

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 03RD DAY OF NOVEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/432/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

AGUEZE DOMINIC EBUKA (a.k.a. Liam Ethan)

DEFENDANT

JUDGMENT/SENTENCING

The Defendant is standing trial in this Honourable Court for the offence of cheating by personation contrary to the provisions of section 324 of the Penal Code Act CAP 532 Laws of the Federation (Abuja). Specifically, count one-charge under which the Defendant was brought before this Honourable Court reads thus:

“That you, Agueze Dominic Ebuka a.k.a. Liam Ethan, sometime in the year 2021, in Abuja, within the jurisdiction of the High Court of Federal Capital Territory, did cheat by personation when you pretended to be Liam Ethan to one April Gordon a United States of America citizen and in that assumed character obtained the sum of \$550.00 (Five Hundred and Fifty United States Dollars) and thereby committed an offence punishable under section 324 of the Penal Code Act CAP 532, Laws of the Federation (Abuja).”

The Prosecution arraigned the Defendant in this Honourable Court on the 12th day of October, 2021. Upon the arraignment of the Defendant, the Prosecution informed this Court that the Defendant had approached it for plea bargaining, where the Court told the Prosecution that his plea have to be taken first before any other thing. The Charge was read to the Defendant who, after confirming that he understood the language of the Court, pleaded guilty to the one-count charge.

The Prosecution, pursuant to the provisions of section 274 of the Administration of Criminal Justice Act, 2015, proceeded to state the facts of the case against the Defendant through its sole witness, PW1, one Mustapha Kaigama, and to tender the plea bargain agreement. The PW1 identified as Mustapha Kaigama, as stated above; an operative of the Economic and Financial Crimes Commission attached to the Advanced Fee Fraud Unit whose schedule of duty included the investigation of cases of economic and financial crime, carrying out of searches, effecting arrests and performance of such duties as might be assigned to him by his superior officers.

The PW1 further stated that upon an intelligence report obtained from an open source about the activities of some alleged fraudsters operating in Mina, Niger State, the operatives of the Economic and Financial Crimes Commission, on the 22nd day of February, 2021, arrested nine persons,

including the Defendant. Upon a search of the Defendant's mobile phones and laptop, incriminating evidence were unveiled.

In the course of its evidence, the Prosecution, through PW1, tendered a number of exhibits marked as follows:

1. HP laptop marked as **Exhibit A**;
2. One iPhone 7 Plus marked as **Exhibit B**;
3. One Infinix S4 phone marked as **Exhibit C**;
4. Computer printouts marked as **Exhibits D1 – D16**;
5. Conditional Bail marked as **Exhibit E**; and
6. Statement of the Defendant marked as **Exhibits F1 – F2**.

After the conclusion of the evidence of PW1, Counsel for the Prosecution addressed the Court. In his address, he urged the Court to sentence the Defendant in line with the terms already agreed in the plea bargain agreement. Counsel for the Defendant, in aligning himself with the position of the Prosecution pleaded with the Court to be lenient in sentencing the Defendant. The case was thereafter adjourned to the 3rd of November, 2021 for Judgment/sentencing.

The issue before this Court, in view of the circumstances of this case is this:

“Whether the Court should not, after due regard to the crime committed, the plea of guilt of the Defendant, and the existence of a plea bargain

agreement and its contents thereof, enter Judgment and sentence the Defendant herein as per the terms of the plea bargain agreement?"

I have gone through the plea bargain agreement and I must reproduce it here verbatim for the sake of clarity.

"PLEA BARGAIN AGREEMENT

This Plea Bargain Agreement is made pursuant to section 270 of the Administration of Criminal Justice Act, 2015 this day of 2021 between the Federal Republic of Nigeria (represented by the Economic and Financial Crimes Commission) and Agueze Dominic Ebuka (hereinafter called the Defendant).

WHEREAS:

- 1. The Defendant has been charged under section 324 of the Penal Code Act CAP 532, Laws of the Federation for cheating by personation. The Defendant having seen and evaluated the weight of evidence against him has approached the prosecution seeking for a plea bargain via a letter dated 24th February, 2021.*
- 2. That the Defendant herein has paid back the sum of \$550 (Five Hundred and Fifty United States Dollars) being the amount he benefitted from the scam and subject of the charge before this Honourable Court.*

3. *The Defendant having shown remorse and purged himself of the crimes alleged against him, the prosecution has considered the application for the plea bargain and have accepted same.*
4. *The Defendant herein has from his arrest and investigation up to the filing of the charge against him, cooperated with the operatives of the Economic and Financial Crimes Commission, the Complainant in this case.*
5. *There is need to avoid wastage and further dissipation of the resources of the Court and the Federal Government of Nigeria in going into a long trial.*

IT IS HEREBY AGREED THAT:

1. *That before the conclusion of this agreement the Defendant was informed:*
 - i. *That he had 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.*
2. *That the Defendant shall plead guilty to the one-count charge of cheating by personation dated the 10th September, 2021, pending before this Honourable Court.*
3. *That the Defendant's iPhone 7 Plus, Infinix S4 and HP laptop which were used as instruments of his criminal exploits shall be forfeited to the Federal Government of Nigeria.*

4. *That the forfeited properties shall be sold by the Economic and Financial Crimes Commission and proceeds realized from the sale shall be paid to the Federal Government account.*
5. *That upon conviction, the sentencing of the Defendant by this Honourable Court shall be six months imprisonment or a fine of ₦100,000.00 (One Hundred Thousand Naira) only payable to the Federal Government of Nigeria.*
6. *That the Defendant shall depose to an affidavit of undertaking to be of good behavior.*

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

Both the Prosecution and the Defendant, along with their respective Counsel, executed the plea bargain agreement.

The above is the plea bargain agreement between the Prosecution and the Defendant. Before I proceed to sentencing, I must say something about plea bargain under Nigerian laws. Plea bargain, simply put, is a negotiated agreement between a prosecutor and a defendant by virtue of which the defendant pleads guilty to a lesser offence, or, in a charge involving multiple counts, then to one or more of the counts in exchange for some concession by the prosecutor, usually, a more lenient sentence, or, in the case of a multiple-count charge a dismissal of the other charges. See the case of

Igbinedion v. FRN (2014) LPELR-22766 (CA) per Ogunwumiju, JCA at pp. 20 – 26, paras B. see also Ogboka v. State (2016) LPELR-41177(CA) and Muhammed v. FRN (2019) LPELR-48107 (CA).

The argument for plea bargain as a viable alternative to retributive justice is anchored on the fact that as an alternative form of justice, plea bargain projects the advantages of the concepts of restorative justice and restitutive justice as against the merits of concept of retributive justice. With restorative and restitutive justice comes the recognition of both the victim's and offender's roles in the problem solving process. The victim's rights and needs are also identified and respected while the offender is encouraged to be responsible for their actions with the ultimate objective of turning them into a better person. Restorative justice removes the stigma of crime while fostering repentance and forgiveness; and restitutive justice ensures the victim of a crime is restored to the position they were before the offence was committed against them and, where total restitution is not possible, then, the victim is adequately compensated by the offender for the wrong done to the victim.

Plea bargain found its way into Nigeria's jurisprudence and, hence, legal system when it was first applied in Nigeria in the case of ***FRN v. Nwude & Others Suit No. ID/92C/2004; (2015) LPELR-25858(CA)***. Other cases where plea bargain was applied before the enactment of the Administration of Criminal Justice Act, 2015 include ***Gava Corporation Ltd v. FRN (2014)***

LPELR-22749 (CA); PML Securities Company Ltd v. FRN (2014) LPELR-22768 (CA); Igbinedion v. FRN (2014) LPELR-22766 (CA); Romrig Nigeria L:td v. FRN (2014) LPELR-22759 (CA) among other cases.

Plea bargain was eventually codified and became part of Nigeria's *corpus juris* by virtue of section 270 of the Administration of Criminal Justice Act. This section contains elaborate guidelines on the application of plea bargain. Of particular relevance in this case are the provisions of section 270(1)(a), (2)(a) and (b), (3), (4)(a) and 5(b) of the Administration of Criminal Justice Act, 2015. Subsection (3) enjoins the Prosecution to either offer or accept plea bargain if the offer or acceptance would be "*in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process.*" Paragraph (b) of subsection (5) contains the following illuminating provisions:

"With regard to the nature of and circumstances relating to the offence, the defendant and public interest;

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

- (i) the defendant's willingness to cooperate in the investigation or prosecution of others,***
- (ii) the defendant's history with respect to criminal activity,***

- (iii) the defendant’s remorse or contrition and his willingness to assume responsibility for his conduct,**
- (iv) the desirability of prompt and certain disposition of the case,**
- (v) the likelihood of obtaining a conviction at trial and the probable effect on witnesses,**
- (vi) the probable sentence or other consequences if the defendant is convicted,**
- (vii) the need to avoid delay in the disposition of other pending cases,**
- (viii) the expense of trial and appeal, and**
- (ix) the defendant’s willingness to make restitution or pay compensation to the victim where appropriate.”**

In ***Olugbenga v. FRN (2018) LPELR-47572 (CA)***, the Court of Appeal per Aboki JCA held ***pp. 13 – 15, paras F – F*** of the law report that ***“Plea bargain arrangements can be achieved in Nigeria by a combination of prosecutorial discretion, defence options and judicial discretion.”*** As to the nature of plea bargain, the erudite jurist went on to state: ***“It is my view that the concept of plea bargain is akin to a court entering a consent judgment in a civil suit.”***

I hereby return to the case at hand. Before me, the Defendant is standing trial for cheating by personation provided for under section 321 of the Penal Code Act. The punishment for cheating by personation is provided under section 324 of the Penal Code Act. The section provides that “**Whoever cheats by personation shall be punished with imprisonment for a term which may extend to five years or with fine or with both.**” Under the plea bargain agreement, the Prosecution and the Defendant agreed that the Defendant shall be sentenced to either a term of imprisonment of six months or a fine of ₦100,000.00 (One Hundred Thousand Naira) only.

It must be noted that the Defendant pleaded guilty to the offence charged. This is consistent with the provisions of the plea bargain. The Court in **Olugbenga v. FRN (2018) supra** described such step by the Defendant as “**an overt act on the part of the accused person in evidence of the plea bargain.**” See also **PML Securities Co. Ltd v. FRN (2018), LPELR-47993 (SC)**. The effect of the plea of guilty is not lost on this Court. In **Adamu v. FRN (2020) 2 NWLR (Pt. 1707) 129**, the Supreme Court per Peter-Odili JSC held at page 157, paras D – G thus:

“When a plea of guilt takes place with full understanding, then that cuts off delay and the court, upon such a plea in full compliance with section 218 of the Criminal Procedure Act,

need not further ask the accused person to go and prepare a defence”

The Court went on to state at ***page 158 paras A – C*** of the law report that

“By virtue of section 218 of the Criminal Procedure Act, if the accused pleads guilty to any offence with which he is charged, the court shall record his plea as neatly as possible in the words used by him and if he is satisfied that he intended to admit the thrust of all the essentials of the offence of which he has pleaded guilty, the court shall convict him of that offence and pass sentence upon or make an order against him unless there shall appear sufficient cause to the contrary.”

In ***Simon v. FRN (2020) 12 NWLR (Pt. 1739) 525 at pages 548, paras E – F; 548 – 549, paras H – F; 550, paras A – B; 553 paras D – E***, the Court of Appeal per Adefope-Okojie JCA held thus:

“In criminal proceedings, once an accused person pleads guilty to the charge, the prosecution can ask the leave of the Court to tender exhibits after summarizing the facts of the case and then urge the Court to convict the accused who pleaded guilty to such charge. The court then remains with the discretion to straightaway convict and sentence the accused person through summary trial procedure if it is satisfied that he actually

intended to own up to the guilt of the offence or, in the alternative, ask the prosecution to call witness or witnesses and proceed with full-blown trial. Thus, it is proper and flawless where the trial court adopts the procedure which leads to the tendering and admission in evidence of exhibits. It is a proper procedure by the prosecution where, after the plea of guilty, documents are tendered from the bar...”

In the case before me, the Defendant pleaded guilty to the charge read to him. He confirmed that he understood the language of the Court. The Prosecution through PW1 tendered exhibits to substantiate the allegation of cheating by personation with which the Defendant was charged. I therefore hold that the procedure adopted by the Prosecution and endorsed by this Honourable Court is proper and in compliance with the procedure laid down by the law as seen from section 274 (which is *in pari materia* with the provisions of section 218 relied upon by the Supreme Court and the Court of Appeal in the cases of ***Adamu v. FRN (2020) supra*** and ***Simon v. FRN (2020) supra*** respectively). Section 274(1) and (2) provides as follows:

(1)“Where a defendant pleads guilty to an offence with which he is charged, the court shall:

(a)record his plea as nearly as possible;

(b)invite the prosecution to state the fact of the case; and

(c) enquire from the defendant whether his plea of guilty is to the fact as stated by the prosecution;

(2) Where the court is satisfied that the defendant intends to admit the truth of all the essential elements of the offence for which he has pleaded guilty, the court shall convict and sentence him or make such order as may be necessary, unless there shall appear sufficient reason to the contrary.”

In view of the foregoing, therefore, this Court hereby hold that the Defendant indeed committed the offence of cheating by personation contrary to the provisions of section 324 of the Penal Code Act CAP 532 Laws of the Federation (Abuja) and, accordingly, finds him guilty of the offence of cheating by personation.

Pursuant to the above, therefore, I shall now proceed to sentencing. In this case, however, there is a plea bargain agreement; and the Court has been invited to give effect to the provisions of this plea bargain agreement. I must point out that, though there is a plea bargain agreement before this Honourable Court, this Court is not bound willy-nilly to give effect to the content of the plea bargain agreement. Subsection (10) of section 270 of the Administration of Criminal Justice Act, 2015 gives the Judge or Magistrate the power to “**ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the**

agreement voluntarily and without undue influence.” Where the Judge or Magistrate is so satisfied, he can proceed to convict the Defendant on his plea of guilt and shall award the compensation to the victim in accordance with the terms of the agreement.

Subsection 11 of the section 270, however, gives the Judge or Magistrate the discretionary power to deviate from the terms of the plea bargain agreement under certain circumstances. For the avoidance of doubt, the said subsection provides thus:

“Where a defendant has been convicted under subsection (9) (a), the presiding Judge or Magistrate shall consider the sentence as agreed upon and where he is:

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

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

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

I have carefully considered the offence with which the Defendant is charged. I have also given serious thought to the punishment provided for the offence in

the Penal Code Act. I have studied the evidence tendered in this case by the Prosecution. **Exhibits F1 and F2** are the extrajudicial statements of the Defendant wherein he confessed to the commission of the offence with which he was charged. From the statement, the Defendant is a young man of 21 years. He is a final year student of Federal University of Technology, Mina, in Niger State. He admitted he posed as Liam Ethan to obtain money amounting to \$550 from one April Gordon, a citizen of the United States. From the proof of evidence attached to the charge sheet, Prosecution recovered the total sum of \$436 from the Defendant. According to paragraph 2 of the recitals of the Plea Bargain agreement, the Defendant has paid back the total sum of \$550 being the subject of the offence.

I must point out that it is not in all cases that retributive justice will be the objective of the Court. In some cases, restorative justice and restitutive justice can be applied too. The goal is to make the society a better place and to give the Defendant another chance to redeem himself and be useful to the society. It is my considered belief, and I so hold, that the Defendant, a student and a young man of an impressionable age, should be considered for leniency by this Court in sentencing him. Banishing him to prison to spend time with hardened and seasoned criminals might be counter-productive to the same society the Court serves to cleanse and protect through the administration of criminal justice process.

Since there is no proof before this Court that the Defendant is not a first timer and considering paragraphs 3, 4 and 5 of the recitals to the plea bargain agreement, which provisions are consistent with the provisions of section 270(5)(b)(i),(ii),(iii),(vii), (viii) and (ix) of the Administration of Criminal Justice Act, 2015, I hold that the punishment stipulated in the plea bargain agreement is reasonable. To this end, therefore, I hereby sentence the Defendant in accordance with the terms of the plea bargain agreement as follows:

- 1. That the Defendant is hereby sentenced to a term of imprisonment of six months or a fine of ₦100,000.00 (One Hundred Thousand Naira) only.**
- 2. That the Defendant's iPhone 7 Plus, Infinix S4 and HP laptop which were used as instruments of his fraudulent activities shall be forfeited to the Federal Government of Nigeria.**
- 3. That the forfeited properties shall be sold by the Economic and Financial Crimes Commission and proceeds realized from the sale shall be paid to the Federal Government account.**
- 4. That the Defendant shall depose to an affidavit of undertaking to be of good behavior.**

This is the Judgment of this Court delivered today, the 03rd day of November, 2021.

**HON. JUSTICE A. H. MUSA
JUDGE
03/11/2021**