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PLEA BARGAIN IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA: EVALUATING THE BENEFITS AND DRAWBACKS THEREOF

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Abstract

The applicability of the doctrine of plea bargain in Nigeria's criminal justice system has generated missed reactions owing to the public evaluation of the benefits and drawbacks of plea bargain to the victim of the crime, the defendant, and to the state. There are arguments that plea bargain is subject to abuse, thus becoming an incentive to offenders for commission of more heinous crimes. On the other hand, advocates of the doctrine have argued in favour of its sustenance on grounds of speedy trial and public interest. There are also inconsistencies in the application of the doctrine which are manifest in the procedures and conditionalities for application of the doctrine under the Administration of Criminal Justice Act 2015 (ACJA) and its equivalents in the states. This divergence has raised contradictions and at times negative public outcry against the courts for applying the doctrine in certain cases and thus necessitating the call for abolition of the doctrine in Nigerian. This paper set out to evaluate the benefits and disadvantages of application of plea bargain in Nigeria while also considering the conditionalities for the application of doctrine under the ACJA. The doctrinal research methodology was adopted to examine legal

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doctrines relevant to the subject. The paper found out that although there are benefits and justifications for the introduction of plea bargain in Nigeria, yet there are contending disadvantages to the application of the doctrine which are not insurmountable. It recommended the need for further amendments to the ACJA in order to derive best advantage of plea bargain to the administration of criminal justice in Nigeria.

Keywords: Administration of Criminal Justice System, Administration of Criminal Justice Act, ACJA, Financial Crimes, Plea Bargain,

1. INTRODUCTION

Criminal justice is a legal process which involves the procedure of prosecuting the person accused of committing crime from arrest to the final disposition of the case[1]. It is the collective institutions through which a defendant passes until the allegations have been disposed of or the assessed punishment concluded. The criminal justice system has its legal foundation through the Constitution of the federal Republic of Nigeria 1999 (as amended) (constitution) as some sections of the constitution deals with criminal justice[2]. Plea bargain is one of the processes involved in the trial of a person who is accused of committing a crime (dominantly financial crimes) in Nigeria. Summarily, plea bargain is a negotiation between the prosecution and the defendant who admits to the commission of an alleged offence for a more lenient sentence. Upon the introduction of the doctrine in Nigeria, Ozekhome,[3] and other writers have considered the concept of plea bargain in line with its benefits or otherwise and its applicability in our judicial system. The concept of plea bargain was first introduced into the

[1] A.B Dambazau, *Criminology and Criminal Justice*, (2011) 173.
[2] Sections 35, 36 thereof.
[3] M.A. A. Ozekhome (SAN), "Coercion to Compromise: The Imperatives of Plea" in *Plea Bargain in Nigeria Law and Practice*, E. Azinge and Laura Ani, (eds.) (Nails Press, 2013) 227.

Nigerian legal system by the Economic and Financial Crimes Commission Act (EFCC) by virtue of section 14(2) thereof which provides that,

> subject to the provisions of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the power of the Attorney-General to institute, continue, takeover or discontinue any criminal proceedings against any person in any court of law), the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, exceeding the amount to which that person would have been liable if he had been convicted of that offence.[4]

Following the introduction of this concept into the Nigerian criminal justice system, the ACJA made provisions for the guidelines for application of plea bargain in Nigeria. The applicability of the doctrine of plea bargain in Nigeria's criminal justice system has generated missed reactions owing to the public evaluation of the advantages and disadvantages of plea bargain to the victim of the crime, the defendant, and to the state which have interest in the justice of the case. There are arguments that plea bargain is subject to abuse, thus becoming an incentive for offenders for commission of more heinous crimes. On the other hand, advocates of the doctrine have argued in favour of its sustenance on grounds of speedy trial and public interest. The divergence in the application of the doctrine is also manifested in the procedural steps and conditionalities in application of the doctrine under the ACJA and under different jurisdictions of the states. In view of the contention over the relevance of the doctrine to the Nigerian criminal justice system, this study now aims at examining the application of plea bargain under the ACJA in relation to the benefits advantages or downsides of the doctrine to the nation. In achieving this, the study examines the mode of applicability of the concept and its legal and institutional frameworks in

[4] Section 14 (2) EFCC Act, 2004.

Nigeria and in the relevant states. In order to put this study into proper perspective, it will now examine concepts which are relevant to the study for proper appreciation of the subject matter.

2. CONCEPTUAL CLARIFICATION

2.1 Plea Bargain

There is no universally accepted definition of plea bargain among publicists and jurists[5]. The Black's Law Dictionary defines plea bargain as,

> An informal agreement whereby the accused and the prosecutor in a criminal case, work out a mutually satisfactory disposition of case subject to court approval. It usually involves the defendant pleading guilty to a lesser offence or to only one some of the lighter sentence than possible for the graver charge[6].

Plea bargain has been defined by Nchi as an informal arrangement whereby the accused person agrees to plead guilty to one or some charges in return for the prosecution agreeing to drop other charges or a summary trial[7] According to B. Momodu in his *Encyclopedia of Nigerian Case Law: Principles and Authorities*

> Plea bargain is a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor usually, a more lenient sentence or a dismissal of the charges[8].

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[5] A. Alubo, *The Nigerian Plea Bargaining System: Presumption for Nigerian Criminal Justice System* (St. Stephens inc, 2002) 258

[6] *Black's law dictionary* 8th edition, (1999) 1190.

[7] Nchi, S.I. *The Nig. Law Dictionary* (Tamaza Publishing Company Ltd, 1996) 250.

[8] B. Momodu, ,*Encyclopedia of Nigerian Case Law Principles and Authorities*, 696.

Plea bargain is loosely defined as a deal between the prosecutor and the defendant wherein the defendant pleads guilty to a charge less than the original or receives sentencing consideration for pleading guilty to the original charge[9]. Plea bargain is not synonymous with pleading guilty. Plea bargain (also called plea negotiations or plea agreements) are arrived at through negotiations between the prosecutor and the defendant's attorney during which a proposed resolution of the criminal charges against the defendant is arrived at[10] . It is a practice whereby the accused forgoes his right to plead not guilty and demand a full trial and instead uses a right to bargain for a benefit. Plea bargaining means the accused's plea of guilty has been bargained for and some consideration has been received for it[11].

One of the most prolific writers on plea bargain in America, John Langbein[12], observed from a negative perception of the application of the concept that, plea bargaining occurs when the prosecutor induces a criminal accused to confess guilt and to waive his right to trial in exchange for a more lenient criminal sanction that would be imposed if the accused were adjudicated guilty following trial in exchange for a more lenient criminal sanction that would be imposed if the accused were adjudicated guilty following trial. The prosecutor offers leniency either directly, in form of a charge reduction, or indirectly, through the connivance of the judge, in the form of a recommendation for reduced sentence that the judge will follow. In exchange for procuring this leniency for the accused, the prosecutor is relieved of the need to prove the accused's guilt, and the court is spared having to adjudicate it. The court condemns the accused on the basis of his

[9] A. Motir, "The Necessity of Plea Bargaining" <http://artscidrake.edu/dussj/mohraaron>pdf (accessed 25 January, 2023)
[10] *Ibid*
[11] G. Ferguson and D. Roberts, "Plea Bargaining; Directions for Canadian Reform", can. Bar Review vol. 52, 1974, 497 at 501 see also M.G. Santos, "Pleas and Plea Bargains", *Tropical Report 12*, D.W. Maynard, "Aspects of sequential organization for plea bargaining".
[12] J.H. Langbein, "Torture and Plea Bargaining" Uchi L. Rev. Vol. 46, 1978-79

confession without independent adjudication[13]. In Canada, in 1975, the Law Reform Commission of Canada defined Plea bargaining as "any agreement by the accused to plead guilty in return for the promise of some benefit"[14]. M P Piccinator noted that because of objections based on observations that the definition was suggestive that justice could be bought, neutral expression such as "Plea discussion", "plea negotiation" and "plea agreements" are now used[15].

2.2 Criminal Justice System

A criminal Justice System is a criminal legal network. It is the interrelationships of criminal justice elements comprising of the police, courts and the prisons now known as the correctional facilities. It is a loose federation of agencies each separately budgeted, each drawing its manpower from separate wells, and each a profession unto itself [16]. According to Moore, the criminal justice system is not a system in the sense that all its agencies are directed towards a particular objective with the help of a centralized authority, but that it is a limited system to the extent that the different agencies are linked[17].

Criminal justice is a legal process which involves the procedure of prosecuting the person accused of committing crime from arrest to the final disposition of the case[18]. It is the collective institutions through which a defendant passes until the allegations have been disposed of or the assessed punishment concluded. The importance of the criminal justice system is to

[13] ibid
[14] Ibid. See also *Kercheval v. US* 274 U.S 220-223 (1927)
[15] Piccinator, M.P "Plea Bargaining", Department of Justice, Canada, <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ilp-pji/pb-rpc/toc-tdm.html> (accessed 25 January, 2023)
[16] D.J Newman, *Introduction to Criminal Justice,* (New York: Lippincott, 1978) 3.
[17] M.H Moore, "The Legitimation of Criminal Justice Policies and Practices" in James Q. Wilson, *et al.,* (eds.), *Perspectives on Crime and Justice,* (National Institute of Justice, Research Report, 1996-1997 Lecture Series, Vol.1, Nov 1997).
[18] A.B Dambazau, *Criminology and Criminal Justice,* (2011) 173-175

curtail crime and to help in the smooth running of the society. The criminal justice system has its legal foundation through the constitution as some sections of the constitution deals with criminal justice.[19]

3. TYPES OF PLEA BARGAIN

Various types of plea bargain have been identified following the modes of application of the concept. Four types of plea bargain popularly applied within the Nigerian criminal justice system are charge bargain, sentence bargain, fact bargain, and the count bargain. These four forms of plea bargains will now be considered albeit briefly.

3.1 Sentence Bargain

This is a type of plea bargain where the defendant and the prosecutor come into an agreement for the defendant to plead guilty or not contest the stated charge in exchange for a lighter sentence. [20] Sentence bargaining saves the prosecution time by not having to prove the defendant's guilt at trial. In exchange, the defendant also benefits by not having to serve as much time (if any) in jail.

3.2 Charge Bargain

Here, the prosecutor in the agreement with the defendant agree to reduce the charge to a less serious offense in exchange for a guilty plea or a no contest to the stated charges. Such agreements are usually made before criminal charges are filed[21]. The prosecutor then enters into an agreement with the defendant, allowing the defendant to plead guilty to a lesser charge or only some of the charges in exchange for dismissal of the remaining charges or higher charges. This is the most common form of plea bargain.

3.3 Fact Bargain

[19] Section 36 CFRN.
[20] J.A. Agaba., *Practical Approach to Criminal Litigation in Nigeria* (Law Lords Publication, 2011) 591-592.
[21] Ibid.

This occurs where the accused agrees to affirm to certain facts in order to avoid other facts from being introduced into evidence. Also, where the defendant agrees to plead guilty in accordance with an agreement in which the prosecutor set forth to certain facts that will affect how the defendant would be punished under the sentence guidelines[22].

3.4 Count Bargain

This occurs where a defendant who is facing multiple charges is allowed to plead guilty to fewer counts by the prosecutor in exchange for a lenient sentence. Here, defendant who faces multiple charges may be allowed to plead guilty to fewer counts.[23]

4. EXCEPTIONS TO THE APPLICATION OF PLEA BARGAINING IN NIGERIAN CRIMINAL JUSTICE SYSTEM

It is important to note that the application of plea bargain in the Nigeria criminal justice system is still subject to a debate as some writers and scholars are in support while some are also in strong opposition against the application of the doctrine despite the enactment of the ACJA, thereby making it difficult to ascertain the exceptions of the doctrine.

In view of the foregoing, this study examines some offenses where the negotiation between the defendant and the prosecution is mostly seen as undermining criminal justice. These instances include the following,

4.1. Capital Offense: Capital offenses are offenses that are punishable by the death penalty. Capital offenses as provided for under the Criminal Code and the Penal Code include the following:

[22] Ibid
[23] Ibid

a) Armed robbery. By virtue os section 403 of the Criminal Code Act, attempted armed robbery is punishable with life imprisonment with or without whipping.[24]
b) Murder. Section 320 of the Criminal Code Act provides for the offense of murder. It provides that,

> Any person who: (a.) Attempts unlawfully to kill another; or (b) With intent unlawfully to kill another, does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life is guilty of a felony and is liable to imprisonment for life.[25]

c) Treason. Section 37(1)(2) of the Criminal Code Act provides for treason and conspiracy to commit treason. It provides thus,

> (1) Any person who levies war against the State, in order to intimidate or overawe the President or the Governor of a State, is guilty of treason, and is liable to the punishment of death. (2) Any person conspiring with any person, either within or without Nigeria, to levy war against the State with intent to cause such levying of war as would be treason if committed by a citizen of Nigeria, is guilty of treason and is liable to the punishment of death.[26]

d) Treachery. Section 49(1) of the criminal code Act provides,

> If, with intent to help the enemy in any war in which Nigeria may be engaged, any person does, or attempts to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of the armed forces of Nigeria, or to endanger life, he is

[24] s 403 of the Criminal Code Act
[25] s 320(a)(b) of the Criminal Code Act
[26] s 37(1)(2) of the Criminal Code Act

> guilty of felony and liable on conviction to suffer death.[27]

e) Aiding suicide of a person. Section 326 of the Criminal Code Act provides that,

> Any person who- (1) procures another to kill himself; or (2) counsels another to kill himself and thereby induces him to do so; or (3) aids another in killing himself; is guilty of a felony and is liable to imprisonment for life.[28]

Plea bargain application has been exempted from capital offenses. For instance, the Administration of Criminal Justice Law of Anambra state does not allow plea bargain in the case of capital offense. In the case of a capital offense, a plea of guilt will not be recorded, however a plea of not guilty will be entered for the accused. In the case of *Olabode v State*[29], the Supreme Court stated that "let me even go further to say that in murder cases like this present one, even if the accused had pleaded guilty to the charge of murder after same should have been read and explained to him, the court has made a practice of recording for him in such unusual circumstances a plea of not guilty".

4.2. Adequacy of Punishment. Here, the prosecutor ensures that that the defendant agrees to enter a sentence that shows the level and degree of the offending conduct. In order to preserve the integrity of the justice system and the separation of powers, it is so important that the prosecutor should put into consideration the adequacy of the punishment when making a decision to enter into a plea bargain agreement with the defendant. The ACJA provides that "in considering a plea agreement the prosecution is to consider the public interest in the probable sentence or other consequences

[27] Section 49(1) of the Criminal Code Act
[28] Section 326(1)(2)(3) of the Criminal Code Act
[29] *Olabode v State* (2009) All FWLR (pt.500) 607

if the defendant is convicted"[30] The issue of inadequacy of sentence in relation to plea agreement has provoked public outcry in the early cases that were plea bargained in Nigeria.

5. PROCESS OF PLEA BARGAIN

There is a formal process of plea bargain which must be complied with for a successful application of the concept for conviction of a defendant. The parties to a plea bargain agreement includes the prosecutor and the defendant. In plea bargain, during the course of negotiation, both parties must make compromises aimed at reaching an achievable agreement. A defendants' knowledge of his chances of victory at trial is often key to his decision to enter a plea bargain. It is always advisable to opt for an experienced criminal defense attorney who can help such defendant to make this critical but strategic decision. It is safer to know what a defendant is bargaining for. After a plea agreement has been reached by the prosecutor and defendant, the Prosecuting officer will obtain the requisite internal approval and file a charge or count in a court of competent jurisdiction. The next phase involves the court to accept the plea bargain agreement. After the matter is charged to court, the Defendant will be required to plead guilty to the counts or charges as agreed in the plea bargain arrangement. Thereafter, the prosecutor and the Defendant's counsel will inform the court of the plea bargain arrangement pursuant to which the court will convict the defendant bearing in mind the circumstances of the plea bargain arrangement already entered by the parties.

However, a Plea of guilty is a formal confession, so where the plea of the accused is made after the charge is read and explained to him and the said

[30] Section 270(5) (b) of the ACJA 2015

plea is unambiguous and unequivocal, the accused can be duly convicted where the offence is a non-capital offence[31].

The ACJA 2015 provides for the guidelines for the application of the concept sections 270 – 277 of the Act. However, in a case of capital offense even if the accused pleads guilty, a plea of not guilty will be entered for the accused. Section 270 of ACJA, 2015 thus provides that:
Section 270 (1)[32] *"*notwithstanding anything in this Act or in any other law, the Prosecutor may:

(a) Receive and consider a plea bargain from a defendant charged with an offense either directly from that defendant or on his behalf; or
(b) Offer a plea bargain to a defendant charged with an offense.

2) The prosecution may enter into plea bargaining with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defense, provided that all of the following conditions are present:

(a) The evidence of the prosecution is insufficient to prove the offense 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 representative; or
(c) Where the defendant, in a case of conspiracy, has fully cooperated with the investigation and prosecution of the crime by providing relevant information for the successful prosecution of other offenders.

By virtue of *section 270(1) – (18)* of the ACJA 2015, the ACJA specifically sets out some factors which the prosecution is to consider in deciding

[31] *Offor v The State* [2012] 18NWLR pt.1333 pg. 421; *Okewu v Federal Republic of Nigeria* [2012] 9NWLR Pt.1305 pg 327.
[32] Section 270 of ACJA, 2015

whether to go into plea bargain. The factors which a prosecutor is mandated to consider can be categorized into two depending on the stage at which the agreement is proposed; the first before the defendant has taken his plea to the charge while the second stage is during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence. It mandates the prosecution to give the victim of the crime an opportunity to make representations regarding the contents of the agreement and the inclusion in the agreement of a compensation or restitution order. Where the plea agreement is proposed during or after the presentation of the prosecution's case, the consent of the victim or his representative is required. It is pertinent to note that while the ACJA expressly empowers the court to accept the plea agreement subject to confirmation of the terms of the agreement by the defendant, the court is not mandated to seek the views of the victim and whether his/her consent or representation was obtained in the preparation of the plea agreement. However, under its inherent powers, the court should ensure that the plea agreement makes adequate provision for the victim to further the general objectives of the Act. To further enhance the position of the victim, the ACJA makes specific and unique provision for the forfeiture, transfer and vesting of the proceeds of the crime on the victim or his representative.This was provided for under subsection 12 of the stated law. The section also provides for the finality of a judgment entered pursuant to a plea agreement, such judgment is final and there is no right of appeal for any of the parties unless fraud is alleged. Also, where a defendant is convicted and sentenced following a plea agreement, he is exempted from trial on the same facts for the greater offence for which he was earlier charged to which he pleaded to a lesser offence.

The provision of the EFCC Act subjects plea bargain to the provisions of Section 174 of the Constitution. Many persons in Nigeria believe that the concept should not be practiced in the country as the concept is not yet ripe in the country.

6. CONDITIONALITIES FOR APPLICATION OF PLEA BARGAIN

Before a court can convict based on plea of guilty using the doctrine of plea bargain, the court must be satisfied as to certain conditionalities namely as discussed below.

6.1 That Defendant Understands the Charge Read to Him

The court must be satisfied that the accused understands the charge read to him.[33] What this implies is that, it is not sufficient that the charge is read over to the accused. It must also be explained to the accused to the satisfaction of the court. This means that the basic ingredients constituting the offence must be explained to the accused[34]. *In the case of Kayode & 2ors. v State*[35], the appellants were charged before the high court of kwara state sitting at Ilorin on a two-count charge of conspiracy to form a secret cult contrary to section 97 of the penal code and being members of a secret cult group to wit, black axe contrary to section 7 of the Secret Cults and Secret Societies in Educational Institutions (prohibition) Law, 2004. The charges were read to accused persons and they were asked whether they understood the charges to which they answered in the affirmative. The trial judge convicted them and passed sentences on them. The appellants appealed against the decision of the trial court. In allowing the appeal, the court of Appeal relied on the provision of section 161(3) of the CPC which provides that: the court shall, before convicting on a plea of guilty, satisfy itself that the accused has clearly understood the meaning of the charge in all details and essentials and also the effect of his plea. The court held as follow,

> Even where the accused persons pleaded guilty, the court needed to reconsider the evidence and the charge and by question understood the full meaning and implications of the

[33] J.A Agaba, '*Practical approach to Criminal Litigation in Nigeria'* (3rd ed, 2017).
[34] Ibid.
[35] *Kayode and 2ors v State* [2008] All FWLR Pt.402 at pg.1014.

charge and plea before proceeding to enter a plea of guilty and sentencing the accused persons accordingly[36].

The court concluded that the appeal ought to be allowed and the appeal was allowed.

6.2 Court to Hear the Facts Constituting the Alleged Offence

The courts must hear the facts as alleged by the prosecution as constituting the offence charged[37]. In this condition where the prosecution has stated and narrated the facts alleged against the defendant, the court will ask the accused if he affirms to the facts charged against him by the prosecution. In the case of *Osuji v. Inspector –General of police*[38], the accused was charged for an offence of unlawful assault to which he pleaded guilty. The charge was not explained to the accused, the prosecution stated the facts alleged against the accused but the Magistrate, without asking, the accused whether he admitted those facts as stated by the prosecution, went ahead and convicted him. On appeal, it was held that the failure of the Magistrate to ensure that charge was explained to the accused was fatal to the plea as it contravened section 218 of the CPL.[39]

6.3 Court be Satisfied that Plea of the Defendant is Unequivocal

The court must be satisfied that the plea of the defendant is unequivocal.[40] In this condition the defendant must have intended to admit the charge. The plea must be unambiguous. *In Aremu v. Commissioner of police*[41], the defendant was charged with the offence of escaping from lawful custody. He pleaded guilty with certain reasons. He was convicted for his plea. On appeal, it was held that the plea, being ambiguous was not a plea of guilty.

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[36] *Kayode and 2ors v State* (supra).

[37] J.A Agaba, '*Practical approach to Criminal Litigation in Nigeria'* (3rd ed, 2017), at p.14

[38] *Osuji v Inspector-General of police* [1965] LL.R 143.

[39] Section 218 of the Criminal Procedure Act and also *Kayode v. State*, supra.

[40] J.A Agaba, *Practical approach to Criminal Litigation in Nigeria'* (3rd Ed, 2017) 14.

[41] *Aremu v Commissioner of police* [1980] 2 NCR 315.

It has also been held in the above case as well as in another case, that where an *allocutus* after the plea obviously negates the plea of guilty.[42] In the above case, the accused in his *allocutus* stated that he was never in lawful custody. The appellate court held that the trial court should have taken that statement as a negation of the facts stated by the prosecution. Where an accused makes an otherwise unequivocal or unambiguous plea of guilty but in the course of the proceedings before sentencing makes any statement denying criminal liability or any statement inconsistent with his plea, the court should enter a plea of not guilty for him. In *Onuoha v. Inspector-General of police*[43] here the accused was charged with an offence of stealing some money. He pleaded not guilty but the plea of guilty was wrongly entered for him. In answer to a question by the Magistrate whether he took the money, the accused answered in the affirmative. The magistrate convicted the accused. on appeal, it was held that the mere admission of taking the money was not a conclusive proof of stealing the money as he could have taken the money for safekeeping or for any other genuine reason, it was not certain that the accused intended to admit commission of the offence of stealing.[44]

6.4 The Facts Stated by the Prosecution Must Support the Charge of which Defendant has Pleaded Guilty

The facts stated by the prosecution must support the charge of which the accused has pleaded guilty[45], if otherwise the court shall not convict on it[46]. The facts stated by the prosecution and admitted by the accused must sustain the charge. All ingredients of the offence must be contained in the facts alleged by the prosecution and admitted by the accused before a plea of guilty can be sustained. In *Abele v. Tiv Native Authority*,[47] the accused

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42 *IGP v. Adedeji* [1957] WRNLR 178.
43 *Onuoha v. Inspector-General of police* [1956] NRNLR 96.
44 J.A Agaba, *Practical approach to Criminal Litigation in Nigeria'* (3rd Ed, 2017).
45 Ibid.
46 s 274 (1) (c) of the ACJA 2015.
47 *Abele v Tiv Native Authority* [1965] NMLR 425.

persons where charged with the offences of rioting and brigandage while armed with deadly weapons. They pleaded guilty to the charge. Although evidence showed that the accused persons were armed with sticks were tendered in evidence. The trial court found them guilty based on the plea of guilty. On appeal against the conviction, it was held that since no sticks were tendered to ascertain where they amounted to deadly weapons, the only charge that can be sustained against the accused was that of rioting and the appellate court substituted a conviction of rioting while armed with deadly weapons. However, the appeal was allowed. It should be remembered that it is not a requirement of the law that the court has to make the accused to admit every essential ingredients of the offence. What the law requires is that the judge should be satisfied that the accused understands the charge and intends to admit all the essentials of the alleged offence.[48] It is the subjective judgment of the judge whether or not the accused intends to admit the essentials of the alleged offence.[49]

6.5 Whether Expert Witness is Available where offence charged can only be Constituted by Expert Evidence

Where the offence charged is one which can only be constituted by expert evidence.[50] In such a case the court must be satisfied that such expert witness is available as at the time of the plea before convicting the accused on a plea of gvuilt.in the case of *Stephen v. Police*[51], the charge against the defendant was that he was in possession of Indian hemp. However, the defendant pleaded guilty to the charge and he was convicted, the Indian hemp was not tendered in evidence neither was there a chemist's report showing that those plants tested positive to cannabis sativa. On appeal the conviction was expunged on the ground that expert witness was a requirement in the circumstance.

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[48] J.A Agaba, *Practical approach to Criminal Litigation in Nigeria'* (3rd Ed, 2017) 14.
[49] Section 274(1) (b) of the ACJA.
[50] J.A Agaba, *Practical approach to Criminal Litigation in Nigeria'* (3rd ed, 2017).
[51] *Stephen v Police* [1966] 2 All NLR 261.

6.6 Where Offence Charged is a Capital Offence

(f)Where the offence charged is a capital offence.[52] In a situation where the offence charged is a capital offence, a defendant cannot plead guilty as long as it is a capital offence and even if the defendant goes ahead to plead guilty in this situation a plea of not guilty will be entered for him. In *Olabode v State,*[53] the Supreme Court stated that,

> let me even go further to say that in murder cases the like of present one, even if the accused had pleaded guilty to the charge, of murder, after same should have been read and explained to him, the court has made a practice of recording for him in such unusual circumstances a plea of not guilty.

Plea bargain has been applied in few cases involving financial crimes in Nigeria and prominent among the cases are the following instances. The concept was applied by the EFCC in the case of *Federal Republic of Nigeria v Tafa Balogun*[54], where Tafa Balogun was former Inspector General of Police. He was accused of stealing money voted for the police. In the charge brought against him by the Anti-graft agency under the Money Laundering (Prohibition) Act of 2005, he was said to have incorporated some companies to loot the police treasury through bribes and kickbacks on contracts. Billions of naira was fraudulently withdrawn by him from the police account and laundered to the company's foreign account. Consequently, he was forced to resign. During the trial, the judge (Justice Binta Nuako) said in her judgment that she considered the fact that Tafa Balogun was “offender" and had shown remorse throughout the trial. His Lordship sentenced the defendant to a term of six months imprisonment and a fine of (N500,000) (3,846 US Dollars) on each of the charges against him. The court also ruled that the defendant would forfeit all his assets, shares, and landed properties acquired with the fund stolen from the police

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[52] J.A Agaba, *Practical approach to Criminal Litigation in Nigeria'* (3rd ed, 2017).
[53] *Olabode v State* [2009] All FWLR (Pt.500) 607.
[54] *Tafa Balogun v. Federal Republic of Nigeria*(2005)4NWLR(Pt.324) 190.

treasury. The asset totaled 150 million US Dollars including money stashed in banks, shares in blue ship companies and 14 luxury buildings.

In *FRN v Nwude & others*[55], the three (3) accused persons Nwude, Nzeribe Okoli and Amaka Anaiemba, were charged by the FCC in 2004 before an Abuja High court for defrauding a Brazilian Bank, Ban Quo Noreste, of the sum of 212 million dollars. Later the Abuja High Court rejected the case on the ground that the court had no jurisdiction to entertain the case before it and the case was transferred to an Ikeja High Court presided over by Justice Joseph Oyewole. The judge sentenced and convicted them accordingly; Nwude was sentenced to 25yrs imprisonment, while Okoli was sentenced to 12yrs imprisonment. The third accused person was Mrs. Ana Jemba avoided trial by pleading guilty to the amended charges. They were also asked to forfeit 110 million dollars to the Federal Government. This was as a result of guilty plea from the accused persons. They were found guilty on all the 11 counts charged. The convicts changed their plea to guilty plea after initially pleading not guilty, and were commended by the judge for so doing.

In *Romrig (Nig.) Ltd. v. FRN*[56], the appellant was involved in a charge instituted at the Federal High Court Enugu, involving Lucky Nosakhare Igbinedion and six others. The appellant was the 5th defendant in that charge. Lucky Nosakhare Igbinedion was convicted and sentenced pursuant to a plea agreement which did not involve the 5th defendant in that charge. In a fresh charge at the Federal High Court Benin, the appellant who was the 5th defendant in the earlier charge opposed the fresh charge on the ground of double jeopardy and condonation. The application of the appellant for a dismissal of the charge was dismissed at the Federal High Court Benin and at the Court of Appeal. The Supreme Court affirmed the decision of the trial court and the Court of Appeal. The Supreme Court held

[55] *FRN v. Nwude & others* (2004) WRN 56
[56] *Romrig Nig.Ltd v. FRN* [2018] 15 NWLR (pt.1642) 284.

inter-alia that there was no plea agreement between the appellant and the prosecution at the Federal High Court Enugu. The Court held also that there was no evidence that the appellant was tried, convicted or acquitted at the Federal High Court Enugu. In the absence of evidence of any plea agreement between the appellant and the prosecution, the appeal was dismissed.

The Supreme Court also made the following important pronouncements on plea bargain:

(i) A plea bargain cannot be taken or entered in absentia. This is because a plea bargain must be a deliberate and conscious act taken by the accused and the prosecution. In the instant case, the appellant did not enter a plea bargain with the prosecution.
(ii) A plea bargain is only valid or effective when agreed upon by the prosecution and the accused in person and not by proxy.
(iii) Only directors of an accused corporate entity can represent such company in a plea bargain agreement.
(iv) An accused cannot inherit the benefit of a plea bargain with a co-accused no matter the relationship.

Another plea bargain case that attracted public opprobrium is the case of the *Federal Republic of Nigeria v. John Yusuf*[57] which involves Mr. John Yusuf, a Former director of the Police Pension Office. He was charged with several counts of offenses for defrauding the office and pensioners of N27.2 billion Naira. He was convicted after pleading guilty to counts 18, 19 and 20 in which he was alleged to have connived with others to convert the sum of N24.2 billion Naira, N1.3 billion Naira and N1.7 billion Naira, belonging to the Pension Office to his personal use. He was convicted of the three counts and sentenced to imprisonment for two years each, on each of the counts (sentences to run concurrently) with an option of N250, 000 (two

[57] I. Chiedozie "Nigerian Wonder: N27bn pension Thief Gets N750,000 fine" (written 29th January, 2013) <http://investadvocate.com.ng/2013/01/29/nigerian-wonder-n27bn-pension-thief-gets-n750000-fine > (accessed 5 February, 2023)

hundred and fifty thousand naira). This is one instance wherein the application of plea bargain was grossly abused in Nigeria, leading to public uproar against the option of N250, 000 (two hundred and fifty thousand naira for someone who stole over twenty-seven billion naira and denied pensioners their entitlements. In addition, the defendant was ordered to forfeit landed properties located in Abuja.

Except for the punishment of five years imprisonment imposed on Emmanuel Nwude for defrauding the Brazilian banks, the punishments imposed in the other cases are grossly lenient. The public outcries against the punishments imposed on the convicted offenders were therefore justified. One reason that may have accounted for the overly lenient punishment is the absence of a clear framework to guide the courts in sentencing. Before the recent emergence of Sentencing Guidelines, the courts have attempted to formulate general guidelines to regulate the exercise of discretion in sentencing. The guidelines formulated by the courts have been criticized on the ground that their rationality are extremely difficult to defend and on the ground that they lead to incoherent, irrational and incredibly intricate variety of sentences. Although plea bargain seems to have been abused and corrupted in some instances by connivance between the prosecution and the defendant and sometimes by the court leading to questionably lenient punishment, there are advantages of plea bargain to the criminal justice system in Nigeria and this informs the succeeding paragraphs of the paper.

7. ADVANTAGES OF PLEA BARGAIN

Plea bargain has become a mechanism in the administration of criminal justice system in most of the developed countries of the world today. The application of this system became possible due to importance attached to the practice right from the period crime bedeviled the society. As criminal law became more crowded, prosecutors and judges felt increased pressure to move cases quickly through the system. Trials could take days, weeks, months and years, while guilty pleas can be concluded within minutes.

Also, the outcome of any given trial is usually unpredictable, but plea bargaining provides both prosecution and defense with some control over the result. In this context, the system would enable the courts to avoid dealing with cases that involve no real disputes and try only those where there is a real basis for dispute. Victims would be spared the ordeal of giving evidence in court, which could be a distressing experience depending on the nature of the case. The specific advantages of plea bargain therefore include the following[58],

1) Plea bargaining allows persons who admit responsibility for their crimes to receive consideration for their remorse in the form of lighter sentence.
2) Plea bargaining saves the cost of litigation and thereby conserves judicial funds which would otherwise be wasted on investigation and litigating cases.
3) The difficulty of proving certain complex cases such as economic crimes committed across many jurisdictions in one operation make plea bargaining quite attractive.
4) Plea bargaining helps the court and the prosecutors to manage their cases loads in ensuring that cases that need not go through plenary trials with attendant frustrations are not allowed to linger on.
5) A cardinal objective of the justice system is the satisfaction by contending parties that justice has been done. Plea bargain forms a frame work wherein the accused and the prosecutor can reach an agreement which settles the matter in what appears to be in the spirit of fairness to all parties concerned.
6) An accused person may, though guilty of a particular charge, be very crucial in supplying information with respect to the prosecution of another offense which is, perhaps more serious and the proof of which may prove quite daunting. A good example may be found in the trial of Major Al-Mustapha and others, where Barnabas Jabilla (Alias Rogers) is being used

[58] Agre and St John, 'What are the Advantages and Disadvantages of Plea Bargain', <https://www.robertagrelaw.com/blog/what-are-the-advantages-and-disadvantages-of-plea-bargaining/> (accessed 15 September, 2023).

as a prosecution witness. With plea bargain, he can be convicted and sentenced with a lighter sentence and then be used as a prosecution witness because his evidence is very material.
7) Plea bargain may contribute towards the successful prosecution of serious offenses because the prosecution will now have ample time with more serious matter.
8) It avoids the necessary of a public trial and may protect the innocent victim of crime against the trauma of giving evidence in open Court. In rape cases for instance, where the victim may not want to testify because of social implication of the evidence to her future, plea bargain becomes of critical importance.
9) Plea bargain reduces public expenditure incurred in prolonged trials of criminal suspects[59].

Although, the advantages of plea bargain as stated above justify the introduction of the doctrine, yet there are disadvantages to its application in the criminal justice system in Nigeria, leading to the call to abolish the doctrine of plea bargain in some quarters. Some of the disadvantages of plea bargain identified from the practice are stated below.

8. DISADVANTAGES OF PLEA BARGAIN

From some of the literature available on plea bargaining, one can imply that pleading guilty to criminal charges is somehow pathological, a deviation from the natural course of events in criminal justice system. In this respect despite the advantages of plea bargaining enumerated in this work, there have been criticism against the practice[60], which include the following:

[59] J.A. Agaba., *Practical Approach to Criminal Litigation in Nigeria* (Abuja, Law Lords Publication, 2011) P. 591-592
[60] The Lawyers & Jurist 'Advantages and Disadvantages of Plea Bargaining' <https://www.lawyersnjurists.com/article/advantages-and-disadvantages-of-plea-bargaining/> (accessed 16 September, 2023)

1) Plea bargain also makes the justice system to suffer since both the defense and prosecution parties depend on their power to negotiate a deal, instead of focusing on the outcome of full trial.[61]
2) The prosecution is capable of taking full advantage of accepting the criminal act in weakest trials. The more likely the trials ends, acquittal the more beneficial a guilty claim is for the prosecution.
3) Plea bargain leads to poor case preparation and investigation: this is because, the prosecutions as a result of the understanding don't take time to properly prepare for the case and poor police investigation rather than pursuing justice, the parties would reply on plea bargaining, where the details of the offense so committed will be less important.
4) It is also argued that plea bargaining is unconstitutional because, it takes away the defendant's Constitutional right to a fair trial as he is coerced into such agreement, then this argument may have a considerable weight but if the defendant, at all times in the criminal case, retails his right to trial without pressure to make an agreement, the court finds the procedure Constitutional."
5) It does not provide benefit for the innocent defendants, this means that police officer or the prosecution are encouraged to undertake shoddy investigations and lead council to no longer bother to plan and organize a quality case in Court[62].
In essence, plea bargaining can become routine and thereby an end rather than a means to an end. Thus, very few cases crossing a prosecutor's desk deserve a trial. The majority of plea bargaining cases do settle and prosecutors develop a strong work habit of managing their caseload that way. As such, a holdout case may be seen as a nuisance, causing plea bargaining to deteriorate into coercion, concession and compromise without regard for the merit of the case. The indiscriminate use of plea bargaining to clear court calendars has been condemned from different

[61] s 270 Administration of Criminal Justice Act, 2015
[62] Agre and St John, 'What are the Advantages and Disadvantages of Plea Bargain', <https://www.robertagrelaw.com/blog/what-are-the-advantages-and-disadvantages-of-plea-bargaining/> (accessed 15 September, 2023).

quarters. But under pressure, a prosecutor's definition of reasonable plea bargaining has an unfortunate tendency to expand. Plea bargaining does not encourage participating by the victim. The criminal justice system historically, has treated victims cavalierly. It is only with recent development of victims witness programs that victims' involvement is being encouraged. Most victims want to have a voice in the outcome of a case, but this very seldom happens when cases are plea bargained. Victims are generally left out because negotiations often are informal and unscheduled and talking to victims very different from that of an experienced criminal attorney. Victims have the difficulty of accepting what the outcome of what a case is worth in criminal justice terms and understanding the realistic limitations on punishment.

9. CONCLUSION

The study examined the concepts of plea bargain, types of plea bargain, process of plea bargain and the conditionalities for the application of plea bargain in Nigeria. This study also examined the applicability of the doctrine of plea bargain in Nigeria with specific interest in considering the advantages and disadvantages of application of the doctrine of plea bargain under the ACJA. It also considered the provisions for plea bargain under the EFCC Act and the ICPC Act. The study highlighted certain offences for which the doctrine of plea bargain cannot be applied under the criminal justice system in Nigeria. It recommended the need for further amendment of the ACJA as well as the laws of the various states in order to derive greatest advantage to plea bargain to the administration of criminal justice system in Nigeria.