An Examination of the Selective Application of the Doctrine of Plea Bargain in Nigeria

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Abstract
A lot of controversies have greeted the import of the American developed concept of plea bargain to the Nigerian criminal justice system, because of how the concept is made to become a subtle way of letting corrupt government officials and other public figures escape justice. This controversy and suspicion are largely because of the way and manner the anti-graft agency is making use of the concept in selective and biased manner. That is by selecting the persons or cases to apply the concept to, leaving a lot of deserving cases out. This has the negative effect of defeating some of the aims of the concept to wit: speedy justice and cutting congestion of cases and inmates. This piece examines the selective manner the Nigerian prosecutors are making use of the concept to the detriment of the country's justice system. The paper found among others that presently, the concept of plea bargain is largely restricted to corrupt related cases which do not even near a quarter of the total criminal cases to the detriment of the Nigerian criminal justice. It is the recommendation of the paper that plea bargain as a matter of public policy be extended to cover all property related cases and other deserving ones especially those where restitution is possible. The study is based on doctrinal method of research which makes reference to both primary and secondary materials.
Keywords: Plea bargain, Selective Application, Speedy justice, high profile individuals

1,1 Introduction

The adoption of plea bargaining in the Nigerian criminal justice system is widely believed to be fashioned after its use in the United States of America.[1] It was introduced in the United States of America (USA) to address the arithmetical increase in crimes and public

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[1]Osasona, T. (2016) Time to reform Nigeria's criminal justice system. Journal of Law and Criminal Justice, 3(2), pp. 73-79

outcry that follows prolonged court trial.[2] Upon its introduction in the United States' criminal justice system, it gained success in eliciting conviction regardless of the guilt or innocence of the suspect. As a result, just as it is used in the USA, plea bargaining is a measure aimed at fast tracking processes in the criminal justice sector in the Nigerian system.[3] Consequent upon its introduction, plea bargaining has been used by the Economic and Financial Crimes Commission(EFCC) to convict and sentence a number of prominent Nigerians who have corruptly enriched themselves as public servants and politicians.[4] The rationale that informed the import of the American developed concept into the Nigerian criminal justice system may have been noble, if one considers the lot of frustrations that attributed the system. However, the personnel saddled with the task of utilising the concept to salvage the country's justice system of the many challenges have not indicated the willingness to sincerely uphold such task. This fact is apparent in the selective and biased manner the concept is being offered only to high profile individuals to the exclusion of the petty offenders who formed the larger part of inmates at our various custodial centres in the country. It is against this background that the study undertakes to examine the application of the concept of plea bargain in Nigeria focussing more on the selective manner the concept is currently being applied, against the extant legal provisions applicable to and governing the concept. The paper is divided into four parts namely; introductory part, Conceptual Clarifications part, Plea Bargain in some selected foreign countries, Rationale of the Concept, Selective Application of Plea Bargain in Nigeria, and the last Conclusion part.

1.2 Conceptual Clarification

1.2.1 Definition of the Concept of Plea Bargain

No standard definition of plea bargain exists among practitioners and Scholars. The definition of "plea bargain" varies depending on the jurisdiction and the context of its use.[5] However, to understand and grapple the full meaning of plea bargain we need to look at some different definitions advanced by experts.

Plea bargain has been defined as a negotiated agreement for a criminal defendant whereby he or she agrees to plead guilty in exchange for a more favourable outcome. This outcome may be the dropping of additional charges, a reduction in the sentence or being charged

[2] Bar-Gill, O. &Gazal-Ayal, O. (2006) 'Plea bargains only for the guilty' Journal of Law and Economics, Volume 49, pp. 353-364.
[3]Opara, L., (2014). The law and policy in criminal justice system and sentencing in Nigeria. International Journal of Asian Social Science, 4(7), pp. 886-897.
[4] R. A. Aborisade and O.A. Adeleke 'One Rule for the Goose, One for the Gander? The Use of Plea Bargain for High Profile Corruption Cases in Nigeria' AFRREV Vol. 12 (2), Serial No 50, April, 2018: 1-12 p. 4 accessed 27 – 3 – 2021 from www.afrrevjo.net
[5] Samuel, O. "Development of Plea Bargaining in the Administration of Criminal Justice in Nigeria. A Revolution, Vaccination against Punishment or Mere Expediency" NIALS Journal of Law and Development 2012.

with a lesser crime.[6] It had also been defined as "the practice of negotiating agreement between the prosecution and the defence whereby the defendant pleads guilty to a lesser offence or (in the case of multiple offences) to one or more of the offences charged in exchange for more lenient sentencing, recommendations, a specific sentence or a dismissal of other charges.[7]

It was again defined 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".[8] According to Mudasiru, Plea bargain is an arrangement in a criminal case between the prosecutor and the defendant that usually involves the defendant pleading guilty in order to receive a lesser offence or sentence.[9]

A judicial pronouncement on the nature of plea bargain stated that plea bargain is an innovation of the law for the benefit of the defendant, the prosecutor, the victim of the offence and the society at large. In most cases, the defendant would forfeit all proceeds of the crime and where the properties acquired with the proceeds of crime for which the defendant is arraigned have not been dissipated, they would be forfeited to the state and given back to the victim of the crime and in restitution and such victim may be the government, authority, organisation or individuals.[10]

Finally, a statutorily definition was given by the Nigerian Administration of Criminal Justice Act 2015 where it was defined as:

> The process in criminal proceedings whereby the defendant and the prosecution work out a mutually acceptable disposition of the case; including the plea of the defendant to a lesser offence than that charged in the complaint or in the information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than that for the higher charge subject to the court's approval[11]

1.2 Types of Plea Bargain

There are four different types of plea bargain[12] which will be discussed below:

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[6] www.hg.org/article.asp?id=40219 assessed on 20-05-2018
[7] John F. Meyer. "Encyclopedia Britannica" www.brittanica.com/topic/plea-bargaining assessed on 20-05-2018
[8] Nchi, S.I. 'The Nigerian Law Dictionary' 2nd ed. Jos Greenworld Publishers ltd, 2000 at 403 cit in Samuel O. op. cit.
[9] Mudasiru S.O. op cit. p.335
[10] Agbi v Federal Republic of Nigeria (2020) 15 N.W.L.R. Pt. 1748 p.423
[11] Section 494 (1) Administration of Criminal Justice Act, 2015
[12] Micah Schwartzbachwww.nolo.com/legal-encyclopedia/what.thedifferenttypesofpleabargains.html assessed on 20-05-2018

1.3.1 Charge Bargain

In Charge Bargain, it is arranged in a way that prosecutor takes out a less serious offence charge which carries a consequent less punishment than what would have been obtainable if the original charge were preferred and the accused successfully prosecuted. In this case, the accused person must have pleaded guilty to one or more charges depending on the bargain.[13] The accused pleads guilty to a crime that is less serious than the original charge or than the most serious charge.[14]

1.3.2 Count Bargain

This is where the accused that faced multiple charges may be allowed to plead guilty to fewer counts. The charges need not be identical: the prosecutor may drop any charge or charges in exchange for a guilty plea on the remaining charges.[15] Count bargain applies only to defendants who face multiple charges.[16] And it was submitted that many consider count bargaining to fall under charge bargaining[17] which is not correct.

1.3.3 Sentence Bargaining

Sentence bargaining involves assurance of lighter sentences in return for a defendant's pleading guilty.[18] According to one author, under sentence bargaining, it is necessary that the offence in question must carry alternative punishments. It is his view that if the offence carries a single mandatory punishment without any option, then there is nothing to bargain as the accused person may have nothing to gain from the bargain.[19]

1.3.4 Fact Bargaining

In fact bargaining, a prosecutor agrees not to contest a defendant's version of the facts or agrees not to reveal aggravating circumstance that would lead to a more severe sentence under sentencing guidelines.[20] Here the prosecution agrees not to reveal or to hide certain facts against the accused from the court when the accused agrees to plead guilty to certain facts as stipulated by the prosecution. For instance in 1973, Spiro Agnew resigned his Vice Presidency, pleading no contest to the charges of failing to report income, he got three years probation and a $10,00 fine.[21]

Despite the above distinctions, it has been said that there is no strict dichotomy between the types of bargains. This reasoning has been explained in the following words:

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[13]Samuel O. op. cit. p.59
[14]Schwartzbach op. cit.
[15]Jon'a F. Meyer op.cit .
[16]ibid
[17]Schwartzbach op. cit.
[18] Jon'a F. Meyer op.cit .
[19] Samuel O. Op. Cit. P.59
[20]http://law.jrank.org/pages1283/guilty-plea-plea assessed 20-05-2018
[21] Samuel O. Op. Cit. P.66

> This is due to the fact that whichever is adopted, the end result the accused is likely to get a lighter punishment for the offence he has committed in consideration for pleading guilty.[22]

1.4 Rationale of Plea Bargain

The Nigerian Court of Appeal per Ogunwumiju (as he then was) in the case of ***FRN v Lucky Igbenedion***[23] stated that(:)

> the advantages of plea bargain include that accused can avoid the time of and cost of defending himself at trial, the risk of harsher punishment, and the publicity the trial will involve; the prosecution saves time and expense of a lengthy trial, both sides are spared the uncertainty of going to trial and the court system is saved the burden of conducting trial on every crime charged.

His lordship succinctly stated one of the most important rationales of the plea bargain doctrine. This is the provision of win-win to both the prosecution and the defence. The Judges are also saved of the burden of conducting trial on every charge before them. However, this laudable situation can only be achieved when the prosecution made a sincere use of the doctrine putting interest of the state and the victim and the need to bring about a speedy and efficient dispensation of justice to all.

The United States Supreme Court while noting the important nature of plea bargain in saving the judicial manpower and facilities stated thus:

> Plea bargain is an essential component of the administration of justice. Properly administered, it is to be courageous. If every charge were subjected to full scale trial, the states and the Federal Government would need to multiply by many times the number of judges and court facilities.[24]

The foregoing judicial pronouncement from the United Sates apex court clearly indicated the positive and revolutionary impact the application of the plea bargain doctrine has on the country's criminal justice system. The court shows how the doctrine saved the country's justice system of the need for greater manpower and other court facilities. It is thus an important part of the system without which the system would collapse.

1.5 Application of Plea Bargain in America

In U.S.A, plea bargain was employed as early as 1970s in property crimes and other offences that do not attract capital punishment. The aim was to save society the huge

[22]Ibid, p.60
[23]supra
[24]Santobello v. New York (1971) 404 U.S 257, 260 92 S. Ct. 498

expenses involved in litigation and to recover for it the stolen common wealth in property crime cases. In the case of Bradley v. United States,[25] the American Supreme Court upheld the practice in 1970. [26]

In 2012, the U.S. Supreme Court acknowledged that plea bargaining had replaced trials as the nearly universal means of resolving criminal cases: 'It is not some adjunct to the criminal justice system; it is the criminal justice system.'[27] Because the ultimate fate of defendants is now almost always decided before trial, the Court's landmark decisions in **Missouri v. Frye and Lafler v. Cooper** recognised that defendants are entitled to effective assistance of counsel during plea negotiations.[28] As the years go on, fewer and fewer defendants are choosing to take advantage of the right to a trial. It is submitted that only 3% of the federal criminal defendants do choose to exercise their Constitutional right to full trial.[29]This is to say that, 97% or more of all federal criminal cases in America are solved through the application of plea bargain. In US plea bargaining had become critical to maintaining an efficient criminal justice system. Today, the critical role that juries historically played has all but disappeared as plea bargaining has become the overwhelming norm for resolving criminal cases.[30] This is in sharp contrast with what is obtainable in Nigeria, where it is hard to find 3% of criminal cases being solved with the use of plea bargain.

1.5.1 The Selective Application of Plea Bargain in Nigeria

The introduction of the doctrine of plea bargain in Nigeria by the Economic and Financial Crimes Commission has generated a pool of criticisms from many Nigerians home and abroad. The criticisms are majorly because of the fact that the doctrine has since its introduction been largely restricted to prosecution of financial crimes and which the perpetrators are nation's high profile individuals. This made some to contend that plea bargaining engenders unfairness, inequality and travesty of justice, as it tends to favour the upper class of the society and not for the benefit of the greatest number of people. It is therefore seen as an instrument of the ruling class to escape the wrath of the law, and as a machine of perpetrating corruption in Nigeria.[31]

[25]Bradley v United States SCT 1463, 25 L.ED 21747 (1970)
[26]Ibid p. 33
[27] Missouri v. Frye, 132 S. Ct. 1399, 1407 (2012).
[28] National Association of Criminal Defense Lawyers 'The Trial Penalty; The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save it https://www.nadl.org/Document/Trialpenaltysixth Amendment/RighttoTrialNearExtinetAccessed 23rd March, 2021.
[29]Ibid p.65
[30]Ibid p.123
[31]Adele G. 'Prosecuting Corruption and the Application of Plea Bargain in Nigeria: A Critique' International Journal of Advanced Legal Studies and Governance 3 (1), 53 – 70<https://www.icidr.org> Accessed on 14th March, 2018.

It is submitted that plea bargain lacks social justice content, because it has allowed highly placed persons in the society who were alleged to have siphoned billions of public funds to get away with justice.[32] According to C. Wigwe, majority of Nigerians are vehemently opposed to the practice of plea bargain because it sharply contradicts what they perceived to be fair and just. This to him is large part due to the fact that plea bargain agreements that received a great deal of public attention mostly involved cases of high profile defendants and large sums of money.[33]

A retired Justice of the Supreme Court, Kayode Eso, was reportedly of the opinion that it is an act of corruption to have brought plea bargain into our Criminal Justice system, thus making it a subtle escape route for the rich in the Society.[34]The view is reinforced when contrasted against the reality of countless convicted and awaiting trial persons in our prisons, many of whom have been sentenced for offences which are not as grave as public or private offices corruption. Plea bargain is hardly contemplated for such classes of offenders because they do not belong to the so called club of the rich.[35]

The adoption of plea bargain in resolving corruption cases against high profile individuals was based on the assumption that it is mutually benefiting to all the parties involved and this claim, is supported by the fact that plea-bargain saves time and cost of adjudicating, ensure quick conviction and asset recovery, and cooperation and guilty plea of the offenders are rewarded with a light sentence. The offender gives up his right for trials in exchange for light sentence, while the court and the EFCC also give up their rights to ensure proportionality between crime and punishment for quick conviction and asset recovery.[36] These mutuality in exchange do not only constitute an injustice to the lower class who is exempted from these largesse, it also does not ensure social justice and deterrence .While the rich get away with their crimes by receiving a light sentence for stealing so much, the poor and the politically less connected persons usually received the full weight of the law.[37]

[32]Nsirim, Elisabeth and Onyige, Chioma Daisy 'The use of Plea Bargain in Reduction of Financial Crimes in Nigeria' International Journal of Recent Scientific Research' Vol. 11, Issue, 04 (B), pp. 38055-38065, April, 2020
[33]Wigwe C.C. "The Law and Morality of Plea Bargaining" Port Hacourt Law Journal Vol. 5 No. 1 April 2013. P.24
[34]Ogunye J 'In Defense of Plea Bargaining' <https://www.premiumtimesng.com/opinion/121369-indepense-of-plea-bargaining-is-the-problem-by-jiti-ogunye.html accessed 24 - 04 - 2021
[35]Ibid pp 34 - 35
[36]Oluwagbohunmi, J A 'Equal Before the Law, Unequal Before Men – Explaining the Compromising Use of Plea Bargaining in Nigeria' Fountain Journal of Management and Social Sciences: 2015; 4(2) 52 – 60 accessed online : www.fountainjournals.com 27 – 03 – 2021
[37]Ibid p. 5

This selective application of plea bargain appears to make a mockery of the Nigerian judicial system. This was predicted by a former Attorney General of the Federation as he once declared that the introduction of plea bargain 'will make a mockery of the entire process of dealing with corruption'.[38]This has the effect of making the public and outer world to perceive the Nigerian justice system as one that discriminates between poor citizens and highly placed ones. This made one sociologist to argue that, wealthy and powerful groups are systematically weeded out of the criminal justice system at successive decision points, so that the end result of the system is that poor and powerless groups are disproportionately convicted and imprisoned. Thus wealthy and powerful who steal so much may be less likely to be arrested, tried or convicted at all, or they may be convicted of a less serious offence and given a lenient sentence.[39]

Presently in Nigeria, plea bargain appears to be a situation arranged between the EFCC and the politicians, where the offenders receive lenient punishment for crimes committed and with no remorse for past crime commits the same crime in hopes to plea bargain.[40] No doubt, the results of an improper application of the plea bargain fostered an overwhelmingly negative perception of plea bargain itself and the judiciary in general. It gave the perception that the concept, does more harm indeed than good.[41] This perception may be reinforced by the fact that politicians and those holding public offices are the greatest beneficiaries of plea bargaining. It is hardly extended to ordinary citizen offenders and is discriminatory in nature. It is submitted that there is often big gap between high profile and lows profile cases in the country which largely defines the path of the justice administered. Hence, there is a general social belief that the law that governs the affluent is significantly different from the law of the poor.[42]

Accordingly, the selective application of plea bargain in Nigeria engenders unfairness, inequity and travesty of justice. It is not fair to the poor and less privileged of the society, as they will never be able to benefit from such negotiation for the mitigation of punishment if they are confronted with such legal action. Therefore, there is consensus among many literature appraising the use of plea bargain within the Nigerian criminal justice

[38] Ted C. E. and Eze A.G. 'A Critical Appraisal of the Concept of Plea Bargaining in Criminal Justice Delivery in Nigeria' Global Journal of Politics and Law Research vol. 3 No. 4, pp. 31-43 accessed online <www.eajournals.org>
[39] Hazel, B., K.. Introduction to the Criminal Justice System, West, St. Paul, pp111-12. Langbein, J., H. (1995). Torture and Plea Bargain. In Feinberg (Eds.), philosophy of law, London: Wardsworth 1972. <https://digitalcommons.law.yale.edu/fss-papers/543. Accessed on August, 2015
[40]O. Bisola ' The Current Legal Framework on Plea Bargain in Nigeria' 2019 accessed on 27 – 03 – 2021 https://ssrn.com/abstract=3429822
[41]Ibid p.10
[42]Ibid, R. A. Aborisade and O.A. Adeleke 'One Rule for the Goose, One for the Gander? The Use of Plea Bargain for High Profile Corruption Cases in Nigeria' AFRREV Vol. 12 (2), Serial No 50, April, 2018: 1-12 p. 7 accessed 27 – 3 – 2021 from www.afrrevjo.net

administration that it is a 'largesse' that us only designed to benefit members of the upper class of the Nigerian society.[43]

The use of plea bargain for high profile corruption cases in the country is therefore perceive as another setback for the country's quest towards ensuring equality in the treatment of all citizens under the law. The manifestation of a criminal justice system that defacto distributes separate, unequal standards of justice for lower class of citizens and citizens of high economic class has created a mushrooming prison population that is overwhelmingly occupied by poor and socially disadvantaged citizens.[44] A cursory look at the provisions of Administration of Criminal Justice Act which is the first federal statute that made explicit provision on plea bargain will reveal that the selective application of the concepts violates and runs contrary to the purpose the Act aims at achieving as declared in section 1 therein thus:

1. (1) The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.

(2) The courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of this Act for the realisation of its purposes.[45]

The quoted provision enjoins the courts and the law enforcement agencies as prosecutors to ensure compliance with the innovative provisions of the Act (plea bargain inclusive). This is for the purpose of achieving the salient and innovative provisions brought about by the Act. And to gain, the Act provides for the application of the plea bargain in general tone to all offences with the exception of capital offence as follows:

270. (1) 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 offence either directly from that defendant or on his behalf; or

(b) offer a plea bargain to a defendant charged with an offence.

A careful look at the above provisions of ACJA reveals that the apparent discrimination presently obtainable in selecting the kind of offenders to be offered opportunity of plea bargaining is clearly unjustifiable. The Act does not give room for that as it clearly stated in section 270 (1) quoted above that the '…the Prosecutor may: (a) receive and consider a plea bargain from a defendant charged with an offence…' or 'offer a plea bargain to a defendant charged with an offence.' It is therefore submitted that the selective method of applying plea bargain violates the provisions of the Act. On the need to strictly comply

[43]Ibid p.8
[44]Ibid p.9
[45]Agbi v Federal Republic of Nigeria op.cit

with provision of statute where it provides for particular way doing anything, Court of Appeal held that "Where a statute provided for the method of doing anything, it must be done in accordance with the express provision of the statute".[46] The foregoing clearly stands against the discriminatory use of plea bargain against the express provision of the law.

The only exception to the general applicability of the concept of plea bargain to all offences is as stated by the Act itself in section 274 (3) thus: 'Where the defendant pleads guilty to a capital offence, a plea of not guilty shall be recorded for him'. It is therefore apparent that save the offences that carry mandatory sentence of capital punishment, plea bargain can be offered to all category of offenders. The only thing is that the prosecutor shall satisfy the conditions set down by the Act in section 270 (2) that:

a) the evidence of the prosecution is insufficient to prove the offence 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.

The Act went further to state some other important requirements the prosecutor needs to meet before advancing or accepting the offer of plea bargain to or from the defendant. That such action shall be in the interest of justice, public interest, public policy and the need to prevent abuse of legal process.[47]

1.6 Nigerian Cases Prosecuted by Way of Plea Bargain

1.6.1 FRN v Tafa Balogun,[48] the accused, former Inspector General of Nigerian Police pleaded guilty to charges of corruption and embezzlement of public funds to the tune of 10 billion naira which was a result of plea bargain agreement entered between him and the prosecution. He was convicted to a charge of failure to disclose his assets. In November 2005, he was convicted to six months imprisonment.

1.6.2 FRN v Diepreye Alamisiegha,[49] EFCC charged him with embezzling about 55 million dollars of Public funds. He was sentenced to two years imprisonment while he refunded some amount of money to the government coffers based on application of plea bargain.

[46]Ibid, see also Mobil Producing Nig. Unltd. V. Johnson (2018) 14 N.W.L.R. (Pt. 1639)
[47]See section 270 (3) Administration of Criminal of Criminal Justice Act, 2015.
[48](2005) 4 NWLR pt. 324
[49](2006) 16 NWLR pt.1004 at 93 - 9

1.6.3 In **FRN v Igbenedion**[50], the ex-Governor of Edo state was arraigned by the Economic and Financial Crimes Commission before the Federal High Court Enugu on a 191 count charge of corruption, money laundering and embezzlement of about 2.9 billion. In a plea bargain arrangement between the parties, EFCC reduced the 191 count charge to only one count. The court convicted him in line with the plea agreement, and sentenced him to six months imprisonment or pay 3.6 million naira as option fine.[51]

1.6.4 FRN v Cecelia Ibru[52]the accused, a former Managing Director Oceanic Bank Mrs. Cecelia Ibru, was arraigned on a 25 count charges all bordering on corrupt practices.[53]Consequent upon plea bargain entered into between EFFC and the defence, the charges were successfully reduced into three and the accused decided to plead guilty to the three amended charges. The Judge sentenced the accused to six months imprisonment on all the three counts, amounting to eighteen (18) months imprisonment. The sentences however, are to run concurrently and this means that the convict would spend only six months in prison. This very case shows the level of abuse of plea bargaining in the context of its application to corruption cases in Nigeria. It shows that plea bargain is an escape route for criminals who embezzled public funds. This also exposes the allegation of complicity on the side of judicial officers when high profile individuals are involved as one writer opined that the court's judgement is a mockery of justice and shame to the criminal justice administration.[54]

1.5 FRN v Christian Nwosu and Ors[55], one of the defendants, and a staff of the Independent National Electoral Commission(INEC) was convicted for accepting over N70 million bribes from Mrs. Alison Madueke, who was referred in the case as being "at large". The court adopts the plea bargain agreement as the judgement of the court.

In the act of biased application of plea bargain, the judiciary has at many instances being fingered as culpable alongside the prosecutorial agencies. The case of **FRN v John Yusuf**[56], where the accused a former Deputy Director, Police Pensions Board was arraigned by EFCC on a 20 count charges for converting 32.8 billion naira Police pension fund to his own use. In a plea bargain reached between the prosecution and the defence, the Judge sentenced him to two years imprisonment on each of the count with option to pay fine of N250, 000 for each count. Expectedly, the convict, Mr. John Yusuf promptly paid

[50]Charge No: FHC/EN/6C/2008z
[51] Odia P. "The Abuse of Plea Bargain in Nigeria" 28th July, 2012 accessed from www.saharareporters.com accessed on 28th February 2012
[52]Federal Republic of Nigeria v Mrs Cecilia Ibru [Unreported] Charge No. FHC/L/297C/2009.
[53] Contrary to section 15 (1) of the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act Cap F2 LFN,2004 and punishable under Section 16 (1) (a) of the same Act
[54]Oguche S, p.94
[55] FRN v Christian Nwosu and Ors (unreported) Charge No: FHC/L/106C/2017 Decided in May 2017
[56] Federal Republic of Nigeria v John Yusuf Yakubu [Unreported] Charge No. FHC/ABUJA/CR/54/12.

the paltry fine and walk away a free man escaping the full wrath of the law. This decision by the court erupted condemnations and criticisms from many concerned citizens and organisations. That made the trial judge that presided over the case to be handed a one year suspension by the National Judicial Commission following public outcry.[57]

The selective and biased application of plea bargain may be seen manifest when the above cases involving high profile individuals are contrasted against lesser serious property cases involving poor citizens. For instance, a man was jailed for absconding with a Nokia handset valued at N48, 000.[58] Again, a Magistrates' Court in Lagos state slammed a N500,000 bail each on two employees alleged to have stolen 30 litres of diesel valued at N4,800.[59] Another case on this point was that of two young men who were sentenced to shocking 27 years of imprisonment for the theft of a mobile phone belonging to then governor of Osun state.[60]

The collusion of some judicial officers in the biased application and abuse of plea bargain clearly negates the role conferred on them by the law as noted with approval by the Court of Appeal thus: ...The presiding Judge or Magistrate is also empowered to examine, consider, and evaluate the sentence agreed upon by the prosecutor and the defendant and where it appears to the presiding Judge or Magistrate that the sentence agreed upon is not commensurate with the gravity of the offence committed, the presiding Judge or Magistrate could impose heavier punishment subject to the conditions prescribed in section 270 (11) (c) of the Act... It is also designed to forestall any bargain that is illegal or against public policy.[61]

While noting that, the application of plea bargain in some of the above cited cases has rendered positive results because of the recovery of billions of looted assets. It is submitted that all the defendants involved in the cases are members of high profile class of the nation. None of them is therefore a member of ordinary class of citizens who constitute the larger portion of inmates at the various custodial centres in the country, offenders left out of the 'largesse' of plea bargaining include those accused of Advanced Fee Fraud offences (yahoo boys) who are mostly at the present moment being arraigned by the EFCC.

[57]Sani T., 'Justice Talba, who freed pension thief, suspended for one year' Premium Times Newspaper April 26, 2013www.premiumtimesng.com accessed on 26th, October 2021.
[58]Sunday A.O. 'Criminal Justice System in Nigeria: For the Rich or the Poor?' Humanities and Social Sciences Review 04 (01):27-39 (2015) p.37
[59]ibid
[60]ibid
[61]Kelly v Federal Republic of Nigeria (2020) 14 N.W.L.R. (Pt. 1745) p.491 C.A.

1.7 Findings

A. The study finds that the Administration of Criminal Justice did not discriminate on the offences to be prosecuted by way of plea bargain.
B. It is a finding of the study that the Nigerian law enforcement Agencies prosecuting offences selectively prosecute high profile citizen offenders only with plea bargain.
C. They study also finds that plea bargain is not extended to offenders arraigned on allegation of advanced fee fraud who constitute the largest percentage of offences being prosecuted by EFCC.
D. The study finds that selective application of plea bargain is contrary to the purpose of emerging Administration of Criminal Justice regimes which among others is speedy dispensation of justice.
E. The study finds that sincere application of the concept of plea bargain to all qualified cases irrespective of the offenders' economic or social status is capable of salvaging the country from many challenges including congestion at the custodial centres.

1.8 Conclusion/ Recommendations

As presented in the paper, plea bargain is a doctrine or concept developed to solve the challenges of justice administration especially, those of delay, prisons and courts congestion. And it accordingly achieved this goal in many countries, a good example of which is America where almost all their criminal cases are said to be dispose by way of plea bargain. It is therefore the believed of the authors that if plea bargain is fully and sincerely embraced, the instances of awaiting trial inmates will be drastically reduced. It will help in saving the tax payers money which otherwise will be expended in protracted fruitless trials, this is because lawyers will not be inclined in employing means of frustrating trials. The Nigerian prosecutorial agencies did not however seem to be ready to employ the doctrine with all sincerity to salvage the Nigerian justice system from all the challenges bedevilling it especially that of delay. That is why as it appears in the paper, only highly profile individuals or politically exposed persons are made to benefit from the plea bargain. This is contrary to the purpose and clear provisions of the various legislations introducing the doctrine. It is our hope that all the stakeholders concerned will join hands to make good use of the doctrine of plea bargain as is obtained in other climes that are making judicious use of it.

Arising from findings in this paper the following recommendations are hereby proffered:

1. That the Nigerian Security Agencies responsible for prosecution of offences should make efforts of upholding the purpose of the Administration of Criminal Justice Act as declared in its section 1 (2).
2. That the security agencies responsible for prosecution of offences should stop the biased selective application of the concept of plea bargain to the high profile offenders only.

3. That the Economic and Financial Crimes Commission should extend the application of plea bargain to offenders arrested on ground of advanced fee fraud as it is doing to corrupt political office holders.
4. That the Security agencies should apply the concept of plea bargaining to all qualified cases in order to uphold the innovative provisions of the new Administration of Criminal Justice regimes one of that is speedy dispensation of justice.
5. The study recommends sincere application of the concept of plea bargain to all qualified cases irrespective of the offenders' economic or social status in order to salvage the country's justice sector from its many challenges including congestion at the custodial centres.