

**IN THE HIGH COURT OF JUSTICE**  
**FEDERAL CAPITAL TERRITORY OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO – ABUJA**  
**ON, 26<sup>TH</sup> JANUARY, 2022.**  
**BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.**  
**SUIT NO.:-FCT/HC/CR/533/21**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA:.....COMPLAINANT**

**AND**

**MOSHOOD AWOWOLE.....DEFENDANT**

Defendant present.

Bamidele Akomode for the Prosecution.

Sechapsokwa with Timothy Istifanus for the Defendant.

**JUDGMENT.**

Sequel to the plea of guilty and the presentation of the plea bargain agreement, the Court orders the prosecutor to present the facts of this case.

Prosecution:

There was a surveillance carried out in Mpape where by various suspects including the convict was arrested on 29/1/21. Items recovered from the convict includes – two phones. I have the Investigating Police Officer (IPO) present to give the details of the facts.

PW1: sworn on the holy Koran and states in English. On the 29/1/21, there was a surveillance and the arrest of the convict who was into internet fraud. After the arrest the Defendant and others were carried to our office Economic and Financial

Crimes Commission (EFCC). The convict made statement under cautionary words.

Defendants confessed in writing and the two phones – a Techno and an Infinix phones recovered were taken to the forensic laboratory for further investigation. In them crminating items were found such as pictures of white women and other documents used in the cybercrime. The convict was released on administrative bail. Case file was forwarded to our legal department. We also recovered N200,000. The name of one of the victims a Chinese is Liu from China.

Prosecution:

We seek to tender the said Techno phone and Infinix phones recovered.

Defence counsel:

No objection.

Tendered, admitted and marked Exh PW1A& PW1B.

Court:

Where is the N200,000.

Prosecution:

We used it for restitution. We have paid restitution to the victim of this case.

Court:

By reason of Section 270(12) the power to make order for restitution belongs to the Court and not Economic and Financial Crimes Commission (EFCC).

Considering the literary interpretation of Section 270(12)Administration of Criminal Justice Act (ACJA), the

prosecution (Economic and Financial Crimes Commission (EFCC)) has no powers to confiscate recovered proceeds of crime and the Economic and Financial Crimes Commission (EFCC) equally lacks the powers to auction or reconstitute the victim of the crime from the recovered proceeds. It is a flagrant abuse of powers of this Court. Plea bargain agreement does not empower the investigative officers to appropriate the proceeds of crime without a Court order.

The Court has the onerous and mandatory duty to make orders per the forfeited items by the word 'SHALL' in Section 270(12) Administration of Criminal Justice Act (ACJA). The duty of the Economic and Financial Crimes Commission (EFCC) ends with the presentation and tendering of the proceeds recovered as exhibits. If the Court after presentation of facts and tendering of the recovered proceeds finds a prima facie evidence and is satisfied that the property recovered is liable to forfeiture, the Court is duty bound to make an order of forfeiture as prescribed by the law. On whether the Court should see the exhibit, before making the order. Yes is the answer under Section 270(12) Administration of Criminal Justice Act (ACJA), by the word 'SHALL' implies that it is only the Court that has the powers to make order as to the proceeds recovered which must be tendered before the Court. The Supreme Court has held in **Haruna v. A.G. Federation (2012)LPELR 7821 (SC)**, that it will not be proper for Exhibits to become unavailable to the Court for further consideration, evaluation or appraisal by reason of their disposal before the end of the case. As cited within **Abiodun Yunusa v. The State (2016)LPELR-41384(CA)** the Court of Appeal condemned the release of exhibits and its eventful sale to a witness.

The effect of Section 270(12) Administration of Criminal Justice Act (ACJA) is not for the law enforcement agencies to make

themselves beneficiaries of the forfeited items. This is clear misconception of Section 270(12)Administration of Criminal Justice Act (ACJA).

It is obvious from the facts before the Court that the N200,000 recovered as part of the proceeds of the crime is not presented as exhibit before this Court. The prosecutorial agency misconstrued the provisions of Section 270(12)Administration of Criminal Justice Act (ACJA) by acting ultra vires and disposed-off or purportedly restitutedthe alleged victim with the N200,000.

Court therefore, orders the prosecution to produce the N200,000 recovered as part of the proceeds of the crime on next adjourned date. Defendant is yet to be sentenced,therefore should be remanded in prison custody until Section 270(12)Administration of Criminal Justice Act (ACJA) is complied with.

Both the prosecutor and defence counsel agree on 26<sup>th</sup> January, 2022 for further hearing.

Case adjourned to 26<sup>th</sup> January, 2022 for further hearing.

On 26<sup>th</sup> January, 2022: -

Prosecution:

I have the N200,000 forfeited by Defendant in Court and I apply to tender it from the bar.

Court:

That application to tender money which is not a CTC document from the bar is alien.

Prosecution:

I have the 2<sup>nd</sup> IPO that will conclude the facts and I will tender the money through him.

PW2: affirms and states in English. My name is Augusta UgwuNdidiamaka. I am a staff of EFCC detective. I know the Defendant. On 24/2/21, an intelligent report was brought about fraudulent activities around Kpape, Abuja. The team of operative was given an approval to raid that axis. Some fraudsters were arrested. Among them was Defendant. Upon arrest a search was conducted and two smart phones were recovered, taken to Forensic department and fraudulent documents were recovered from the phones.

Upon investigation Defendant's statement was taken under caution. He alluded that he is involved in fraud when he posed as a Chinese man thereby defrauding a Chinese Fin Ju of the sum of N200,000. Defendant gave up the N200,000 he benefited from the Chinese which is N200,000 in N1,000 denomination.

Prosecution:

We seek to tender the said N200,000.

Defence counsel:

No objection.

Tendered, admitted and marked Exh PW2A for the bundle 200,000 pieces of 1000 naira notes. The phones have earlier been tendered as PW1A and PW1B.

Prosecution:

Do you have any other thing to tell the Court.

PW2:

None.

Prosecution:

The prosecutor and the Defendant have entered a plea bargain for the guidance of the Court for continuation and sentencing.

### **Sentencing.**

The Nigeria Criminal Justice System has recently enshrined the use of plea bargain in Administration of Criminal Justice Act (ACJA) as a tool to ensure effective, efficient and swift justice delivery in deserving cases. It does not mean that it is in all criminal cases that the procedural enabling statute, (Administration of Criminal Justice Act (ACJA)) under Section 270 applies.

The procedural Section 270 particularly Subsection (12) mandates the Court to make order as to the properties forfeited by the Defendant under the plea bargain agreement and the prosecutorial counsel must be careful and diligent in ensuring that the Section 270 Administration of Criminal Justice Act (ACJA) is strictly complied with.

Evidently, in our present society the magnitude of Cybercrime regarding "Yahoo Crimes" as popularly known in Nigeria environment, has escalated and I suppose the prosecutorial agencies sense of diligence in investigation and prosecution of the culprits must be of great alert to satisfy that the proof is beyond reasonable doubt. Prosecutor must discharge this proof cast on them by the Evidence Act whether the accused pleaded guilty or not.

Unfortunately, they have resorted to the quick dispensation of these crimes by plea bargain, negotiating agreement in exchange of prosecution. Disappointedly I have observed the many pressures and influences on the prosecutor and Court to dispense with Crimes and proceeds of the crime in a hurry

without complying with the provisions of the law but ending up using the Courts as a rubber stamp to execute a fraudulent plea bargain agreement. I refuse to encourage such process. Thus encouraging the slogan which says, ***“In the Court, both parties know the truth while the judge is put on trial instead of the parties.”***

It seems that the attitude of the prosecutorial agents in the plea bargain agreement is meant to permanently silence the culprit from any interrogation either by intimidation or coercion with a promise of getting him released from the clutches of the law instead of effecting the intendment of the legislators for efficacy and efficient trial, achieving the result of justice for all. I must remind the investigating officers that it is ultra vires their powers in Section 6 & 7 Economic and Financial Crimes Commission (EFCC) Act to allocate to themselves the powers to transfer or vest in the victim of the crime or any other person the forfeited properties. This contravenes Section 270(12) Administration of Criminal Justice Act (ACJA) which empowers only the Court and only the Courts to make orders as to the forfeited properties. Section (12) states;

***“The presiding Judge or Magistrate SHALL make an order that any money, asset or property agreed to be forfeited under the plea bargain shall be transferred to and vest in the victim or any other person as may be appropriate or reasonable feasible.”***

In other words, the Court has the powers to make the order on the forfeited property to vest in the victim, in the absence of the victim, the forfeited property to vest in his representative, or any other person. Thus, in the absence of the victim as in the present case, the Court has the sole power to order the forfeited property to the appropriate person which I consider in this case is the Federal Republic of Nigeria. Thus, the forfeited

properties must be produced, admitted in evidence to enable the Court effectively comply with Section 270(12) Administration of Criminal Justice Act (ACJA).

In guiding the Courts, the Supreme Court in **Haruna v. A.G.Federation (2012) LPELR 7821 (SC)** had held that it will not be proper for exhibits to be unavailable to the Court for further consideration, evaluation of their disposal before the end of a case. Evidently, the law requires the prosecutor to produce and submit to the Court of trial the exhibits recovered in the course of investigation and forfeited by the Defendant to the Court's satisfaction.

Subsequently, having found the Defendant guilty as charged, the Defendant is convicted of the offence contravening the law.

Upon conviction and relying on Section 270 (11)(a) I am not satisfied with the plea bargain agreement with regards to sentencing. I consider it in-appropriate considering the maximum sentence for the offence under Section 324 Penal Code which is 5 years with or without fine. The Defendant has been informed of the sentence being increased and he still maintains his plea of guilty.

In sentencing therefore, the Defendant is sentenced to 6 months imprisonment or a fine of N300,000.00.

The Chief Registrar High Court, Federal Capital Territory is ordered to take custody of the N200,000.00 and pay same into the interest yielding account of Federal Republic of Nigeria.

The Chief Registrar is ordered to auction the two phones techno and infinix phones marked Exh PW1A and PW1B and pay the proceeds into the interest yielding account of Federal Republic of Nigeria.

**HON. JUSTICE A. O. OTALUKA**  
**26/1/2022.**