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Plea bargaining in Nigeria, the law practice and challenges

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Abstract

It is an indisputable fact that plea bargaining has received a lot of attention in the Administration of the Criminal Justice System in Nigeria. Plea bargain originated from the American Legal System and it has adopted by other countries including Nigeria. The use of plea bargain was codified in the ACJA 2015, it provides that the prosecutor may enter into plea bargain with the defendant with a consent of the victim or his representative during and after the presentation of the evidence of the prosecution but before the presentation of the evidence of the defence and it should be reduced in writing. Plea bargain in Nigeria is a legal proceedings that allows the defendant to agree with the prosecutor to plead guilty to a lesser offence or to receive a reduced sentence in exchange of cooperation. This paper examined the origin of the concept, its development across several countries, the law, practice, advantages, disadvantage challenges, it made some observations and recommendations.

Keywords: Plea Bargain, Defendant/Accused, EFCC, Prosecutor and Corruption

Introduction

The search for justice is as old as the existence of man on earth. The Romans Egyptians as well as Black Africans have at one time or the other designed models of public justice. There is this Babylonian King, King Hammurabi who decreed "an eye for an eye" as his own sense of justice, but up till date modern man has felt outraged by this conception of justice. Justice for all has evolved in time past and this has led to various theories and concept of justice, which has led us to plea bargain. Plea bargain is getting another attempt in finding solutions to society's yearning for justice. Plea bargain is generally an agreement in a criminal trial in which a prosecutor and an accused person arrange to settle the case against the accused usually in exchange for concessions^[1]. It is also seen as 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 concessions by the prosecutor usually a more lenient sentence or a dismissal of the other charges. The lenient sentence or a dismissal of the other most controversial tools used in the disposition of criminal trials. It is deeply entrenched in the Criminal Justice System of the United States of America unlike in Nigeria, the use of plea bargain in the Nigerian Criminal Justice System is relatively a recent development. The practice was introduced in 2015 with the enactment of the Administration of Criminal Justice Act (ACJA) which allows for plea bargain in certain circumstances. The application of plea bargain in the Nigerian criminal justice system has been met with mixed reactions, on one hand proponents has argued that it has the potential to reduce backlog of cases and expedite the administration of justice, it also has the potential to encourage defendants to plead guilty, which can lead to quicker resolution of cases going to trial. This article seeks to elaborate the application of plea bargain in Nigeria Criminal Justice System, the objective of this research is to identify the mode of practice and challenges faced by it and proffer ways to meet up with the unchallenged practice in other jurisdictions.

Origin and history of plea bargaining

Plea bargain originated from the American Legal System^[2] it actually originated from the convention but with time, having been accepted by the courts, it became entrenched in the Federal and State Criminal Procedure Rules^[3].

¹ Wikipedia a – Plea Bargain available online at <http://en.wikipedia.org/wiki/pleabargain> (visited on 10th February, 2010.)

² Suman. R (2008) **Law Relating to Plea bargain** (1st Ed.) U.S.A. Orient Publishing Company. P.8

³ Following the case of Brandy v. U.S. 397 (1970), it became more entrenched in the American Legal system to the extent that at 2001 about 94% of criminal cases in the US are settled by plea bargain.

As a matter of fact, before the introduction of Plea bargaining in the United States of America, the right to a trial by jury was considered a central part of the justice system. The 7th Amendment of the Bills of Right codified it as an essential part of America's civil liberties, whenever criminals were caught and charged, the government went through a trial and verdict. But as from 1950s, a trend towards plea bargaining began, the most prominent and recorded plea bargain case dates back to 1746 in Massachusetts when a Prosecutor reduced an initial charge of burglary to a simple theft in return for guilty pleas by three defendants^[4]. Plea bargains in the US are generally subjected to the approval of the Court, even though different states and jurisdiction have different rules guiding the Application of the system.

Types of plea bargain

1. **Charge Bargain:** this arises where the prosecutor agrees with the Defendant to press a lesser charge than that originally filed and
2. **Court Bargain:** this arises when the accused person agrees to plead to one or fewer number of charges
3. **Sentence bargain:** this type of bargain involves the exchange of a guilty plea for a promise of leniency, the prosecutor need not press for a lesser charge but rather, the charge remains as it is, the prosecutor based on the agreement, recommend a lighter sentence^[5]. Under our law, the judge has power to give lower than the sentence prescribed by law unless, it is a mandatory sentence or a minimum sentence prescribed by law^[6]. It is opined that there is no strict dichotomy between these types, in the sense that at the end the accused person is likely to get a lighter sentence for the offence he has committed in exchange for pleading guilty^[7].

Application of the concept of plea bargain in other jurisdiction

The United States

Plea bargaining is a significant part of the criminal justice system in the United States, the vast majority of criminal cases in the United States are settled by plea bargain rather than by a jury trial. The United States Supreme Court has recognized plea bargaining as both an essential and desirable part of the criminal justice system and indeed gave approval to plea bargain in several cases^[8]. As a matter of fact it has been argued that the United States of American Criminal Justice System would cease to function without plea bargain, as it forms a framework wherein the accused and his accusers can reach an agreement which settles the case once and for all, in what is hoped will be in the spirit of fairness^[9].

France

The introduction of a limited form of plea bargaining (comparution sur reconnaissance préalable de culpa bilite or CRPC, often summarized as plaider coupable) was highly

controversial in France. In this system the public prosecutor could propose to suspects of relatively minor crimes a penalty not exceeding one year in prison, the deal if accepted, had to be accepted by a judge. Opponents most especially the attorneys and left wing parties, argued that plea bargaining would gravely infringed on the rights of the defendant, the long-standing constitutional right of presumption of innocence, the rights of suspects in prison custody and the right to a fair trial.

Plea Bargain in Nigeria and Its Application

Before the coming of the Administration of the Criminal Justice Act 2015, there has not been any law on Plea Bargaining. The use of Plea bargain in the Nigeria Criminal Justice System is a recent development. This practice was codified in 2015 with the enactment of the Administration of the Criminal Justice Act, it is allowed in certain circumstances and this has been met with mixed reactions. On one hand, proponents argues that it has the potential to reduce backlogs. The application of Plea bargaining in the Nigeria Criminal Justice became known and applied with the establishment of the Economic and Financial Crimes Commission Act (EFCC) 2004, following the increased level of corruption, as the concept was provided for in section 14(2) of the EFCC Act. This concept became also known by Nigerians from Newspapers, Radio Stations Section 14(2)^[12] provides thus:

“Subject to the provision of section 174 of the Constitution^[10] of the Federal Republic of Nigeria, 1999 (it relates to the power of the Attorney General of the Federation to Institute, continue, take over or discontinue criminal proceedings against any person in any Court of law) the commission may compound any offence punishable under this Act by accepting such sum of money as it thinks fit not exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence.”

On the basis of the above provision, the commission has entered into several Plea bargaining arrangements and executed same. Example of Plea bargaining by EFCC on corruption based cases. In FRN V John Yusuf Yakubu¹³, this accused person was An Assistant Director on Police Pension Board and was alleged to have stolen (32.8 billion naira) Police fund, he was charged on a ten count charge of corruption and embezzlement under section 315 of the Penal Code punishable with 14 years jail terms, he pleaded not guilty under the plea bargain arrangement, the charge was substituted with three counts charge under section 390 of the Penal Code Act^[11] each section 270 of the ACJA 2015, in its frame work has made provision for the use of Plea bargain in Nigeria. The law is explicit leaving no one in doubt in section 270(1) (a) and (b) and 2 specifically dedicated to the practice and application of Plea bargaining. Section 270(1) (a – b) and

⁴ Scimjrgan (2010) importing the concept of Plea Bargaining into Criminal Procedure Code in Malasia, 5, Current Law Journal. CLI, P. XXIX, See <http://www.academia.edu/43865> importing the Concept of Plea bargaining into Criminal Procedure Code in Malasia.

⁵ James F. Parker Plea Bargaining (1972) I Am. S. Criminal 187 at 188.

⁶ Slap V. A.G. of the Federation (1968). NMLR 326

⁷ Akeem, O.B, Plea Bargaining in the Prosecution of Complex Crimes being a paper presented at the West African Region.

⁸ Santobello V. New York 404 U.S, 257(1971); Corbitt V. New Jersey 439 U.S, 212 (1978); Burdenkircher V Hayes 434 U.S, 357 (1978)

⁹ Alabama V Smith, Supreme Court of the United States, (1989) 490.

¹² EFCC Act 2004

¹⁰ Unreported case No. F.C.T/HC/CR/64/2012 at the F.C.T. High Court, Abuja presided over by Hon. Justice Abubakar Taiba decided on 28th of January, 2013.

¹¹ Unreported case in charge No. PHC/EN/6C/2008 at the Federal High Court Enugu, presided over by Hon. Justice A. A. Kafarati decided on 18th December 2008.

(2) provides thus.

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 or behalf; or

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

(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 defence, provided that all the following conditions are present as provided for in paragraph a – c)

It is clear from these provisions that parties have to agree beforehand to show transparency of the negotiation and it is to be entered into by the prosecutor after consultation with the Police Officer who investigated the case and where it is feasible to consult with the victim of the offence. Subsection 7^[12] made it mandatory that the plea bargaining that is to be entered into should be in writing and should be signed by parties involved^[13]. Although the Judge or Magistrate shall not be a party to the agreement, the prosecutor is enjoined to inform the court that parties have reached an agreement and the court shall inquire of the defendant of the correctness of such information and agreement^[14]. One striking feature of the law of Plea bargaining is that the right of choice (discretion) of the defendant remains unfettered from the beginning of the plea process to the point of sentence, the defendant can still change his plea by withdrawing from the plea agreement even after he has been convicted based on his plea and the Court can countenance that withdrawal. This is provided for in subsection 11(a) – (b) – it provides thus.

11 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; or

(b) Of the view that he would impose a lesser sentence than the sentence agreed impose the lesser sentence

Subsection 15^[15] provides thus

Where the accused has been informed of the heavier sentence as contemplated in subsection (11) (c) of this section, the defendant may

(a) Abide by his plea of guilty as agreed upon that, subject to the defendant’s right to lead evidence and to present argument relevant to sentencing, the presiding, judge or magistrate proceed with the sentencing; or

(b) Withdraw from his plea agreement, in which event the trial shall proceed de novo before another presiding judge or magistrate as the case may be.

Although, it has been said, that the agreement must be written and signed by the parties, it is not meant for the purposes of

contradicting the accused in subsequent proceedings in the same matter if the agreement were to fail in the course of the same proceedings. Where an accused withdraws out of the agreement as in subsection 11(b), the judge or Magistrate orders trial to proceed de novo, the earlier agreement between the parties shall not be tendered in evidence against the accused as same is not admissible against him and no reference shall be made to the agreement at the accused’s person trial^[19].

Those involved in Plea Bargaining:

1. The Prosecutor^[16]
2. The accused^[17]
3. The victim^[18]

The prosecutor is the initiator and captain in criminal proceedings and his powers are so enormous that he can terminate the whole processes by the powers conferred on him under the law^[19]. The defendant or accused is the second most valuable player whose position is very paramount and, in fact, he initiates the process of plea bargaining with a view to getting lighter sentences or charges. The court even thought the magistrate or judge do not take part in the discussion that leads to a bargain, such bargain must be endorsed and approved by him^[20].

Advantages of Plea bargaining

1. It saves the cost of litigation and thereby conserves judicial form of higher sentences.
2. 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.
3. Plea bargaining can help in enhancing prison decongestion by providing for quick disposition of cases and in some cases ensuring lesser prison sentences in place of longer terms.
4. The difficulty in proving certain complex cases such as economic crimes committed across many jurisdictions in one operation make plea bargaining quite attractive.
5. Plea bargaining ensures that victims of crimes are protected especially as regards crimes that attracts stigmatization such as rape, homo-sexuality.

Disadvantages of Plea Bargain

1. The prosecutor may likely exchange a heavier charge or sentence, instead of the lesser offence committed by an accused in order to scare him in accepting plea bargain for him to plead guilty to a lighter offence and get convicted.
2. By this plea bargain method, the community is deprived of the opportunity of getting to know the actual truth about the alleged crime as there would not be full public trial.

¹² ACJA 2015

¹³ Section 270 (c) ACJA 2015

¹⁴ Section 270(9) ACJA 2015

¹⁵ Section 270 ACJA 2015

¹⁶ See. Albert, W. Alaschua, “The Prosecutor’s Role in Plea Bargaining”, U. Chi I. Rev. 50, 51 (1968).

¹⁷ See Albert, W. Alaschula, “The Defence Attorney’s Role in Plea Bargaining” 84 Yale L. J. 1179 (1975).

¹⁸ See Sarah Welling, “Victims Participation in Plea Bargainings” 65 Wash. U.L.Q. (1987) 301.

¹⁹ The enormous powers of the Attorney General, the Chief Prosecutor is provided in section 174 and 211 of the CFRN 1999 as amended.

²⁰ People V Orin Supra

Challenges of Plea Bargaining

1. There is no much awareness of its use in court.
2. It favours or focus more on the accused who benefits more rather on the victim who is hurt by the act of the accused/defendant.
3. There is lack of framework for its application and operation,

Conclusion

Plea Bargain is one of the legal concepts that has received a lot of attention in the Administration of Criminal Justice System in Nigeria, this concept was traced from the United State of America which other countries like Nigeria has adopted. This concept was examined in this paper, it stated the meaning of plea bargaining, it analyzed it's practice in other jurisdictions with emphasis in Nigeria, which includes its scopes, practices, advantages, disadvantages and the challenges it faces in its application under the Nigeria Legal System.

Observation

1. It's use is shrouded with corrupt practices and insecurity.
2. It was the Economic and Financial Crimes Commission (EFCC) that started the practice and application of plea bargain in corruption related cases relying solely on the provision of section 12 (2) ^[21] (Though it was not expressly started in the section rather the word compounding was used in that section).
3. It was observed that it is was the EFCC that started the application of plea bargaining in corruption related cases in Nigeria

Recommendation

Plea Bargaining should not be used for corruption related cases for it encourages looting 2 I recommend that plea bargaining should be used only for cases that carries lesser conviction sentence.

²¹ EFCC Act 2004