

**HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON WEDNESDAY, THE 7<sup>TH</sup> DAY OF April, 2022**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINIMUSA**  
**JUDGE**

**CHARGE NO: FCT/HC/CR/578/2021**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA**

**COMPLAINANT**

**AND**

**SHODUKE HAMEED**

**DEFENDANT**

**JUDGMENT/SENTENCING**

The Defendant was arraigned before this Honorable Court on the 23<sup>rd</sup> February 2022. However, due to the Prosecution oral application that the Defence approached him for plea bargain agreement as such he is desirous of amending the earlier charge to go in line with plea bargain agreement. This Honorable Court reluctantly granted the oral application and adjourned the case to 8<sup>th</sup> March, 2022 for arraignment. On the 8<sup>th</sup> March 2022 the Defendant was arraigned on one count charge of Cheating contrary to section 320 of the Penal Code Act Cap. 532, Laws of the Federation (Abuja) and punishable under section 322 of the same Act. Before the charge was read to the Defendant some questions were asked to the Defence Counsel as well as the Defendant to wit;

I understand that your client want to plead guilty? Have you discussed the issue with your client the implication and consequence of Plea Bargain and its terms? Is the Defendant capable of understanding the nature of these proceedings?Is the terms of Plea Bargain agreement been signed by all parties concerned and filed in the Court?

The Defence Counsel answered the questions in affirmative.

The Defendant was also asked some questions: Is he ready to plead guilty to the alleged charge filed before this court? Did he understand the charge to which he is pleading guilty? Is she aware that he has the right to plead not guilty and to continue with the trial of this case? If he chooses this option the Prosecution would have to prove its case against him. Did he understand that I am not bound to accept the agreed sentence in the Plea Bargain agreement? I could accept it or impose more, or impose less?. Did he enter the plea bargain agreement voluntarily? Is the signature on the agreement his?. The Defendant answered all the questions put to him in affirmative.

The charge was read and explained to the Defendant and the Defendant pleaded guilty to oneCount charge where the Prosecution told the Court that since the Defendant pleaded guilty he is urging the Hon. Court to convict the Defendant accordingly, the Prosecution referred the Hon. Court to the Plea Bargain agreement, the Prosecution proceeded to call its sole witness in accordance with section 274 of the Administration of Criminal Justice Act 2015 in order to prove the allegation made against the Defendant.

PW1 by name Kingly Prince Will an operative of the EFCC attached to Advance Fee Fraud Headquarters who leave at Plot 301/302 Institute and Research Idu Abuja. His schedules of duties are Investigation, Arrest and Report of cases assigned to the section and other assignment given to him, PW1 told the Court that yes, he knew the Defendant in this case the Defendant was arrested in October, 2021 among other suspects following an approval of an intelligentreport of Fraudsters.

Upon the arrest of the Defendant his statement was obtained under wards of caution, two mobile phones wererecovered Blue Intel and one Samsung Galaxy. The Samsung Galaxy phone was analyzed some documents were discoveredand printed in presenceof the Defendant and same was endorsed by the Defendant, it was revealed that the Defendant was in Internet Fraud with website he used www.offerup.com, used by the Defendant to defraud his Victim the website is online Market place that can connect the seller and the buyer the Defendant will make an offer to the Victim if the Victim agreed, Defendant will asked for money to ship the goods the Defendant have defrauded one Dave a United State of American Citizen 355 US Dollars

In an answered to examination in Chief PW1 tendered some items and documents which were marked as Exhibits as follows;

- 1) Defendant statement Exhibit A1-A6
- 2) Certificate of Identification Exhibit B1
- 3) Printed documents from Samsung Galaxy Exhibit C1-C3
- 4) The sum of 355 US Dollars Exhibit D1-D5
- 5) Samsung Galaxy Exhibit E1
- 6) ITel phone Exhibit F1

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 7<sup>th</sup> April, 2022 for Judgment/sentencing.

The issue before this Court, considering the nature of the offence alleged and the circumstances surrounding this case is “*Whether the Court should go ahead and sentence the Defendant without referring to the Plea bargain agreement since the Defendant has already pleaded guilty to one count charges against him?*.”

I am privileged to go through the plea bargain agreement and I am inclined to 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 ...25<sup>th</sup> day of November 2021 between the Federal Republic of Nigeria represented by the Economic and Financial Crimes Commission (hereinafter called the Complainant) and Shodunke Hameed (hereinafter called the Defendant).*

***WHEREAS:***

- 1. Following surveillance carried out on an intelligent report of internet fraud activities at Abuja, by Operative of the Complainant, various Suspects including the Defendant were arrested.*
- 2. Investigation conducted following the arrest of the Defendant revealed that:
  - a. He is into internet scam and has defrauded unsuspected Citizens of United States of America the sum of 355 US Dollars under the guise of selling Bow flex Dumbbells.**
- 3. during the course of investigation into the case, the Defendant admitted his wrong doings and showed remorse for his actions and refunded the sum of 355 US Dollars as full restitution through the complainant.*
- 4. The Defendant has applied to the Complainant for plea bargain through his Lawyer, Emmanuel Udolor.*
- 5. That upon the application of the Defendant to plead guilty to the charges, the Prosecution hereby accept and entered into this agreement upon the terms and conditions here under stated.*

***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( amended) count charge of cheating dated the 12<sup>th</sup> November, 2021, 2<sup>nd</sup> day of February 2022, pending before this Honourable Court.*

3. *That the Defendant's Samsung Galaxy 7 and Itel torch phones 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 Court Economic and Financial Crimes Commission and proceeds realized from the sale shall be paid in to the Federal Government account.*
5. *That the Defendant has already paid the sum of \$ 355 United States Dollars as full restitution to the victims*
5. *That upon conviction, the sentencing of the Defendant by this Honourable Court shall be either one year imprisonment or a fine of ₦200,000.00 (Two Hundred Thousand Naira) only for one count payable to the Federal Government of Nigeria.*

*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 contribution 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 end of end 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, paragraph 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 provided for under section 320 of the Penal Code Act. The punishment for cheating is provided under section 322 of the Penal Code Act. The section provides that “*Whoever cheats shall be punished with imprisonment for a term which may extend to three 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 one year or a fine of 200,000.00 ( TwoHundred Thousand Naira) only for one counts.

It must be noted that the Defendant pleaded guilty to the offences 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 ingredient 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 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 contrary the provisions of section 322 of the Penal Code Act CAP 532 Laws of the Federation (Abuja) and, accordingly, finds him guilty of the offence of cheating.

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 contents 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. **Exhibits A1 to A6** 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 26 years. He admitted that he created a website [www.offerup.com](http://www.offerup.com) From the proof of evidence attached to the charge sheet, the Prosecution recovered the total sum from the Defendant. According to paragraph 4 of the recitals of the Plea Bargain agreement, the Defendant has paid the total sum of 355 US Dollars 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. Furthermore, there is the need for

the Defendant to be an apostle of good behavior to his fellow youths by taking the gospel of good behavior and responsible citizenship to them, warning them of the dire consequences that attend a life of crime and advising them to desist from internet fraud and all forms of criminality. To this end, therefore, I hereby sentence the Defendant to the following punishment:

- 1. That the Defendant is hereby sentenced to 6 months imprisonment or the fine of ₦100,000.00 (OneHundred Thousand Naira) only for one count. That the Defendant's Samsung Galaxy and Intel phones which was used as instrument of his fraudulent activities shall be forfeited to the Federal Government of Nigeria.**
- 2. That the forfeited properties shall be sold by this Courtor the Economic and Financial Crimes Commission and proceeds realized from the sale shall be paid to the Federal Government account.**
- 3. That the Defendant shall depose to an affidavit of undertaking to be of good behavior.**
- 4. That the sum of \$355 United state dollars recovered from Defendant be sent back to the victim either through his accounts or through Country Embassyor if that is not possible the money be paid in to Federal Government Account and evidence of such compliance shall be made available to the Court through the Registry for my information.**

This is the Judgment of this Court delivered today, the 7<sup>th</sup> day of April, 2022.

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**HON. JUSTICE A. H. MUSA**  
**JUDGE**

**7/04/2022**