

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 17TH DAY OF MARCH, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/148/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA
COMPLAINANT

AND

SARAH JOHNSON

DEFENDANT

JUDGMENT

The Defendant was arraigned before this Hon. Court on 14th day of July 2021 on a 14 count charge for the offence of theft contrary to the provisions of Section 289 of the Penal Code Act Cap 532, Laws of the Federation (Abuja). The Charge sheet was read to the Defendant and the Defendant pleaded not guilty to all the 14 count charge. The Prosecution apply for adjournment to enable him bring his witnesses to proof the allegation against the Defendant, the case was adjourned to 22nd day of September 2021 on that day the Correctional Service Centre was un able to bring the Defendant for lack of vehicle that will convey the Defendant from Suleja Correctional Centre to this Hon. Court on 21st day of November 2021 when the case came up for hearing the Defence

Counsel told the Court that, the Defendant is trying to refund the money she removed from various Account and come to Court for Plea Bargain on the 20th day of January,2022 when the case came up for definite hearing Prosecution told the Court that Counsel for Defendant U.K. Bello who is based in Yola was sick for that reason he craved the indulgence to adjourn the case for the last time.

PLEA BARGAIN AGREEMENT

This Plea Bargain Agreement is made pursuant to Section 270 of the Administration of Criminal Justice Act, 2015 this 31st Day of January 2022 between Federal Republic of Nigeria (represented by the Economic and Finance Crimes Commission) and Sarah Johnson.

WHEREAS:

- 1) The Defendant has been charged for the offence of theft contrary to Section 289 of the Penal Code Act Cap 532, Laws of the Federation. The Defendant having seen and evaluated the weight of evidence against her has approached the prosecution seeking for a plea bargain via a letter dated 15th November 2021.*
- 2) The Defendant having shown remorse and purged herself of the crime alleged against her, the Prosecution has considered the application for the plea bargain and have accepted same.*
- 3) The Defendant herein has from her arrest and investigation up to the time of filing the charge against her, cooperated with the operatives of the Economic and Financial Crimes Commission, the Complainant in this case.*
- 4) There is need to avoid wastage and further dissipation of the state resources and the time of the Court.*

IT IS HEREBY AGREED THAT:

- 1) That before the conclusion of this agreement the Defendant was informed:*
 - i) That she had a right to remain silent.*
 - ii) Of the consequence of not remaining silent and*

- iii) *That she is not obliged to make any confession or admission that could be used in evidence against her.*
- 2) *That the Defendant shall plead guilty to the 14-count charge of theft dated 17th June 2021, pending before this Honorable Court.*
- 3) *That the Defendant has paid back the sum of ₦1,868,000.00 to the victim which is subject of the Charge pending before this Honorable Court. The evidence of which has been furnished to the Prosecution.*
- 4) *That upon conviction, the Defendant shall be sentenced by this Honorable Court to one-year imprisonment or a fine of ₦200,000.00 (Two Hundred Thousand Naira) payable to the Federal Government of Nigeria.*

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

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 the Prosecution and the Defence 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 the 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 Ltd 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 at *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 the offence of theft provided for under section 289 of the Penal Code Act Cap 523 Laws of the Federation (Abuja). The punishment for Theft is provided under section 289 of the Penal Code Act. The section provides that ***“Whoever being a clerk or a servant or being employed in a capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.”*** Under the plea bargain agreement, the Prosecution and the Defence agreed that the Defendant shall be sentenced

to either a term of one year imprisonment or a fine of ₦200,000.00 (Two 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 truth 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 her. She confirmed that she understood the language of the Court. The Prosecution through the sole witness gave his evidence and stated the facts of the case. 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 material* 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 theft contrary to the provisions of section 289 of the Penal Code Act CAP 532 Laws of the Federation (Abuja) and, accordingly, finds her guilty of the offence of theft.

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 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. From the statement, the Defendant is a 40-year old married woman with children. She was a banking officer in Grant Microfinance Bank Plc and has worked there for 12 (twelve) years and, from the proof of evidence attached to the charge sheet, the Prosecution stated that the Defendant has paid back the money she stole which is the total sum of ₦1,868,000.00 (One Million, Eight Hundred and Sixty-Eight Thousand Naira Only). This is stated in paragraph 3 of the recitals of the Plea Bargain agreement.

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 herself and be useful to the society and her family. It is my considered belief, and I so hold, that the Defendant, who is a wife, mother,

sister and possibly still a daughter, if either or both of her parents are alive, should be considered for leniency by this Court in sentencing her. Banishing her to prison to spend time with hardened and seasoned criminals might be counter-productive to her family and the same society the Court strives 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 time offender; and considering paragraphs 2, 3 and 4 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 One year imprisonment or a fine of ₦100,000.00 (Two Hundred Thousand Naira) only.**
- 2. 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 17th day of March, 2022.

HON. JUSTICE A. H. MUSA

JUDGE

17/03/2022