

IN THE HIGH COURT OF CROSS RIVER STATE OF NIGERIA  
IN THE CALABAR JUDICIAL DIVISION  
HOLDEN AT CALABAR  
BEFORE THIS LORDSHIP, HON. JUSTICE ELIAS O. ABUA,  
JUDGE  
THIS MONDAY 13<sup>TH</sup> DAY OF DECEMBER 2021

Suit No. HC/63<sup>C</sup>/2021

BETWEEN

THE FED. REP. OF NIGERIA.....COMPLAINANT

AND

PROF. BASSEY JAMES EJUE ..... DEFENDANT

## RULING

This ruling is based on the plea bargain agreement put before this court by the Prosecutor, Barrister J. O. Abolarin who represents the Economic and Financial Crimes Commission (EFCC) the Agency of Government that investigated and now, prosecutes this charge. Learned Counsel upon the defendant entering a plea of guilty on the one count information filed here on the 31<sup>st</sup> day of August 2021, which charges the defendant with the offence of '*spending funds for a particular service on another service*'

contrary to and punishable under Section 22(5) of The Corrupt Practices and Other Related Offences Act, 2000, moved this Court to convict the defendant in accordance with the plea bargain agreement entered into by the defendant with the investigating Officer, T. N. Ndifon. From the records of this case, I note there-from that there is a written application for consent to file information against the defendant, which is dated the 30<sup>th</sup> day of August 2021. There is a plea bargain agreement immediately following the application, executed by the defendant and the Investigating Officer, T. N. Ndifon, dated the same 30<sup>th</sup> day of August 2021. What this means is that the plea agreement was entered into by the defendant with the Investigator before the charge was filed or registered. There is no information made available here, which shows whether the defendant would have been charged for a more serious offence or that he would be pleading to mitigate sentence, or that he had refunded any part of the monies said to have been misapplied.

There is an affidavit of urgency deposed to by one Peter Idongesit, male, adult Christian, a Nigerian citizen and Operative of the Economic and Financial Crimes Commission of No. 3 Akparawa Crescent, Ewet Housing Estate, Uyo, Akwa Ibom State, relevant paragraphs of this affidavit are paragraphs 3, 4, 5(a) and 5(b). These paragraphs state:

- “3. That the Defendant was investigated on the offence of spending of funds allocated for a particular service on another service.**
- 4. That investigation into the allegations against the Defendant has been substantially completed, and a prima facie case has been made out against the Defendant.**
- 5. That I am informed by T. N. Ndifon Esq, of counsel in our Legal and Prosecution Department on 30<sup>th</sup> August 2021 about 9AM in the course of our weekly briefing which**

information I verily believe to be true as follows:

(a) That after perusing the case file, the facts of the case disclosed prima facie offence of spending of funds allocated for a particular service on another service without appropriate approval.

(b) That the Defendant has shown remorse and thereby applied for a plea bargain in order to not to waste the time of the Court and the prosecution.

(c) .....

Underlining mine for emphasis

What I glean from these paragraphs of the affidavit is that investigation into the allegations leveled against the defendant bordered on spending funds meant for a particular service of the Federal College of Education, Obudu, on another service of that Institution, without requisite approval. But I note from the proofs of evidence filed here, that the petition that led to the investigation of the defendant never bordered on misapplication of funds, but outright stealing or looting of funds which is what the Panel set up by the Governing Council of the College found and made consequential orders. Thus, the plea bargain agreement has left out so much that it is bare and bereft of substance.

There is no information in the plea agreement, on what service the funds said to have been 'misapplied' were in fact, applied. The charge against the defendant is one count which alleges that the defendant without appropriate approval, spent money meant for an unknown and unnamed service, on another service. There is nowhere stated in the plea agreement, the proper service for which the funds were made available for nor what service of the College the funds were eventually utilized for. I have not seen

evidence of the fact that the prosecutor has in entering this plea bargain agreement, did comply with the provisions of Section 270 (2), (3) and (6) of the Administration of Criminal Justice Act, 2015 which provisions are in *pari materia* with section 267 (2), (3) and (6) of the Administration of Criminal Justice Law of Cross Rive State, 2016. These provisions state:

Section 270 (2)

- “(2) The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during 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 made 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 prosecution 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.**
- (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.”

### **Underlining mine**

These provisions provide the essential legal principles that would properly ground the plea agreement made by the parties as provided for by the Law. A plea bargain is never intended to cover up criminal acts. Relevant facts must all be brought out to the open for the plea bargain agreement to fall within acceptable limits and confines of the law. There must be evidence in the plea agreement which shows that the victim of the offence had been carried along in the negotiation and acceptance of the plea bargain, which I do not see here.

The defendant who offers a plea bargain to the prosecution must also offer something by way of forfeiture of assets, monies, et al which are proceeds of the crime for the plea to be acceptable to the Court. There must be evidence of remorse on the part of the defendant which is expressed by his willingness to forgo some portion of the proceeds of his misdeeds, for the plea to be grounded and acceptable to the Court. Here, there is no offer of anything said to have been made by the defendant only that he feels remorse and would not do so in the future. That certainly, is not enough to ground this plea in the circumstance

Speaking on the principles and the nature of plea bargain, the Court of Appeal, Lagos Division in the case of **Nwude Vs. FRN & Ors. (2015) LPELR-25858-CA** held per Nimpar JCA @ Pp. 62-65 paras A-B, thus:

**"In fact, it is clear from the facts of the case that the accused had bargained with the prosecutor for a lighter sentence in return for a forfeiture of some of his properties. This is popularly known in legal parlance as plea bargain. Plea bargain is an arrangement in a criminal case where the suspect**

pleads guilty to a charge or a lesser charge against him or her. The BLACK'S LAW DICTIONARY (7TH EDTN) gives the definition of plea bargain as: "A negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor usually, a more lenient sentence or a dismissal of the charges." In exchange for this plea, the prosecutor may decide to drop the charge, reduce it, or recommend that the trial judge enter a sentence that is acceptable to both parties. This arrangement has been widely used by the Economic and Financial Crimes Commission (EFCC) to avail suspects. In an attempt to entrench this arrangement in our criminal system, the Courts have also taken judicial notice of Sections 75 and 76 of the Administration of Criminal Justice Law of Lagos, 2007 which provides for plea bargain and sentence agreements. It is important to state that the lack of express legal provision is not necessarily an indication that plea bargaining is alien to the Nigerian criminal justice system. In the case of PML (NIGERIA) LIMITED V. FEDERAL REPUBLIC OF NIGERIA (2014) LPELR - 22767 (CA) the Court held as follows: "The main purpose of criminal trial is to ensure that a person, who has chosen to break any aspect of the criminal law, is not left to go scot-free and for this reason the prosecution has to establish the guilt of an accused person beyond reasonable doubt to pave the way for his punishment by law. The concept of plea bargain has in no way derogated from the purpose or objective of criminal prosecution given the fact that before an accused

can benefit from the arrangement the accused in question must plead guilty to some form of offence and of course be convicted for what he has pleaded guilty to." Essentially, plea arrangements can be achieved in Nigeria by a combination of prosecutorial discretion, defence options and judicial discretion. The ambit of the sentence to be imposed by the Court after a plea bargain is dependent on what has been agreed on by the parties. In other words, the Judge is to pronounce a sentence based on what has been agreed by the parties during the bargain. Can an accused therefore go through a plea bargain and come out without dropping something on the table? I think not. In this instant case, the Appellant had willingly approached the Respondent and had agreed to forfeit his properties in exchange for pleading guilty to lesser charges. The contention that the punishment of the accused must be confined to the Statement of the offence as contained in the count is not applicable here since he had willingly entered into an agreement with the Respondent to forfeit his properties. He cannot now go back on what he has willingly agreed to. He cannot benefit from his crimes ..."

It follows from the foregoing that for the plea bargain agreement to be valid, there must be some concession flowing from the defendant being a proceed of the crime he willingly relinquishes, for him to take advantage of the plea. I have not seen any concession made by the defendant in the document flaunted before this Court as plea bargain agreement. It contains nothing of substance except that the defendant offered the plea and is ready to plead guilty. This mans that he keeps whatever proceeds

of the crime that was committed since there is no evidence of what the funds were used for, placed before this Court.

From the charge it is stated that the money so spent, in the sum of NGN125, 000, 000. 00 (One Hundred and Twenty-Five Million Naira) only, was funds meant for the *Federal College of Education, Obudu Employee Contributory Pension Scheme and the National Health Insurance Scheme*, captured on the Federal Government Integrated Financial Management and Information System (GIFMIS) platform and domiciled in the Central bank of Nigeria. What this means in my humble view, is that this money is the Federal College of Education, Obudu, employees' contributions to both the Contributory Pension Scheme and the National Health Insurance Scheme, being schemes the Federal Government has set up for its employees after service life. It is the monies of the employees of the Federal College of Education, Obudu, contributed by them for their welfare both during service life and after. It is not Government money to be used by anyone as he likes, since that is the order of the day, these days!

The consent of these victims ought to have been taken into account by the plea bargain agreement to be entered into by the defendant with the prosecutor. The victims of this offence are the staffs of the College who have made the contributions to these two schemes. It therefore means that their consent ought to have been obtained before this agreement is entered into by the defendant and the investigating Officer as stipulated by the law. This agreement does not contain any clause that states the restitution made by the defendant who has pleaded guilty to the offence charged, therefore, there is nothing in it for the victims of the crime conceded to. That fact situation too this Court, voids the plea bargain agreement and renders it non-starter.

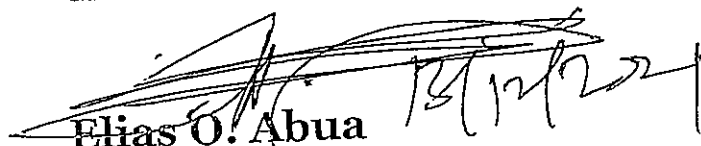
It is curious and not easily understood how it is that the plea bargain agreement does not state any particular service or services that the funds were applied to nor state what restitution that has been made. I am therefore, not satisfied with the



contents of this plea bargain agreement and would reject same as it does not accord with the law and offends against public policy.

**Orders:**

Plea bargain agreement of 31<sup>st</sup> August 2021 hereby rejected, and the defendant would take his plea afresh, accordingly.



**Elias O. Abua**  
**Hon. Judge**  
**13<sup>th</sup> December 2021**

Defendant present in Court.

**J. O. Abolarin** for the Prosecution