 of the same Law.

Dated this 15th Day of July, 2019.

Sgd.
JOSHUA SAIDI,
Legal and Prosecution Dept.,
Economic and Financial Crimes Commission
Plot 301/302 Research and Institute,
District, P.M.B. 166,
Jabi, Abuja.

The Plea Bargain Agreement is at pages 54 to 56 of the record of appeal. The Agreement is worded as follows:

PLEA BARGAIN AGREEMENT

This plea bargain 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 KARO IJIRE.

WHEREAS

1. Following surveillance carried out on intelligence report of cybercrime and internet fraud activities by the Economic and Financial Crimes Commission, one KARO IJIRE was arrested by the Commission.

2. Investigation carried out by operatives of the Commission revealed that KARO IJIRE falsely represented himself as Rachael Mula an engineer in United States of America and fraudulently induced Louise Freeman and Clarisa Hosina, Citizens of United States of America to deliver the sum of $1,000 (One

Thousand Dollars) and (Two Hundred Dollars) via iPunes cards and Western Union Money Transfer.

3. During the course of investigation by the Commission, Karo admitted the commission of the internet scam and agreed to forfeit the sum of $2,200 (Two Thousand Two Hundred Dollars) he benefited from the scam.

4. The Defendant through his counsel has applied to the Prosecution for plea bargain and the Prosecution after consultation with the investigation 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 Impersonation dated and filed on 16th July, 2019, 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 ₦300,000 to be paid to the Federal Government of Nigeria.

4. That the sum of $2,200 USD recovered from the Defendant during investigation shall be paid to the victims Louise Freeman and Clarisa Hosina by the Economic and Financial Crimes Commission through the American Embassy as restitution.

5. That the Defendant shall depose to an affidavit of undertaking to be of good behaviour before this Honourable Court.

IN WITNESS WHEREOF the parties have set their hands the day and year first written above."

Pursuant to the Plea Bargain Agreement, the Appellant on his arraignment on the 23rd July, 2019 pleaded guilty to the Three Count Charges. Consequently, the Respondent's counsel informed the court that the parties have filed a Plea Bargain Agreement and consequently urged the court to give effect to the Plea Bargain Agreement in convicting and sentencing the appellant.

The court, pursuant to the Appellant's plea of guilty and the Plea Bargain Agreement, convicted the Appellant as charged. The trial court rather than passing sentence on the Appellant as contained in the Plea Bargain Agreement, remanded the Appellant in prison custody. The trial court ultimately sentenced the appellant to 3 years imprisonment. The short ruling of the trial court on sentencing is at pages 60 to 62 of the record of appeal. The ruling of the trial court reads as follows:

RULING ON SENTENCE

The convict, pursuant to plea bargain agreement made on 19/07/2019 the plea of guilty to the three counts charge, was convicted on 23/7/19.

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 proceeds of crime, to wit: $2,200 USD. Same shall be paid to the victims as restitution.

The convict pleaded guilty to three count charges punishable under Section 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. PEOPELS 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 urge the court to tamper justice with mercy.

I have read the plea bargain agreement. Parties agreed on ridiculous terms of one-month imprisonment. Let me say that 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 and I must say that the appropriate law/act to charge the convict is the cybercrimes (protection and prohibition) 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 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 Nigerian 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 effect on the society and the nation as a whole. Therefore although the punishment prescribed by law....may be 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 many have become hypertensive or mentally unstable with no resources to attend to their health.

It is most appropriate that our prosecution agencies arraignment accused persons under the provisions 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 three counts charge.

Sgd.

HON. JUSTICE MUAWIYAH BABA IDRIS
Presiding Judge
29/7/19.

Dissatisfied with this decision, the appellant filed this appeal vide the notice of appeal dated 06/09/2019 but filed on 09/09/2019. The reliefs sought in this appeal are from the notice of appeal stated as follows:

RELIEFS SOUGHT FROM THE COURT OF APPEAL

i. An Order allowing the Appeal.

ii. An Order setting aside the judgment of the trial court, presided over by Hon. Justice Muawiayah Baba Idris sitting at Nyanya, Abuja Federal Capital Territory delivered on the 29/07/2019 CONVICTING the appellant for the commission of the offence of cheating contrary to Section 322 of the Penal Code.

iii. An Order of court setting aside the judgment of the trial court, presided over by Hon. Justice Muawiayah Baba Idris sitting at Nyanya, Abuja Federal Capital Territory delivered on the 29/07/2019 SENTENCING the appellant to three (3) years imprisonment without option of fine and the payment of the sum of $2,200 as restitution.

vi. An Order of Court discharging and acquitting the appellant.

The record of appeal was transmitted on 06/11/2019. The Appellant's Brief of Argument was filed on 10/12/2019, while the Respondent in response to the Appellant's brief filed its brief on 17/02/2020 but was also deemed properly filed and served on 24/04/2020.

The Appellant's Reply Brief was filed on 20/03/2020 but deemed properly filed on 27/04/2020.

The appellant distilled two issue for determination while the respondent also distilled two issues for determination.

Appellant's two issues are as follows:

1. **Whether the trial judge was right when he rejected the plea bargain agreement by the parties and sentenced the Appellant to 3 (three) years imprisonment.**

2. **Whether the trial judge did not deny the Appellant right to fair hearing when he sentenced the Defendant to maximum 3 (three) years imprisonment for the offence of cheating without giving him opportunity to present his case.**

Respondent's issues for determination are as follows:

1. **Whether the trial court was bound by the plea bargain entered into between the appellant and the respondent in sentencing him.**

2. **Whether the trial court exhibited any bias, lack of fair hearing in the trial of this case.**

On the 27th day of April, 2020, when the appeal came up for hearing, counsel to the Respondent, Mr. Sylvanus Tahir Esq., moved and adopted the Respondent's Preliminary Objection which is incorporated at pages 3 – 6 of the Respondent's Brief of Argument.

I shall first consider the Preliminary Objection of the Respondent and resolve it one way or the other before considering the appeal on its merit, if need be.

PRELIMINARY OBJECTION:

The Respondent raised three issues for determination on the preliminary objection viz:

(1) whether the two issues identified by the Appellant are emanating from the three grounds contained in the notice of appeal and argued together in his brief of argument are in competent.

(2) Whether the notice of appeal of the appellant is not competent.

(3) Whether having raised any allegation of fraud in the notice of appeal as required by Section 270(18) of the administration of criminal justice Act 2015, the entire appeal is not competent.

Learned counsel for the respondent in arguing this Preliminary Objection, urged the court to allow him argue the three issues together. He submitted that the issue raised for the determination of an appeal must emanate from a competent ground of appeal and where it does not emanate from a competent ground, the issue is incompetent and liable to be

struck out. He cited the cases of **Pere Roberto (Nig.) Ltd. v. Ani (2009) 13 NWLR (Pt. 1159) 522** and **Umoru v. State (1990)3 NWLR (Pt. 138) 363.**

Counsel argued that the Appellant in his notice of appeal filed on 9/9/19 formulated three grounds of appeal. And that the ground three of the notice of appeal is incompetent on the ground that:

> **(1) The ground is neither that of law nor fact or mixed law and fact**
>
> **(2) It is also not misdirection because a ground of appeal must reflect the record of appeal and not the imagination of counsel or appellant.**
>
> **(3) Bias cannot be a ground of appeal if it is not raised and established in the course of trial at the lower court.**

Counsel submitted that a competent ground/issue cannot be lumped together with an incompetent ground of appeal or issue, as doing so will amount to making the court sift the chaff from the grains. The Supreme Court reiterated this point in the case of **Barbus (Nig.) Ltd. & Anor v. Okafor Udeji (2018) LPELR 44501 at pages 6-8 A-D.** He cited the cases of **Ikpeazu v. Otti & ORS (2016) LPELR 40055** and **Korede v. Adedokun (2001) NWLR (Pt. 736) 483 @ 499.** He stated that this appeal originated from a plea bargain entered by the parties and the only window provided by the Administration of Criminal Justice

Act 2015 is where the appeal involves the issue of fraud which is not the case here. He relied on Section 270(18) & 270(10)(a).

He maintained that the trial court complied with the provisions of these sections substantially and the issue of fraud was not alleged in any grounds of the notice of appeal therefore the Appellant cannot benefit from this appeal.

Counsel urged your lordships to interpret the word SHALL in Section 270(18) ACJA to mean as Mandatory. He urged the court to uphold the preliminary objection and strike out the appeal in limine.

Resolution of the Preliminary Objection:

Let me say that this objection is not directed at the entire appeal. It is against one of the grounds of appeal. This objection would have been better by a Motion on Notice. This notwithstanding, I will look into the core of the objection.

The objection is principally on the issue of ground 3 of the grounds of appeal and consequently the issue raised therefrom. Ground 3 reads:

> **Ground No: 3:**
>
> **The learned trial Magistrate exhibited extreme bias, lack of fair hearing, intolerance and prejudice against the appellant during the pendency of the matter.**

Particulars of Error:

i. **The trial Judge exhibited so much irritation and annoyance towards the appellant and denied him fair hearing.**
ii. **The trial court completely ignored the plea bargain agreement and Section 270(11) & (15) of ACJA, 2015.**
iii. **The trial court did not allow or give the appellant the opportunity to defend his case but went ahead to convict and sentence him to three (3) years imprisonment without option of fine.**
iv. **Under Section 270(11) and (15) of ACJA, 2015, the trial court was supposed to aloe the appellant to defend himself notwithstanding the plea guilty since the court has jettisoned the plea bargain agreement.**

To begin with, the decision before us on appeal is not that of a Magistrate's Court. In fact, a decision of a Magistrate's Court cannot come before us in this Court. It does appear that reference to "the Learned Trial Magistrate" who was accused of exhibiting "extreme bias" cannot be the case before this court on appeal. By this fact, that ground cannot be said to be competent before us. This ground of appeal complaining about the learned trial Magistrate is strange and incompetent. That ground cannot be countenanced. It is hereby struck out. It follows therefore, that this appeal is left with grounds 1 and 2. These two grounds are capable of sustaining this appeal. The end result is that this objection succeeds in part. Since the remaining two grounds of appeal can sustain the appeal, the appeal will now be considered on merit.

Main Appeal:

The two issues of the appellant more represent the complaint of the appellant in this appeal. The two issues shall be effectively looked into to enhance the interest of justice in this appeal.

The parties argued the two issues together, both will also be taken together in considering this appeal.

Issues One and Two:

These issues are **whether the trial judge was right when he rejected the plea bargain agreement by the parties and sentenced the Appellant to 3 (three) years imprisonment; and Whether the trial judge did not deny the Appellant right to fair hearing when he sentenced the Defendant to maximum 3 (three) years imprisonment for the offence of cheating without giving him opportunity to present his case.**

Counsel for the Appellant while arguing the two issues together, submitted that where a trial court rejects a plea bargain agreement in a criminal case, the court cannot award a higher sentence without first giving the defendant opportunity to accept the sentence or reject same. Where the defendant rejects the higher sentence, the trial court has a duty to transfer the case file to another judge for proper trial. In which case no reference shall be made to the plea bargain filed in the previous court.

Counsel also submitted that sentencing a person under a plea bargain agreement is not dependant on the discretion of the court but strictly according to the law guiding the plea bargain. The conviction and sentencing of the Appellant is unconstitutional and violates Section 270(15) ACJA 2015.

Counsel maintained that there is nowhere in the record of appeal that shows that the trial court informed the appellant that the offence requires a higher sentence other than what was agreed upon by the parties. And that the trial court lacks the judicial discretion to abandon the provision of Section 270(15) ACJA 2015.

Furthermore, that the trial court sentence the appellant based on emotion and sentimental grounds without recourse to statutory and/or judicial authorities. (see pages 60-62 ROA).

Counsel further agued and submitted that the principle of fair hearing as set in the 1999 Constitution is fundamental in the judicial process or the administration of justice, that breach of it will vitiate or nullify the proceedings. Once an appellate court comes to the conclusion that there is breach of the principle of fair hearing, the proceedings are null and void ab initio. He cited the cases of **Ceekay Traders Ltd v. General Motors Co. Ltd (1992) 2 NWLR (Pt. 222) 132** and **University of Nigeria Teaching Hospital Management Board v. Nnoli (1994) 8 NWLR (Pt. 363) 376.** He maintained that the appellant was not

given adequate time and opportunity to defend himself and also relied on the provision of Section 36(6)(b) & (c) of the 1999 Constitution of the Federal Republic of Nigeria.

Counsel urged the court to resolve all the issues in favour of the appellant.

In response, learned counsel for the respondent argued on the two issues that the notice of appeal of the appellant in this case is targeted at the proceedings of 29/07/2019 and therefore the proceeding of 23/07/2019 is not part of the appeal. Counsel argued that the proceeding of 23/07/2019 is instructive in this appeal in view of the reliefs sought by the appellant in his Notice of Appeal.

Counsel therefore, submitted that there was no judgment delivered on 29/07/2019 but a sentence passed by the trial court on the appellant. That the judgment in this case was delivered on 23/07/2019 and same not being the subject of this appeal. He maintained that a finding of fact not appealed against is deemed admitted and established. That the appellant having not appealed against his conviction on 23/07/2019 is deemed to have admitted it and cannot seek the reliefs as contained in paragraph 4 of his notice of appeal. He reffered the court to the cases of **Commissioner for Finance Imo State v. Motors Ltd. (2018) LPELR 45075, p. 15 – 16** and **Awote v. Owounni (1986) 5 NWLR (Pt. 46) 94.**

It was further submitted that even where there is plea bargain agreement and same negates the interest of justice especially in sentencing, the trial court is not bound by such bargain. That the trial judge gave reason in exercising his discretion the way he did. He maintained that the trial court was right in imposing the terms of imprisonment other than the one contained in the plea bargain. He urged us to so hold.

On the issue of fair hearing, counsel for the respondent submitted that it is just the figment of the imagination of counsel to the appellant. That the appellant was always represented in court by his counsel and that the charge and the nature of the offences contained in the charge were explained to the appellant in detail and to his understanding before taking his plea of guilty. On the issues of sentiment and emotion as contained in paragraph 3.08 of the appellant's brief of argument. Counsel for the respondent contended that such issues are not born out from the record of appeal before this court and that an appeal can only be against what was decided by the lower court. That an appeal against a judgment on a matter not decided in the judgment is incompetent. He referred the court to the case of **Etiemone v. Apina (2019) LPELR 47258.**

Counsel urged the court to dismiss this appeal and uphold the judgment of the trial court.

Part of the argument of the respondent is that the appellant did not appeal against his conviction. This contention is with due respect not having any strand of reality and seriousness as the entire appeal is directed at the whole decision of the trial court. Conviction of the appellant is part of the decision of the trial court. Moreover, the content of ground 1 is suggestive of the appellant's grouse about his conviction and sentence inspite of the plea bargain agreement entered by the parties. It is therefore, excellently clear without controversy that the issue of the conviction of the appellant is part of the content of this appeal.

The contention of the appellant is that the trial court did not reckon with the plea bargain agreement entered into by the parties in spite of the fact that the plea bargain agreement of the parties was filed up in the case before the trial court. I had before this particular appeal carefully and critically taken wholesome view of the issue of plea bargain agreement in the cases of **Tunde Azeez Adeyemi v. FRN (unreported decision) in Appeal No: CA/A/874^{C}/2019, Favour Ebebienwe Ogagaoghene v. FRN (unreported) Appeal No: CA/A/872^{C}/2019** and **of Onajite Tsoan Ejovwo (unreported) Appeal No: CA/A/870^{C}/2019**. The decisions were all delivered on 18/05/2020. The position I took in these appeals is still the position I will adopt and apply in this appeal.

Plea Bargain is a creation of Section 270 of ACJA, 2015. This Section in subsections (1) to (4) thereof of the law 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 condition are present-
>
> (a) the evidence of the prosecution is insufficient to prove the offence charge beyond reasonable doubt;
>
> (b) where the defendant has agreed to return the proceeds of the crime or make restitution to the victim of 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 prosecution is of the view that the offer or acceptance of a plea bargain is in the interest of justice, the public interest 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 chare, 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 charge 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.

The law here set up adequate guidelines on how the Plea Bargain is to be pursued. Under this law, parties can enter into an agreement as to which charge to be pursued and which one should be waived.

In the case of **PML (Nig.) Ltd v. FRN (2018) 7 NWLR (Pt. 1619) 448,** the Supreme Court Per Augie, JSC, held that:

> Plea bargain boils down to a negotiation between an Accused and the Prosecution, in which the Accused agrees to plead "guilty to some crimes in return for reduction of the severity of the charges, dismissal of some of the charges, and the Prosecutor's willingness to recommend a particular sentence or other benefits to the accused – Wikipedia, uslegal.com and legal – dictionary.the freedictionary.com... Obviously, the essence of plea bargain is not just to conclude a trial. There must 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 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. The agreement to plead guilty is the essence of a plea bargain. The concept of plea bargain clearly operates in *personam*, so to say and not by privy or proxy. 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 a plea bargain to be in place between the Prosecution and an Accused relying on plea bargain.

From our law, the key and primary feature of a plea bargaining agreement are:

1. It must be a negotiation between an accused (defendant) and the Complainant (Prosecutor).
2. The accused (Defendant)/Appellant, agrees to plead guilty to the offence in exchange for some concession of the Prosecution on the sentencing.
3. A Plea bargain must be a deliberate and conscious act taken by the Prosecution and the Accused person.
4. The court before which the agreement is tendered must not be involved in the agreement of the parties.

5. **The court is to give consideration to the agreement as it is and where the court wants to operate outside it to give a heavier sentence to the accused/defendant, the court shall inform the accused person of that situation to allow the accused make up its mind as to whether to go on with his plea or withdraw it and back out of the plea bargaining agreement of the parties.**

It must be borne in mind that in our law sentencing is at the discretion of the court. Where an accused pleads guilty, he subjects himself for instant conviction except there are other developments which may be inclusive of plea bargaining agreement of the parties. In matter of exercise of discretion, the law requires that the discretion must be judiciously and judicially carried out having regards to the facts and circumstances of the case. Discretion cannot be at large neither can it be exercise in *vacuo*. It must be on facts guided by law, justice and common sense. See **Waziri v. Gumel (2012) 9 NWLR (Pt. 1304) 185; Emenike v. PDP (2012) 12 NWLR (Pt. 1315) 556.**

In the instant case, the parties in their plea bargain agreement contract as per paragraphs 2, 3, 4, and 5 as follows:

2. **That the Defendant shall plead guilty to the charge of Impersonation dated and filed on 16th July, 2019, 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 ₦300,000 to be paid to the Federal Government of Nigeria.

4. That the sum of $2,200 USD recovered from the Defendant during investigation shall be paid to the victims Louise Freeman and Clarisa Hosina by the Economic and Financial Crimes Commission through the American Embassy as restitution.

5. That the Defendant shall depose to an affidavit of undertaking to be of good behaviour before this Honourable Court.

At page 57 of the record of appeal, it is on record that the appellant pleaded guilty to the charge. It follows that the appellant had performed his own part of the bargain. The Respondent must therefore, perform its own bargain for the appellant to be sentenced to a term of Six months or ₦300,000 fine to be paid to the Federal Government. Then the appellant was to depose to an affidavit of undertaken to be of good behavior before the trial court.

The trial court was abreast of the terms of the Plea Bargain Agreement of the parties but sentenced the appellant who had pleaded guilty to the charge to a term of three (3) years imprisonment on the three counts. Sentencing no doubt is an exercise of the jurisdiction of the trial court but such an exercise must be judicious and judicially done. This therefore, involves law and facts mixed with fairness. Where both the prosecutor who initiated the prosecution and the accused person enter into

a bargain which requires the accused person to plead guilty to the charge in consideration of a certain term of sentence, the agreement will automatically bind the parties. The court also which hears the case must defer to their agreement except there is overriding interest of justice or Public Law and order. In **Olatubosun v. Texaco (Nig.) Plc, & Anor. (2012) LPELR – 7805 (SC),** Fabiyi, JSC, held that a judex must exercise his discretion not only judicially but judiciously as well. In doing so, he should be discrete and if need be, apply the sixth sense in a bid to facilitate room for the invocation of substantial justice principle. See further the cases of **University of Lagos v. Olaniyan (1985) 16 SS CC (Pt. 1) 98, 113**, and **Eronini v. Iheuko (1989) 2 NSCC 21 (Pt. 1) 503, 513**.

In Criminal matters, a person accused is presumed innocent until proved guilty in line with Section 36 (5). The person accused in consequence can choose to simply admit by pleading 'guilty' to the Charge or contest the charge by pleading 'not guilty' to the charge. When the plea is not guilty, the prosecution is duty bound to prove the charge beyond reasonable doubt before he can secure a conviction. Where the person accused decided to propose to the Prosecution that they should agree and allow a bargain with his plea and the Prosecution concur to the request, that agreement binds the parties and the trial court must ordinarily go by the agreement of the parties. If however, the learned judge exercises his

discretion to say I want to intervene in the agreement and punish the accused person with a heavier sentence, the law requires the judge to inform the accused person of the development to enable him exercise his right under Section 270 (11) (c) either to go along that line or refrain from the agreement earlier entered into by altering his plea. This is the import of Section 270 (11) of ACJA. This Section 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 heavier sentence than the sentence agreed upon, he shall inform the defendant of such heavier sentence he considers to be appropriate.**

In the instant case, the agreement of the parties is for the appellant to plead guilty to the offence as charged and then be given a sentence in line with the agreement of six-months imprisonment or an option of ₦300,000, fine by the trial court. Under Section 270 (11) of ACJA, the first option given to the trial court is to sentence the accused as agreed upon or if he (the

learned trial judge) is not satisfied with the agreed sentence he shall inform the accused of that decision. From the record before the court, the trial court did not comply with this provision of the law before slamming the appellant with a term of three years imprisonment. The sentence here is clearly outside the requirement of the law and it is therefore unlawful. That sentence cannot be sustained. It is hereby set aside.

Ordinarily, since the trial court failed to comply with Section 270(11) of ACJA, this Court would have sent this case back to the trial court for retrial but since the appellant has been imprisoned and has been in jail since 15/7/2019, to serve the sentence of three years, it is in the interest of justice to act under Section 15 of the Court of Appeal Act, to sentence the appellant as per the law and the Plea Bargain Agreement.

From the foregoing, the appeal is meritorious. It is hereby allowed.

The appellant is sentenced to a term of Six Months imprisonment with an option of a fine of ₦300,000= on each of the counts of the charge. Sentences to run concurrently. His term of imprisonment shall run from 15/07/2019, when he was sentenced and imprisoned.

STEPHEN JONAH ADAH
JUSTICE, COURT OF APPEAL

APPEARANCES:

Isaac Udoka Esq., for the Appellant.

Sylvanus Tahir Esq., with: Aisha Aliyu (Mrs.), for the Respondent.

APPEAL NO. CA/A/1033C/2019

RIDWAN MAIWADA ABDULLAHI, JCA

I read in draft the judgment just delivered by my learned brother, **Stephen Jonah Adah, JCA** and I am in agreement with my learned brother's reasoning and conclusion in the lead judgement.

RIDWAN MAIWADA ABDULLAHI
JUSTICE, COURT OF APPEAL.

APPEAL NO: CA/A/1033^{C}/2019
(ABUBAKAR SADIQ UMAR, JCA)

I have read in advance the judgment of my learned brother, **Stephen Jonah Adah, JCA**.

I entirely agree with his reasoning and conclusion therein, which I adopt as mine. I joined him in saying that this appeal is meritorious and is hereby allowed.

I abide by the consequential orders therein.

ABUBAKAR SADIQ UMAR
JUSTICE, COURT OF APPEAL