PLEA BARGAIN ON THE PROSECUTION OF CORRUPTION CASES UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

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Abstract

Nigeria understandably opted to incorporate plea bargain into its criminal justice administration via Administration of Criminal Justice Act, 2015 with a view of saving time and resources associated with the long and hectic criminal trial in the country. However the introduction and application of the concept is not without challenges. The paper using doctrinal research methodology examined the procedure for the application of plea bargain on corruption matters under the Administration of Criminal Justice Act, 2015 and found that, the Act provides insufficient procedural guidelines and they will not assist the court in the application of the concept, particularly when it comes to sentencing, and also the timing for the parties to enter into plea bargain agreement under the new Act is provided in restrictive manner. The paper recommended that ACJA, 2015 be amended by expanding on the procedural guidelines and any provision that would defect the objective of speeding trial or eliminate

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corruption in the process of the application of plea bargain.

Keywords: Plea Bargain, Corruption, Offence Compounding and Prosecution

Introduction

Nigeria's major social and economic problems were caused by the impact of corruption in Nigeria.[1]The scourge of corruption seems to have defied solution[2] including legal ones, this is because of the fact that the practice of adversarial system of adjudication in the administration of justice encompassed legal technicalities which lead to delays in dispensation of criminal justice and therefore became a herculean task for the prosecution to secure conviction of the accused person. To ameliorate the problem of delay tactics in the criminal justice administration, Nigeria introduce Plea bargain in the Administration of Criminal Justice Act, 2015[3].But notwithstanding the introduction of the concept, the problem still exists in the criminal justice administration. This study examines the provision of ACJA on the application of plea bargain in corruption matters in Nigeria.

Conceptual Clarification

Plea Bargain usually takes a form of compromise between the parties concerned that is prosecution and defence, whereby the

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[1] Mudasiru, O.S., 'Democracy, Plea Bargaining and the Politics of Anti-corruption Campaign in Nigeria' (1999-2008) (2015) 9 *African Journal of Political science and International Relations* 336.

[2] Akor, L.Y., 'Plea Bargain and Anti-Corruption Campaign in Nigeria' (2014) 3 no. 4 *Global Journal of Interdisciplinary Social Sciences* 116.

[3] Eze, C.T., and Amaka, E.G. 'A Critical Appraisal of the Concept of Plea Bargaining in Criminal Justice Delivery in Nigeria' (2015) 3 no.4 *Global Journal of Politics and Law Research European Centre for Research Training and Development*, UK 32.

defendant relinquishes the right to go to trial, while the prosecutor surrenders the right to seek the suppose sentence against the criminal defendant.[4] For example, where the criminal defendant commit offence of homicide which has the punishment for death, the prosecutor will plea bargain with the criminal defendant to plead guilty on the offence of manslaughter which has punishment of life imprisonment, so as to avoid the hurdle of going into full trial and at the same time achieving the conviction of the accused.

Application of Plea Bargain in Selected Jurisdictions

Plea bargain has been used by the advanced capitalist economies in the world for resolution of criminal cases.[5] For examples, USA at the beginning allow for application of the concept on limited offences like property crimes and other offences that do not attract capital punishment. But now, Plea bargaining in the U.S. may take place with regard to any crime, including the most serious crimes such as homicide. Plea bargain in the United States is a significant part of the criminal justice system as the concept was in used in the US before 19 century; and vast majority of criminal cases are settled by plea bargain than by a jury trial, therefore it apply to all criminal cases including homicide cases. The Federal Centenary guidelines are applied in relation to Federal Offences; these guidelines were made to have uniform standard in the Federal Courts for the adoption of plea bargain in criminal proceedings. Under these guidelines, plea agreement consists of an ordinary recommendation to the court with respect to the defendant's plea of

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[4] Oguche, S. 'Development of Plea Bargaining in the Administration of Criminal Justice in Nigeria: a Revolution, Vaccination against Punishment or Mere Expediency?' (2011) 1 no. 1 *NIALS Journal of Law and Development* 49 <http://nails-nigeria.org/pub/oguche %20samuel.pdf> accessed 5 Feb 2016.

[5] *Ibid* 33.

guilt, which is not binding on the court.[6] Under this agreement, the prosecutor recommends to the court boasted on a plea agreement between him and defendant that a lenient sentence be handed down on the defendant in exchange for the defendant's plea of guilty. The court may then impose the sentence or even a maximum sentence despite the recommendation from the prosecutor; this is because the agreement is submitted subject to the acceptance or refusal by the court. Once the court accepts the agreement, it is bounded to sentence in line with the agreement. However, where the court disapproves the agreement, the defendant may withdraw his guilty plea were upon a full trial is ordered.[7] A criminal defendant who withdraws his guilty plea risk a more severe punishment if he is found guilty of the charge; the case of *Alabama v. Smith* illustrates this fact.

In India, the statute[8] introduced the concept into the criminal justice system, but with limitation in its application on offences relating to socio-economic crimes.[9] The plea bargaining in India are only allow in respect of offences that are punishable by imprisonment below seven years, or if the accused has been previously convicted of a similar offence by any court, then will not be entitle to plea bargain application.[10] Similarly, application of plea bargaining in India is excluded in respect of property offences in the nature of socio-economic crimes and offences against a

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[6] Eze, and Amaka, n. 3, p.33.
[7] *Ibid* p. 34.
[8] Criminal Law (Amendment) Act, 2005 (Act of 2006), s RHXX 1(a).
[9] Santhy, K.V.K. 'Plea Bargaining in US and India Criminal Law Confession for Concessions' (2013) 7 no.1 *NALSAR Law Review*, Hyderabad 92.
[10] Section 265A chapter XXIA Criminal Law (Amendment) Act, 2005 (Act 2 of 2006).

woman or a child below 14 years of age.[11] Unlike the American system of plea bargaining which is initiated by the prosecutor, a person accused of an offence is the person expected to file an application for plea bargain in the court and such application will contain a brief description of the case and shall be accompanied by an affidavit sworn by the accused person stating voluntariness of preferring the application and that the accused has not previously been convicted by a court in respect of the same offence.[12] The court after receiving the accused person's application for plea bargain will issue notice to prosecutor to the complainant to appear before the court on a fixed date and thereafter, the court will examine the accused person in camera to ascertain the voluntariness of the filling of the application by the accused person and if the court satisfied itself of the voluntariness of the application of the accused person, it will then provide time for the parties concerned to work out a mutually satisfactory disposition of the case which may include giving compensation to the victim by the accused person.[13]

Nigeria, like her peers, put in place plea bargain by allowing for compounding of offences which in reality is similar with the concept of plea bargain.[14]

Administration of Criminal Justice Act, 2015 on Plea Bargain

The main purpose of the Administration of Criminal Justice Act, 2015 is the promotion of efficient management of criminal justice

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[11] Eze, and Amaka, n.3.

[12] Section 265B (1)(2) Chapter XXIA Criminal Law (Amendment) Act, 2005 (Act 2 of 2006.

[13] Oguche, n.4, p.78-79.

[14] Economic and Financial Crimes Commission (Establishment) Act, 2004, s 14(2), see also Criminal Procedure Act, LFN 2004, s 180(1).

institution and speedy dispensation of justice, protecting the society from crime, and protecting the right and interest of the suspect, defendant, and the victim.[15] The Act also pivots the criminal justice system from punishment as its objects to restorative justice which pays attention to the needs of the victim, defendant, other vulnerable persons and society.[16] In order to ensure speedy trial, the Act provides in section 306 that application for stay of proceedings shall no longer be heard until judgement and shall not operates to stall the continuation of trial. This is a revolutionary move that is unprecedented given the delays occasioned to the trial process by interlocutory applications to stay proceedings pending appeal on preliminary matters even when the substantive issues are yet to be tried on the merits.[17] This provision also confirms the constitutional right for speedy trial of an accused person.[18] The Act also requires a suspect to be taken to court as required by law or otherwise be released conditionally or unconditionally; which means that the unnecessary detention of a suspect in a police cell without being taken to court to delay prosecution of a case is taking care of by the Act.[19] In order to check the prolong pre-trial detention of suspect by the police or other law enforcement agencies, the Act provides that the process of recording personal data of a suspect shall be concluded within a reasonable time, but not exceed 48 hours.[20]

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15 Administration of Criminal Justice Act, (ACJA) 2015, s 1(1).

16 Ogundare, O.C. 'Analyzing the Provision for Plea Bargaining under the Administration of Criminal Justice Act, 2015 and its likely impact on the Trial of Corruption and other cases' A paper presented at Annual General Conference of NBA at International Conference centre, Abuja, 24th August, 2015, p. 9.

17 Shittu, W. 'What's wrong with Administration of Criminal Justice Act?'<http://thenationonline.net> accessed 3 Feb., 2016.

18 Constitution of the Federal Republic of Nigeria 1999 (as amended), S 36(45).

19 Administration of Criminal Justice Act, 2015, s 8(3).

20 *Ibid,* s 15(2).

Also section 16 of the Act requires for the establishment of a Police Central Criminal Record Registry which shall receive criminal records from all state police command, this will ensure vital records and information in aid of investigation, prosecution and adjudication are available to speed up the trial process in the criminal matters. The Act also introduced monitoring committee called Administration of Criminal Justice Monitoring Committee which has right of access to all the records of any of the organs in the administration of justice sector in order to ensure criminal matters are speedily dealt with, congestions of criminal cases in courts is drastically reduced, congestion in prisons is reduced to the barest minimum, persons awaiting trial are not detained in prison custody.[21] The Act also requires the court in determining sentence, to have the following objectives in mind such as prevention, restraint, rehabilitation, deterrence, retribution, restitution and education of the public.[22] All these provisions are meant to ensure the achievement of the objectives of the Act on restorative justice and speedy trial of criminal cases in Nigeria criminal justice. One clear objective that the ACJA, 2015 seeks to achieve is access to justice. The position is summarized this way;

> As a democratic country, we have a duty to ensure that people, both rich and poor can easily use the institutions and processes of law to resolve their disputes. The enjoyment of legal rights ought not to be the privilege of the rich. Access to justice requires that people should be able to use the law or the courts with or without the intervention of lawyers for less complicated matters. We will therefore serious thoughts to the simplification of

[21] *Ibid*, s 469 and 470.
[22] *Ibid*, s 401 and 416.

> court proceedings and the law itself and also encourage the use of alternative dispute resolution mechanisms. Indeed, the use of alternative dispute resolution mechanisms is closer to the African method of resolving disputes than the imported system of adversarial adjudication.[23]

The Administration of Criminal Justice Act 2015 was adopted by about ten states in the federation among which are Lagos, Anambra, Ekiti, Oyo, Rivers, Enugu, Kaduna, and Delta.[24] The above objects are what underpin the provision of plea bargaining under section 270 of the Act. The prosecutor may receive and consider a plea bargain from a defendant charged with an offence directly or on his behalf or offer a plea to a defendant charged with an offence.[25] This provision provides that plea bargain under the Act is an agreement between two parties, the prosecution and the criminal defendant. The prosecutor may enter into plea bargaining with the defendant, during or after presentation of the evidence of the prosecution, but before that of the defence, subject to the following conditions being 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 representatives; or
> (c) Where the defendant, in a case of conspiracy, has fully cooperated with the investigation and

[23] Shittu, n.17, p.14.
[24] Daily trust newspaper <www.dailytrust.com.ng> accessed 29 Feb., 2017.
[25] Administration of Criminal Justice Act, 2015, s 270(1)(a)(b).

> prosecution of the crime by providing relevant information for the successful prosecution of other offenders.[26]

It is submitted that there is wrong timing under this provision on entering into the plea bargain agreement by the prosecution against the criminal defendant. Under provision for plea bargain in the Act, 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 needs to prevent abuse of legal process, he may offer or accept the plea bargain.[27] Here the Act provides factors to be considered by the prosecution in determining whether entering into plea bargain in a particular case is of interest of justice, public interest, public policy and the needs to prevent abuse of legal process.[28] Before the plea to the charge, an agreement may be enter by the prosecutor with the defence in respect of terms of the plea bargain which may include the sentence recommended within the appropriate range of punishment stipulated for the offence or plea of guilty to the offence or lesser offence of which may be convicted on the charge; and an appropriate sentence to be imposed by the court on the offence pleaded guilty upon by the defendant.[29] In order to guide the court on the sentence to be imposed on any offence where parties entered into plea bargain agreement, there is need for sentencing guidelines in the new Act as obtained in other jurisdictions like USA and India. To ensure transparency in the negotiation, the Act requires the prosecutor to enter into an

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[26] *Ibid*, s 270(2).
[27] *Ibid*, s 270(3).
[28] *Ibid*, s 270(5)(b)(i-ix).
[29] *Ibid*, s 270(4)(a)(b).

agreement with defence as contemplated in sub-sec. (3) of section 270 after the following:

(a) After consulting with the police responsible for the investigation of the case and the victim or his representatives, and

(b) With due regard to the nature of and circumstances relating to the offence, the defendant and public interest.[30]

Similarly, sub-sec.(5)(b)(i-ix) requires the prosecution to weigh factors, like the defendant's willingness to cooperate in the investigation, defendant's history with respect to criminal activity, the desirability of prompt and certain disposition of case, likelihood of obtaining conviction at trial and the probable effect on witnesses, the probable sentence if the defendant is convicted, the need to avoid delay in the disposition of other cases pending, the expense of trial and appeal and the defendant's willingness to make restitution or pay compensation to the victim. All this is for the prosecution to determine whether it is in the public interest to enter into plea bargain with the criminal defendant.[31] It is submitted that the requirement for consultation of the investigating police officer by the prosecution before entering into plea bargain agreement will cause unnecessary delay thereby defeating the set objective of the concept of plea bargain and considering the fact that the prosecutor can get relevant information from the case file and the victim with respect to the offence. The Act requires the prosecution to afford the victim or his representative the opportunity to make representation regarding:

(a) the content of the agreement; and

[30] *Ibid*, s 270(5).
[31] *Ibid*, s 270(5)(b).

(b) the inclusion in the agreement order.[32]

One may see that under this provision, the law incorporates the concept of restorative justice into plea bargain i.e to say justice to the state, justice to the accused, justice to the victim of the crime and justice to the community.[33] Such agreement between the parties before plea to the charge shall be reduced to writing and shall:

(a) State that, before conclusion of the agreement, the defendant has been informed:
    (i) That he has a right to remain silent
    (ii) Of the consequences of not remaining silent, and
    (iii) That he is not obliged to make any confession or admission that could be used in evidence against him.
(b) State fully, the terms of the agreement and any admission made;
(c) Be signed by the prosecutor, the defendant, the legal practitioner and the interpreter, as the case may be; and
(d) A copy of the agreement forwarded to the Attorney-General of the federation.[34]

All these mandatory requirement of the Act on the process of plea bargain application in court were aimed at ensuring transparency in the agreement process by the prosecutor, defendant, victim and the society at large.[35] Furthermore, the Act prohibits the judge or magistrate before whom the criminal proceedings are pending from participation in the discussion of the plea bargain agreement

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[32] *Ibid*, s 270(6).
[33] Agaba, J.A., 'Practical Approach to Criminal litigation in Nigeria, (3rd edn., Bloom Legal Temple 2015) 640.
[34] Administration of Criminal Justice Act, 2015, s 270(7a-d).
[35] Agaba *supra*, p. 641.

between the prosecution and the defendant.[36] This further clarifies the fact that similar to what is obtainable under the compounding of offences under the EFCC Act, the plea bargain agreement under the new Act is purely between the prosecution and criminal defendant. The role of prosecutor in designing and finalizing plea bargaining is crucial mainly in order to ensure and guarantee the impartiality in the process that is why judges are prohibited from direct participation in negotiations of the parties.[37] Where a plea agreement is reached by the prosecution and the defendant, the prosecutor shall inform the court and the presiding judge or magistrate shall then inquire the defendant to confirm the correctness of the agreement. The court must ascertain whether the defendant admits the allegation in the charge which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may where-

(a) 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, or

(b) The court for any reason is of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement are 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 (7) of this section, shall record a plea of not guilty in respect of such charge and order that the trial proceed.[38]

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36 *Supra* S.270(8).

37 Shittu, K.W., 'The Prosecutor Role in Plea Bargaining', A paper presented at Nigerian Institute of Advanced Legal Studies roundtable on conviction to compromise the plea bargain option, held at the old court room, Supreme court complex, Abuja 19th April, 2012, 12.

38 Administration of Criminal Justice Act, 2015, s 270(9-10).

Even though the judge or magistrate shall not participate in the plea bargain agreement process by the parties, the judge must ascertained the correctness and genuineness of the information contained in the agreement from the defendant before taking further action. This is a reflection of the power of court to convict based on the accused person's plea of guilty under the Criminal Procedure Act and Criminal Procedure Code.[39] The court is permitted to look at the sentence recommended under the plea agreement and decide whether or not to impose same, or impose lesser sentence than the one agreed upon in the agreement or inform the defendant about the heavier sentence which it consider to be the appropriate.[40] Here also to guide the court on whether it is desirable to impose sentence recommended by the parties in the agreement, there is need for sentencing guidelines to avoid abuse by the court. Similarly, where the defendant has been informed of the heavier sentence as contemplated above, the defendant may:

(a) Abide by his plea of guilty as agreed upon and agree that, subject to the defendant's right to lead evidence and to present argument relevant to sentencing, the presiding judge or magistrate proceed with the sentencing; or
(b) Withdraw from his plea agreement, in which event the trial shall proceeds de novo before another presiding judge or magistrate, as the case may be.[41]

Here, the right of the defendant in the criminal trial remains unfettered in the plea bargain arrangement from beginning to the point of sentence; as the defendant can change his plea by

[39] Agaba, n.33, pp. 641-642.
[40] *Supra*,S.270(11)(a-c).
[41] *Ibid*, S 270(15) (a-b).

withdrawing from the plea bargain agreement even where he has been convicted based on his plea and the court can countenance that withdrawal of the defendant, notwithstanding the fact that the plea bargain agreement must be written and signed by the parties.[42] 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 statement 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.[43]

The court 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. The prosecutor shall take reasonable steps to ensure that any money, asset or property agreed to be forfeited by the offender under a plea bargain are transferred to the victim, his representative or other person lawfully entitled to it.[44] Any obstruction or impediment of transfer of any money, asset or property is an offence and is liable on conviction to imprisonment for 7 years without an option of fine.[45] The judgement of the court contemplated under subsection 10(a) of section 270 shall be final and no appeal shall lie in any court against such judgement except where fraud is alleged.[46] A person charged, convicted and sentenced under section 270, shall not be

[42] Agaba, n. 33, Pp.642-643.
[43] *Supra*,S.270(16)(a-c).
[44] *Ibid*, S.270(12-13)
[45] *Ibid*, s 270(14)
[46] *Ibid*, s 270(18)

charged or tried again on the same facts for greater offence earlier charged to which he had pleaded to a lesser offence.[47] This means that double jeopardy is guarded against in the plea bargain arrangement under the new Act and the defendant, having tried and convicted on lesser offence cannot be charged on the same facts on greater offence.[48]

National Policy on Prosecution 2016

In order to have efficient and effective crime prosecution in Nigeria, a policy on prosecution 2016 is provided and is a review of the 2014 policy, which is the code of conduct and guidelines for prosecutors in Nigeria. The policy is essential in providing consistent, uniform and credible framework for improving cooperation, enhancing expertise and capacity of prosecutors across the country. The policy requires the prosecutor in engaging in plea bargain or charge bargain, to adhere to the provisions of the law and any other guidelines paying attention to the interest of the victim of the crime, interest of the public and ends of justice. The guidelines provide requirement for prosecutor to enter plea bargain agreement as follows:

Prior knowledge and approval of the Attorney General shall be obtained before entering into plea bargain agreement; views of the investigator and the victim may be sought at the outset and before any formal communication is made to the defendant and such views must be recorded in the file; any agreement made shall be subject to Attorney General's approval and where the defendant indicates readiness to plead guilty, the prosecutor may accept where:

[47]*Ibid*, s 270(17)
[48]Ogundare, n. 16, p. 11

a) The alternative charge reflects the essential criminality of the conduct and the plea provides adequate scope for sentencing,
b) Need to obtain reliable and material testimony from accomplice as prosecution witness and cannot be obtained in any way,
c) Insufficiency of the available evidence with prosecution,
d) Saving of cost and time weighted against the likely outcome of the matter if it proceeded to trial is substantial,
e) It will save a witness from testifying and the victim not interested to proceed.[49]

The guidelines finally provide that whatever agreement entered into by the prosecutor must obtain approval of the Attorney General before adopting same in court. It is observed that all these provision on seeking approval of the Attorney General before going to plea bargain agreement will defeat the purpose upon which plea bargain is provided in a criminal trial which is saving of cost and time as well as decongesting the cause list of court.

Application of Plea Bargain in Corruption Cases in Nigeria

Prior to provision of plea bargain under Administration of Criminal Justice Act, 2015, there was provision for compounding of offences under the Economic and Financial Crimes Commission (Establishment) Act, 2004[50] which allows the commission (EFCC) to compound offences on economic and financial malpractices. It is

[49] National Policy on Prosecution 2016 <www.fmoj.gov.ng> accessed 20 December 2017.

[50] EFCC (Establishment) Act, 2004,S 14(2) the commission may compound offences under the Act by accepting such sum of money as it thinks fit.

argued that the section of the EFCC Act on compounding of offences is in a form of charge bargain which is one of the plea bargain option even though limited in scope and suffers from the inadequacy of providing parameters and guidelines for its adoption in particular case leading to the possibility of abuse.[51] Plea bargain lacks social justice content, as it has been noted by Transparency international, the trial of the former Governors who were alleged to have siphoned billions of public funds have been reduced to a playboy affair.[52] A special 'rule of law' has been contrived in their favour which may result in their escaping justice. This is because those that visited people with underdevelopment through corruption are being made the receivers of lighter punishment for their evil deed.[53] Justice Kayode Eso, (as he then was) said, in an interview, of plea bargain in Nigeria thus:

> They bargain with the judge, bargain with the accused person, he returns half of the money, and then they give him some hairy-fairy punishment- go and serve three months in prison and the three months, will of course, be in the hospital. This is an encouragement for other governors to steal when they come into office……..look at the issue of Igbinedion in Edo State who was alleged to have stolen billons of naira…..they asked him to plea bargain, there and then he was fined three million

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51 Shittu, K.W., 'The Prosecutors Role in Plea Bargaining', A paper presented at the Nigerian Institute of Advanced Legal Studies roundtable on conviction to compromise the plea bargain option, held at old court room, supreme court complex, Abuja, 19th April, 2012.

52 Ogunode, S.A., 'Criminal Justice System in Nigeria: for the rich or the poor?', (2015) 4 (01), *Humanities and Social Sciences Review* 36.

53 *Ibid* 37.

> naira which, he picked out of his purse and paid there.[54]

A. Also Yakubu Yusuf is one of seven persons standing trial for their involvement in the appropriation of fund totalling N32.8bn meant for police pension scheme. He was convicted by the High Court, Abuja presided over by Justice Abubakar Talba where he was sentenced to two years imprisonment or a fine ofN750,000.00 that being the maximum punishment provided for in section 309 of the Penal Code under which he was charged.[55] In the same line of argument, the former Chief Justice of Nigeria, Justice Dahiru Musdapher, in his own words contends that:

> When I described the concept as of "dubious origin", I was not referring to the original 'raison d'être' or the judicial motive behind its conception way back either in the United States or England in the early 19th century, I was referring to the sneaky motive, if not, behind its introduction into our legal system, then evidently in its fraudulent application; I have said that our wavering disposition on the ethical standard jeopardizes our peace, security and progress. And it is the reason that I have chosen this occasion to speak, with all sense of solemnity, on a matter that has continued to eat away the modest gains that we seem to be making in reforming both the infrastructure and the overall judicial template of the Nigerian Judiciary.[56]

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[54] Ogunye, J., 'In Defense of Plea Bargaining' <www.premiumtimesng.com> accessed 26 January, 2017.

[55] Ogunode,n.52, p. 37.

[56] *Ibid* 34.

B. Notwithstanding the limited option of plea bargaining provided for in the EFCC Act, the commission (EFCC) compounded many offences charged against high profile persons in Nigeria. For instance, *FRN v. Mrs. Cecillia Ibru*,[57] EFCC arraigned the accused person on a 25-court charge, all bordering on corrupt practices in office. It was alleged that Ibru granted a credit facility in the sum of 20 million US dollars to waves project limited which sum was above her credit approval limits as laid down by the bank. Also, she was accused of failing to take reasonable steps to ensure the correctness of Oceanic Bank monthly bank return to the Central Bank of Nigeria (CBN) between October 2008 and May 2009. Ibru was also accused of approving the granting of a credit facility in the sum of N2 million by the bank to Petosan farms limited without adequate security as laid down by the regulations of Oceanic bank, thereby committed an offence punishable under section 15 Failed Bank and Financial Malpractice in Bank Act. Counsel to the prosecution in his submission informed the court that the commission had reached an agreement with Ibru. He further disclosed that the formal agreement had been filed before the court. The charge was reduced to three counts charge of alleged abuse of office and mismanagement of depositor's funds levelled against her by the EFCC.[58] The court (Federal High Court, Lagos) sentenced Mrs Ibru to six months imprisonment on all the three courts and ordered that she forfeit properties and assets valued at N191 billion.

C. Also in *F.R.N. v Tafa Balogun*.[59] Tafa Balogun was charged to court on 70 count charges by the Economic And Financial Crimes Commission at the Federal High Court Abuja in 2005. After

[57] Charge No. FHC/L/297C/2009(unreported).
[58] Oguche, n. 4,p. 90.
[59] Charge No. FCT/ABJ/CR/14/2005(unreported).

bargaining with the accused person, amended eight (8) counts charge of corruption and embezzlement of public funds to the tune of N10 million was filed by the EFCC before the court against the accused which the accused plead guilty upon and gave up 16 billion to the prosecution. The court sentence the accused to six months jail term for an office which attract a maximum of five years jail term.[60]

D. Another case of here is *F.R.N. v. John Yusuf Yakubu.*[61] The accused a former Deputy Director Police Pension Office was arraigned on a 20-count charge for converting N32.8 billion police pension funds to his own use before High Court, Federal Capital Territory (FCT) Abuja by EFCC. After bargaining with EFCC, the charges were reduced to 2. The accused pleaded guilty to counts punishable under section 309 Penal Code Act of the FCT, which provides for a maximum of two years imprisonment for each of the counts or with fine. The court sentenced the accused to two years imprisonment on each of the counts with option to pay a fine of N250,000.00 for each count. In addition, the convict was ordered to forfeit 32 landed properties and the sum of N325.187 million to the Federal Government.[62] Administration of Criminal Justice Act, 2015, which repealed the Criminal Procedure Act and Criminal Procedure Code, has uniform application in all Federal Courts in Nigeria and Courts in the Federal Capital Territory (FCT).[63] The Act makes provision for the application of plea bargain procedure

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[60] Akor, Y.L., 'Plea Bargain and Anti-corruption Campaign in Nigeria'(2014) 3(4), Global Journal of Interdisciplinary Social Sciences 119.

[61] Charge No. FHC/ABJA/CR/54/12(unreported).

[62] Oluwagbohunmi, J.A., 'Equal Before the Law, Unequal Before Men-explaining the Compromising use of Plea Bargain in Nigeria' (2015) 4(2) *Fountain Journal Of Management and Social Sciences* 57.

[63] Shittu, W., 'What's wrong with Administration of Criminal Justice Act?' <www.theNationonlineng.net> accessed 3 February, 2016.

which involves prosecution, defence and the court; the parties negotiate, subject to the approval of the court.[64]

E. In the *Federal Republic of Nigeria v Igbinokhwo Nelson*,[65] the defendant was arrested pursuant to a petition forwarded to EFCC by the British High Commission and received on 12th May, 2015. There were allegations of presenting false documents for visa against the defendant. The petition has an annexure titled Keystone Bank Statement of Account in the name of the defendant. In the course of investigation, the Commission (EFCC) wrote a letter to the Bank to verify the attached statement of account and the Bank replied with a true and correct statement of account of the defendant different from that presented to the British High Commission for visa. Upon his arraignment, the defendant sought to enter into plea bargain with the prosecution and after the plea bargain agreement, the prosecution amended its charges to two counts charged of forgery and using false document as genuine against the defendant which the defendant pleaded guilty upon. The prosecution presented the plea bargain agreement to the court for its consideration and approval.[66] The Court, in its ruling held that paragraph 3 of the plea bargaining agreement dated the 28th June, 2016 signed by the defendant, investigating officer and the counsel to prosecution and defendant is faulty because the issue of punishment is equally the sole discretion of the court and is hereby disregarded. The court further held that after a careful consideration of the agreement, the court will impose a custodial sentence of 1 year with effect from the date of judgment and/or a fine of

[64] Administration of Criminal Justice Act, 2015, s 270.
[65] Charge No.FCT/HC/CR/156/16(Unreported).
[66] See p. 2 of the record of proceedings.

#250,000.00. The finding of the court is guilty as to count 1 and count 2.[67]

F. In *Federal Republic of Nigeria v Saraki*,[68] the Appellant herein, upon conclusion of investigation conducted by EFCC and Code of Conduct Bureau, had preferred 18-counts charges against the Respondent before the Tribunal (CCT) on offences ranging from false declaration of assets, purchasing properties in excess of money fairly attributed to his salary, maintaining a domiciliary account and other similar allegations the Respondent herein at the Code of Conduct Tribunal. The Appellant, made application to commence trial dated 11th September, 2015 and in response, the Respondent herein, pleaded not guilty and sought for an order of the trial Tribunal to quash or strike out the charge. In a unanimous decision delivered on the 24th March, 2016 the tribunal refused the application and ordered the prosecution to produce witnesses to commence trial. The prosecution called 4 witnesses and tendered 48 exhibits and then closed his case. Thereafter, the Respondent raised a no case submission. In a unanimous ruling delivered on 14th June, 2017 the Tribunal upheld the no case submission of the Respondent and discharged and acquitted him of all charges. The Appellant appealed to the Court of Appeal against the ruling of the Tribunal. The Court of Appeal in a unanimous judgement held *inter alia,* that the court was satisfied that the Respondent (Saraki) has a case to answer before the Tribunal (CCT) in respect of 3 out of the 18-counts corruption charges Appellant preferred against him. The court however, dismissed 15 counts of the charge and the premises that they were not supported with credible evidence capable of warranting the respondent (Saraki) to be called upon to

[67] See p. 3 of the record of proceedings.
[68] (2017) LPELR-43392 (CA).

enter his defence to them. Specifically, the respondent (Saraki) is to defend counts 4, 5 and 6 of the amended charge. Whereas count 4 and 5 of the amended charge alleged that Saraki makes false declaration of his assets at the end of his tenure as Executive Governor of Kwara State in 2011 and on assumption of office as a senator in 2011, when he declared that he acquired properties at No. 17A and No. 17B McDonald, Ikoyi Lagos on September 6, 2007 from the proceed of sale of rice and sugar. In court-6, FG alleged that the defendant makes false declaration of his assets when he failed to declare his outstanding loan liabilities of #315,054,355.92 out of the loan of #380,000,000.00 he obtained from Guaranty Trust Bank PLC. The Court of Appeal agreed with FG that the CCT ought to have called the Respondent (Saraki) to defend his claim that he repaid the loan he took from GTB to acquire the two properties through proceeds from his sale of rice and sugar. The Court of Appeal held that the clarification was necessitated by the fact that public officers were by law, prohibited from engaging in any form of business apart from agriculture. The Respondent dissatisfied with the Appeal Court decision, appeal to Supreme Court challenging the three counts charge he was expected to answer at the CCT. The Supreme Court has dismissed the three remaining charges of false asset declaration brought against the Senate president, Bukola Saraki. In a judgement on July 6, the court affirmed the June 2017 decision of the CCT which ruled that the prosecution failed to prove the case against Mrsaraki.[69]

[69] <https://www.premiumtimesng.com/news/headlines/275242-.html> accessed 21 August, 2018.

Conclusion

Plea bargain as introduced in the Administration of Criminal Justice Act, (ACJA) 2015 is a welcome development into Nigeria's criminal justice system but the procedure of its application has to be flexible in order to achieve the main objectives of the concept of plea bargaining which is the avoidance of delay, saving of cost and prison decongestion in the criminal justice system. The application of plea bargain in corruption cases in Nigeria must be use with great caution as it has the tendency of bringing more corruption and serve as an escape route to the high profile people in Nigeria. Application of plea bargain under Administration of Criminal Justice Act, 2015 on corruption matters in Nigeria should never be seen as an escape route to the government officials or rich people in the society as the reason behind introduction of the concept in the new criminal justice system in Nigeria is mainly to eliminate the delay in the administration of criminal justice system of Nigeria and also to eliminate all allegation of corruption practice in the system of its application by the anti-corruption agencies in Nigeria, so great caution must be in place by the judge and the anti-corruption agencies to avoid going into the earlier problem of the application of the concept of plea bargain in Nigeria.

Findings

i. That the agreement of the parties under the plea bargain arrangement under ACJA is now subjected to the discretion and approval of a third party who is not a party to the agreement and has not participated in the discussion leading to the agreement of the parties which might open room for corruption.
ii. That the timing for the prosecution to enter into plea bargain with the criminal defendant under the Act[70] is provided in a

[70] Administration of Criminal Justice Act, 2015, s 270.

restrictive manner and in special circumstances like where the prosecution has insufficient evidence to secure conviction against the criminal defendant or in the case of the defence, where the defendant does not have overwhelming evidence to prove his case against the prosecution.

iii. That the procedural guidelines for the application of plea bargain under the Administration of Criminal Justice Act, 2015 is insufficient. In particular, no sentencing guidelines that will assist a judge in assessment of length of sentence after convicting the criminal defendant.

iv. That even though the Act allows the prosecutor to enter into plea bargain agreement, the process required by the Act of consulting Police responsible for investigation by prosecutor before entering into plea bargain agreement will cause unnecessary delay and defect the purpose of the application of plea bargain which can be avoided in considering the fact that the prosecutor can get relevant information from the case file and the victim.

v. That there is element of corruption which surrounded the application of plea bargain in Nigeria on corruption matters from the cases in which plea bargain were experimented for example, case of John Yusuf.

vi. That by the general provisions of Administration of Criminal Justice Act, 2015, National Policy, the Code of Conduct and Guidelines for prosecutors 2014, National Policy on Prosecution 2016 and various courts Practice Directions on speedy criminal trials on economic and financial crimes offences and money laundering offences, the application of plea bargain is unnecessary.

Recommendations

From the foregoing findings, it is recommended that there should be an amendment to the Administration of Criminal Justice Act, 2015 to allow for the application of plea bargain in every circumstance not only where there is no hope of securing conviction by the prosecution.

That as a matter of necessity, National Assembly shall amend Administration of Criminal Justice Act, 2015 and introduce into it detailed procedure and guidelines for the application of plea bargain.

That any provision of the Administration of Criminal Justice Act, 2015 that will defeat the objective of speeding trial or allows for corruption should be expunged from the Act.