

EFFECTS OF PLEA BARGAIN ON THE ADMINISTRATION OF JUSTICE AND INFRACTIONS OF COMPROMISED AGREEMENT ON JURISDICTION OF COURTS IN NIGERIA

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Abstract

Court is an institution under judiciary, the third arm of government. It is the organ of government whose personnel appointments are based on qualifications and merit. The major functions of court are to interpret laws, punish offenders and to settle cases among aggrieved parties in Nigeria. The court is empowered to perform these functions by virtue of section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Therefore, court is enjoined to ensure that it has power to adjudicate in any matter brought before it before assuming jurisdiction to hear such matter. If a court hear and determine a matter without jurisdiction, such effort amount to nullity. This study used doctrinal methodology to examine plea bargain which affects administration of justice system and compromised agreement as infraction to jurisdiction of court as emerging legal regimes in Nigeria. It relied on Constitution of Nigeria, textbooks, case laws, journals and internet facilities. It revealed that plea bargain is a flagrant subordination of the public's interest to the interest of criminal justice administration and it promotes a cynical view of the entire legal system. It also revealed that, court is the owner of its judgment and it can do anything over it while compromise agreement on the decision of a court is robbery of the court's property/jurisdiction. The study recommended among others that Plea bargain should be viewed from a holistic angle of both restoration and retributive models of justice to avoid giving the impression of immunity from punishment, freedom from guilt and escape from punishment. It further recommended that court order/judgment should be obeyed and it should not be subject to variation by the parties. A court judgment should at all times remain binding between the parties and should not be superseded by a subsequent agreement made by the parties.

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1. Introduction

In the case of *Sanni v Ademiluyi*,¹ the Supreme Court held by Ogundare JSC9as he then was), that the function of a court is to decide between the parties on the basis of the case put before it by them; it should confine itself to adjudicating on issues raised before it. Therefore, it is not the duty of a trial judge to find on issues which was neither pleaded nor raised in the case before it.² However, before a court can decide on any matter brought before it, it must satisfy itself that it has jurisdiction to entertain the matter, if it so do without having jurisdiction, all its efforts in the matter will be in futility. The importance of jurisdiction in the adjudication process has always been emphasized by the courts. It is of absolute importance in judicial proceedings and the life wire of adjudication. Where there is no jurisdiction to hear and determine a matter, everything done in such want of jurisdiction, is a nullity.³ Therefore, jurisdiction is the authority which a court has to determine matters or issues which are brought before it or to take cognisance of issues presented in a formal way for its resolution.⁴

Nowadays, there are some emerging legal regimes which actually affecting the administration justice system; and whittle down the jurisdiction of court in Nigeria. Particular interest in this study are plea bargain and compromised agreement. Plea bargaining is an activity undertaken within the context of the prosecutorial discretion whereby a prosecutor in order to save time or cost, or avoid the difficulty in certain cases, of having to strive to prove certain facts required to establish certain offences, decides to offer certain concessions to the defendant in exchange for specific offences charged or proposed to be charged.⁵ On the other hand, compromised agreement, sometimes called a settlement agreement, is a legally binding contract entered by two parties in which one party agrees not to bring claims against the other in exchange for financial compensation. These agreements are most often used between employers and their former employees. Compromise agreements are beneficial for both parties because they avoid expensive and time-consuming lawsuits and litigation. These agreements can also protect anonymity and

¹ (2003) 1 SC (Pt 1) 77, 83.

² *Balogun v African Continental Bank Ltd* (1972) 1 SC, 177; *Adeniji v Adeniji* (1972) 4 SC 4

³ *Shelim v Gobang* (2009) 12 NWLR (Pt 1156) 403, 455-456.

⁴ Justus Soke and Nduka C Njoku, 'The Court System in Nigeria: Jurisdiction and Appeals,' (2016) 2 (3) *International Journal of Business and Applied Social Science*, 4.

⁵ Conviction to Compromise: The Plea Bargain Option (2012) 2. <http://www.nials-nigeria.org> accessed 30 July 2022.

allow two parties who are in disputes to settle quietly. Other instances that a compromise agreement may be used are for labour management negotiations, criminal cases and custody or divorce cases.⁶

2. Effects of Plea Bargain on Administration of Justice System

The introduction of plea bargain provides a win-win situation for both a State and a defendant. It is a win for the state because plea bargain increases the number of successful convictions by a state. On the other hand, it is a win for a suspect because he receives a reduced charge and sentence while admitting a crime. The introduction of the system seems honourable because it saves the time of the Court and saves the tax-payers money. It however leads to a situation where the hands of judges are tied. This means that, judges cannot give the maximum sentence for the crime admitted, because, doing so, would amount to violation of the fundamentals of plea bargain. This practice whittles down the jurisdiction of court and it gives sentence which is ridiculously small proportion compared to the crime committed.

Antagonists of plea bargain in criminal cases argued that, it violates fundamental human rights of an accused by the inducement of confession of guilt and a trial waiver for the promise of a reduced sentence. Man is conferred with inalienable rights which have been recognised by the Constitution⁷ and are regarded as constitutional or fundamental rights. These rights attached to every human being, including person accused of a crime and is standing trial. In the case of *Rasome-Kuti v Attorney General of the Federation*,⁸ Kayode Eso, JSC (as he then was) enthused on the importance of these rights in a forceful and illuminating light as follows:

A human right is a right which stands above the ordinary laws of the land which in fact, is antecedent to the political society itself. It is a primary condition to a civilized existence, and what has been done by our Constitution since Independence is to have these rights enshrined in the Constitution so that the rights could be immutable.

The position of these rights of an accused person notwithstanding, the constitutional support is still a subject of procedural jeopardy by the practice of plea bargaining. The process of plea bargaining is initiated when a prosecutor induces an accused to confess guilt and waive his right

⁶ Compromise Agreement: Definition and Sample- Contract Counsel <https://www.contractsounsel.com> accessed 4 Aug 2022.

⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) Chapter IV

⁸ (1985) 2 NWLR (PT 6).

to trial. Thus, the accused by confessing his guilt without being tried, relieves the prosecutor the need to prove the guilt of an accused person and the court is spared of having to adjudicate on it. The court condemns the accused on basis of his confession without independent adjudication.⁹ Okwori¹⁰ argued that, the process of plea bargaining violates the rights guaranteed under the US Constitution and the Constitution of the Federal Republic of Nigeria 1999 (as amended), that is, presumption of innocence of the accused person until proven guilty; the right to fair hearing in public; the privilege against self-incrimination; and the right to examination of witnesses. On the other hand, it is a well-established principle of criminal procedure in the United States. Section 36 of the 1999 Constitution of Nigeria; and section 79 of the Administration of Criminal Justice Law, 2011 Laws of Lagos State, provide that Miranda rights which was developed from the case of *Miranda v. Arizona*¹¹ must be read to the person arrested on suspicion of a crime. The Miranda rights provides as follows:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense.

The Miranda rights which is a US Constitutional safeguard of the rights of a suspect gives the confidence that the accused was well informed of his right against self-incrimination for which he could either plead the 5th amendment or request a lawyer who would defend him against the charges brought against him. The provision of the Miranda warning negates the position taken by Okwori as to the disadvantages of the use of Plea bargain in criminal trials.

Hallevy¹² argued that, plea bargains as a mediation process between the accused and the prosecution privatises the judiciary. He believed that the process of plea bargain hands over the power of adjudication to individuals. It means that the prosecutor and the accused counsel have turned the system of the judiciary over to individuals which was not and has never been the intention of the judiciary. Mediation is a practice whereby in a conflict, a third party seeks

⁹ Langbein JH, 'Torture and Plea Bargain, in Feinberg (ed) *Philosophy of Law*,' Wardsworth, London, (1995), 351.

¹⁰ Nicholson A. 'Okwori, Plea Bargaining: A Trial Procedure that Negates Fundamental Rights of the Accused,' SAGE Publication, 2010.

¹¹ *Miranda v. Arizona*, 384 US 436 (1966).

¹² Okwori Gabriel Hallevy, *Is ADR (Alternative Dispute Resolution) Philosophy Relevant to Criminal Justice? Plea Bargain as Mediation Process between the Accused and the prosecution*

solutions to a problem or attempts to reduce the differences that exist with that conflict. The mediator usually takes the initiative in proposing terms of settlement.¹³ This practice of alternative dispute resolution (ADR) differs from arbitration in such a way that the parties are not bound by an agreement to accept the suggestions made. Mediation is used in term when both parties intend to achieve a win-win resolution to the conflict. A plea bargain allows both parties to avoid a lengthy criminal trial and may allow the accused to avoid the risk of conviction at trial on a more serious charge.

From the above, the principle of plea bargain can be summarised as follows:

- i. Parties can negotiate on the terms/conditions of the agreement. That is, for criminal mediation, the parties through their counsel can decide that the accused will plead guilty to a lesser charge for a reduced sentence.
- ii. Plea bargain serves as an advantage to the state that is usually on the benefiting end of this arrangement. This is because the hasty/speedy resolution of the case saves the state from spending tax-payers money. It also helps to reduce the burden placed on the criminal justice system. Therefore, the parties achieve a win-win situation.
- iii. The parties prepare the law that guide the arrangement, such as what charges to drop or keep and what sentences to lighten.
- iv. The Judge agrees/signs the agreement reached by the parties into judgement and the parties are bound by the agreement.
- v. The option to participate in plea-bargain is voluntary. Parties cannot be forced into it. This also is applicable in mediation because every Nigerian citizen has a right of access to the national courts.

There is no doubt that prosecutors use their powers to pressurise persons who have been accused of a crime, and who are presumed innocent to confess their guilt and waive their rights to a formal trial.¹⁴

2.1. Legality of Plea Bargain

Many Nigerians claimed that the practice of plea bargain is illegal and alien to the statutes of criminal justice in Nigeria. The opposition to plea bargain is primarily because it seems to be applied for only rich and powerful thieves among Nigerians and not even an option extended to

¹³ Mediation, Encyclopaedia Britannica, 1999.

¹⁴ Lynch T, 'The case against plea bargaining, Regulation Fall (2003) 27

every criminal act. The fact that people steal huge amount of money meant for the use of the general public is the major reason behind the decay and collapse of Nigerian economy.¹⁵ Absence of funds means that social amenities and welfare programmes cannot be provided. On this premise, the wrath of the people demands rolling of heads of those thieves who put Nigeria into this peculiar mess instead of merely slapping their wrists. Also, those who have dubiously chatted away the hard earnings savings of many Nigerians in the banks are not expected to get away lightly. The Nigerian citizens demand that the breach created in the public trust must be filled up by the most appropriate and deserved punishment of their betrayers and not for them to cough out peanut out of huge amount they have consumed through plea bargain.¹⁶

In November, 2011, at the 5th annual general conference of the session on Legal Practice of the Nigerian Bar Association (NBA), held in Abuja, the then Chief Justice of Nigeria (CJN), Hon Justice Dahiru Musdapher, lent his voice to the denunciation of plea bargain practice and stated that, plea bargaining is a novel concept of dubious origin and it has no place in our law – substantive or procedural.¹⁷ His speech instigated writing of many articles on our newspapers which suggested that CJN had banned the use of plea bargain- perhaps, that might have been his implied meaning or intention. His Lordship, apart from stating in broad and sweeping terms that plea bargaining was unknown to our law and by implication illegal, was in fact complained about the same thing as many other Nigerians to wit: the use of plea bargain for only the rich and powerful in society. As reported by the Tribune, he said: ‘It was invented to provide soft landing to high-profile criminals who have looted the treasury entrusted to them. It is an obstacle to our fight against corruption.’¹⁸

On Monday February 5th 2012, Justice Musdapher reiterated and defended his position on plea bargain at a workshop for judicial correspondents, referring to what he described as:

The sneaky motive behind its introduction into our legal system, or its evident fraudulent application.¹⁹ He stated further: ‘You will see also that plea bargain is not only a flagrant subordination of the public’s interest to the interest of

¹⁵ Tope Adebayo LLP, ‘The Legality of the Use of the Plea Bargain in the Nigerian Criminal Justice System.’ <http://www.topeadebayo.insight/the-legality-of-the-use....> accessed 12 July 2022.

¹⁶ Ibid.

¹⁷ Nigerian Tribune, 16 Nov. 2011.

¹⁸ Ibid.

¹⁹ The Vanguard Newspaper, 6 March, 2012

‘criminal justice administration,’ but worst of all, the concept generally promotes a cynical view of the entire legal system.²⁰

However, his Lordship’s position was criticised by the then Chairman of the Nigerian Bar Association (NBA) Abuja chapter, Mazi Osigwe, the then Chairman of the Economic and Financial Crimes Commission, Mr Ibrahim Lamorde and the then Chairman, Governing Council of the National Human Rights Commission (NHRC), Dr Chidi Anslem Odinkalu at the workshop. They were of the opinion that CJN was not fair in his criticism of the practice or his declaration that it was alien to the statutes. They referred to section 180 (1) of Criminal Procedure Act (CPA) and section 14 (2) of Economic and Finance Crimes Commission (EFCC) Act and decried what they called the failed criminal justice system of the Country. They further pointed out that, cases against Tafa Balogun, Cecilia Ibru, Diepreye Alamieyesagha and others might have dragged on in courts for years or might have been quashed if they had not been settled by plea bargain. They however proposed a reformation/regulation for the use of the practice in the country and suggested that, a set of policy guidelines governing the operation of the practice be issued by the Chief Justice and the Body of Attorney-Generals.

2.2. Application of Plea Bargain under ACJA, 2015

The Administration of Criminal Justice Act, 2015 has solved most challenges that trajectory the practice of plea bargain in Nigeria. The Act provides safeguard for the practice of plea bargain and obviates the arbitrariness in the criminal justice system in Nigeria. No doubt that the concept is a controversial issue that affects the three components of the criminal justice systems as well as the society in terms of crime prevention, costs, convictions, sentencing, prison population and due process. For the purpose of identifying the proper procedures for the effective application under ACJA, section 270 provides for the following innovations:

- i. Plea bargain as previously used in Nigeria possibly encouraged the commission of crimes instead of averting it. It was most applied by Economic and Financial Crimes Commission in the prosecution of corruption cases and was not extended to other offences. Plea bargain is a situation arranged between EFCC and the politicians where the defendants/offenders receive lenient punishment for the offence committed and with no remorse for the past crimes, the offenders commit the same crimes in hopes to plea bargain. Obviously, the results of improper application of plea bargain foster an

²⁰ *ibid*

overwhelmingly negative perception of plea bargain itself and judiciary in general. It gives the impression that the concept does more harm than good.²¹

The underlying wrong perception on the application of plea bargain was based on unequal and extremely light sentencing imposed on the offenders. EFCC could not ensure a proportionately between crime and punishment when negotiated punishment were adopted. There were noticeable unjust punishments passed by different judges to different defendants for similar offences.

In reaction to this, the public demanded that the defendants be given appropriate and deserved punishment. Serious debates among scholars led to the enactment of ACJA in 2015.

ACJA, 2015 offers solution to this issue. It has made it impossible for a plea bargain to be used as an instrument of unreasonable sentence. A judge can review a sentence in plea bargain. If he deems that a sentence is appropriate, he enforces it but if he considers the sentence not proportionate to the offence committed, he shall impose heavier punishment on the defendant.²²

The judge plays supervisory role and has power to either accept or reject the plea bargain entered into by the parties.

- ii. Before the proclamation of ACJA 2015, plea bargain was usually applied in corrupt cases and was rarely extended to other types of offences. Convicted persons for minor offences like assault and stealing spent longer time in prison. Section 270 (1) (b) has reviewed this ugly trend. It provides that the prosecutor can offer plea bargain to a defendant charged with an offence. It means that any offence can be plea bargained.
- iii. Also, in earlier practice of plea bargain, politicians and those holding public offices were the greatest beneficiaries of plea bargain. It was hardly extended to the ordinary citizens and was discriminatory in feature. Section 270 (5) (i) - (ix) has eliminated such negative application and laid down procedural standard which a prosecutor must strictly adhere to before a plea bargain can be entered.
- iv. The application of plea bargain before ACJA lacks social justice content. It was not applied in the public interest, public policy and the need to prevent the abuse of legal

²¹ Ogundare Bisola, 'The Current Legal Framework in Plea Bargain in Nigeria,' (2019), 9. <<http://ssrn.com/abstract=34298223>> accessed 28 August 2020.

²² ACJA, 2015, s. 270 (11) (c).

process. Public interest is very important in the administration of justice and cannot be overemphasised. Section 270 (5) provides for the factors that would help in determining whether such plea bargain is of public interest. The prosecutor must therefore adhere strictly to these factors before entering into plea bargain.

- v. The rights of the victims are now embedded in section 270 (2) which provides that the prosecutor must seek the consent of the victim before entering into a plea bargain. This consultation gives the victim the opportunity to reject any offer that might result in distortion of facts.

3. Meaning and Effects of Compromised Agreement

Under the administration of justice in Nigeria, judgment of court often settles issues in disputes between parties and makes a pronouncement on their rights and entitlements. However, there is nothing preventing parties after the judgment of a court from changing their positions from what they were in the court. Before, during, or after trial, or on appeal, and even after judgment, the parties are at liberty to compromise or settle their matter on terms agreeable to them. The term of settlement can come in before the court delivers judgment on the matter, and such a settlement, once entered as a judgment in court upon the application of the parties involved, becomes a consent judgment. Where judgment has been delivered, the parties may mutually agree to modify the judgment, a practice known as judgment compromise.²³

Judgment compromise, unlike consent judgment, is an agreement that takes place between the parties after judgment. It is a set of mutual agreements where parties agree to compromise or vary the judgment of the court as it relates to their dispute. Compromise is an agreement between two or more persons to settle matters in dispute between them, an agreement for the settlement of a real or supposed claim in which each party surrenders something in concession to the other.²⁴ When compromised agreement is brought to the notice of the court, the agreement compromising the action between the parties completely supersedes the original cause of action and the court has no further jurisdiction in respect of the action. In other words, when judgment has been delivered by a court but the parties are not satisfied with it, they may negotiate and reach a settlement agreeable to them. In law, the parties have compromised the judgment. The

²³ Unini Chioma, Judgment Compromise in Nigeria: is the Practice Legal? (2022) <https://thenigerialawyer.com/judgement-compromise-in-nigeria-is-the-practice-legal/> accessed 20 July 2022.

²⁴ Garner B A, Black's Law Dictionary (8th edn Thomas West, United States of America) 305.

compromise or settlement becomes a new independent agreement. An appeal can only be brought against the new agreement and not against the judgment that has been compromised.

Litigants can settle their differences before, during and after judgment of the trial court, the court of Appeal or the Supreme Court. Rules of court always encourage settlement. A judgment of court often settles the issue in dispute between the parties and makes a pronouncement on the rights and entitlement of the parties. There is nothing stopping parties after the judgment of a court from changing their position from what it was in order to compromise the terms of the judgment of the High Court.²⁵

Once the parties have agreed on a Compromised Agreement, or to compromise the judgment of the trial court, all that they need to do is to inform the court, although, it may be desirable that they have their terms of agreement entered as terms of settlement. The court may make no order.²⁶

The court in the case of *Minaj v Comptroller General of Prison*²⁷ reiterates this position when it held as follows:

Once parties compromise or vary a judgment of court, the right to appeal is extinguished. With the compromised agreement, the Court of Appeal no longer has jurisdiction to entertain the appeal. In the instance case, with compromised agreement dated 21 December, 2016, the Court of Appeal no longer had jurisdiction to entertain the respondent's case who were the appellants at the Court of Appeal. It acted ultra vires to have set aside the judgment of the trial court.

Judgment compromise has gain prominence in administration of justice system in Nigeria and parties have resorted to it in many instances. As a matter of fact, it has received judicial blessings of the Supreme Court in *Minaj's* case.

3.1 Consent Judgment

This is a situation where parties in litigation unequivocally agreed to terms of settlement which mutually refer to the court as the basis for the court's judgment. Through their mutual agreement to settle the matter, they have given their consent to end litigation. This makes it a consent

²⁵ *Abbey v Alex* (1999) 14 NWLR (Pt557) 148; *S.P.M Ltd v Adetunji* (2009) 13 NWLR (Pt 1159), 647.

²⁶ *Green v Rozen* (1955) All ELR, 797.

²⁷ (2021) 8 NWLR (Pt 1777).

judgment. The court in the case of *Ibeto v Aminu*,²⁸ defined consent judgment as a judgment in which the terms are/were settled and agreed upon by the parties to the action. In order to have consent judgment therefrom, the parties must reach a complete and final agreement on the vital issues in their terms of settlement. They must be as *idem* as far as the terms of their compromised agreement is concerned and their consent must be free and voluntary. The consent judgment emerges, the moment the court, on the receipt of the application of the parties, entered into such a compromised agreement as the judgment of the court.²⁹

It should however be noted that a consent judgment only binds the parties to it and not a stranger.³⁰ Although, consent judgment is final between the parties thereto, it can be set aside on many grounds. The court in the case of *Amori v Iyanda*³¹ set the following as the grounds upon which a consent judgment can be set aside:

- i. Where it was obtained by misrepresentation or non-disclosure of a material fact which there was an obligation to disclose;
- ii. Where it was obtained by fraud;
- iii. Where it was concluded by duress;
- iv. Where it was concluded under mutual mistake of fact; and
- v. Where it was obtained without proper authority.

3.2 Infractions of Compromised Agreement on Jurisdiction of Courts

In every litigation, whether civil or criminal, the judgment or order of a competent court, once delivered, remains valid and binding unless and until it is set aside by an appellate court or by the lower court itself. This is the law, even where the court that delivers the judgment lacks jurisdiction. It was held in the case of *NIWA v SPDC*³² that, it is a well-established principle of law and not a novel legal preposition, that judgment remains binding until it is set aside. If this is taken to be what the law is, then, it would not be out of place to argue that judgment compromise is a strange practice in the administration of justice and an infraction to jurisdiction of courts. Allowing parties to compromise on the decision of a court is nothing but robbery of the court's property/jurisdiction. In the administration of justice system in Nigeria, the court is the owner of its judgment and it can do anything over it. Parties cannot therefore turn around to

²⁸ (2007) All FWLR (P355) 521, 533, para A-D (CA).

²⁹ *Gases Ltd v GF. Ind AG* (2001) 9 NWLR (Pt 719) 610, 645.

³⁰ *Vulcan Gases v Gesellschaft* (2001) 5 SCNJ 55.

³¹ (2008) 3 (nwlr (Pt1074) 250, 280

³² (2007) All FWLR (Pt 361) 1727, 1746, paras G-H (CA).

compromise a court judgment. In the case of *OUT v ACB*,³³ the Supreme Court reiterated this principle when Per Niki Tobi held as follows:

A judgment, and this includes a ruling of a court of law is valid or presumed until it is set aside on appeal. A court of law, trial or appellate, has the power or jurisdiction to protect its judgment by providing teeth to bit any act of interference to weaken its legal strength of enforcement or enforceability in the judicial process. In the judicial process, a court of law has the power or jurisdiction to set aside its own order in appropriate circumstances. It has the discretion to do so and once the discretion is judicially and judiciously exercised, an appellate court cannot interfere. After all, the court is the owner of the order and it can do anything with it like every owner of property.

The words of Justice Niki Tobi in the above case remain ever trite and evergreen. It firmly established the basic principle of every court judgment with its binding nature. A court order is meant to be obeyed and it is not subject to variation by the parties. A court judgment should, at all times remain binding between the parties and cannot be superseded by a subsequent agreement made by the parties. One argument that can be canvassed in favour of judgment compromise is that, it can cripple the effectiveness of judgments and where this is allowed, it will hinder the attainment of justice.

Where the parties settle or compromise pending proceedings, whether before at or during the trial, the settlement or compromise constitutes a new and independent agreement between them for good consideration. Its effects are:

- i. To put an end to the proceedings, for they are thereby spent and exhausted;
- ii. To preclude the parties from taking any further steps in the action, except where they have provided for liberty to apply to enforce the agreed terms; and
- iii. To supersede the original cause of action altogether.³⁴

When a compromised Agreement is brought to the notice of the court, the agreement compromising the action between the parties completely supersedes the original cause of action and the court has no further jurisdiction in respect of that action. Put in another way, when judgment has been delivered by a court but the parties are not satisfied with it, they negotiate and

³³ (2008) Vol. 3 MJSC, 191, 208.

³⁴ *Obayiuwana v Ede* (1998) 1 NWLR (Pt 535) 63.

reach a settlement agreeable to them. In law, the parties have compromised the judgment. This compromise or judgment is a new independent agreement. An appeal can only be brought against the new agreement and not against the judgment that has been compromised. The Court of Appeal fell into grave error when it was informed that the parties had agreed to compromise the judgment of the trial court and still proceeded to hear the appeal, despite affidavit evidence and exhibits which showed that a Compromise Agreement had in fact, been entered by the parties. It must be made abundantly clear that once the parties compromised the judgment, the right to appeal is extinguished. With the Compromise Agreement, the Court of Appeal no longer had jurisdiction to entertain the Appeal.³⁵

The effect of an order/decision made without jurisdiction is that, it is a nullity. A judgment given without jurisdiction is no longer alive and no appeal can lie or be heard on it.³⁶

4. Meaning and Nature of Jurisdiction

Jurisdiction means the authority of a court to decide matters before it, it is usually donated. It is the bedrock of adjudication in our courts. Therefore, the question of jurisdiction is a threshold issue and is of the greatest importance in all manner of litigations before our courts.³⁷ In the case of *NASU v Jacob*,³⁸ the term jurisdiction was defined as the authority which a court has to decide matters that are litigated before it, or to take cognizance of the matters presented in a formal way for its decision. Jurisdiction is fundamental and the sole most important requirement for due adjudication in any matter. It is a radical and crucial question of competence because if a court has no jurisdiction to hear and determine a case, the proceedings are and remain a nullity *ab initio*, however well conducted and brilliantly decided they might be, since a defect in the competence is not intrinsic but extrinsic to the entire process of adjudication. Jurisdiction is therefore considered to be the nerve centre of adjudication; the blood that gives life to the survival of an action in a court of law in the very same way that blood gives life to the human being in particular and animal race in general.³⁹ Jurisdiction is the lifeblood, the life wire, the fiat, the stamp of authority which necessarily ensures to the court or tribunal and empowers it to

³⁵ *Minaj Holdings Ltd v Comp-Gen, (Nig.) Customs Service* (2021) MWLR (Pt 4) 81.,86-87.

³⁶ *APC V Uduji* (2020) All FWLR (Pt. 1065) 1, 7.

³⁷ *T.S.A. Ind. (Nig) Ltd v F.B.N. Plc* (2019) All FWLR (Pt 978) 274, 277.

³⁸ (2020) All FWLR (Pt 1053) 1, 1.8.

³⁹ *Onyenucheya v Milad, Imo State* (1997) 1 NWLR (Pt 482) 429.

adjudicate.⁴⁰ The court held in the case of *Duru v FRN*⁴¹ that the issue of jurisdiction is very important and fundamental and is the life wire of every matter requiring adjudication which when raised, the court ought to ensure that it deals with it one way or the other. This is because, any proceeding or appeal made or heard without jurisdiction, no matter how well conducted, is invalid, null, void and of no effect as it touched on the competence of the court.

For a court to have jurisdiction to entertain any matter, it must satisfy itself of the following:

- i. It must be properly constituted with respect to the number and qualification of its members;
- ii. The subject matters of the action must be within its jurisdiction;
- iii. The action is initiated by due process of law; and
- iv. Any condition precedent to the exercise of its jurisdiction must have been fulfilled.⁴²

Courts are creatures of statutes with each court's jurisdiction defined and disclosed by the statutory provisions which creates it. The jurisdiction of a court is therefore settled by the clear provisions of the Constitution and/or other statute specifically conferring such jurisdiction on a court. A resolution of a query as to the jurisdiction of a court is steered by an examination of the provisions of statute that created it. Therefore, an examination of the plaintiff's claim as well as the statutory provisions creating the court are the primary factors to consider in determining if a court has jurisdiction to entertain a matter.⁴³

The absence of jurisdiction is fatal to adjudication as it erodes the powers of the court and makes it incompetent to do what the parties would have asked the court to do. Once the jurisdiction is challenged, the court must first determine whether it has jurisdiction before proceeding to take any step in the matter. However, in some situations, the court on its own does the necessary, such as declining jurisdiction.

The appellate court has no inherent appellate jurisdiction and cannot exercise jurisdiction outside its powers. The court cannot exercise jurisdiction to hear appeal unless such jurisdiction is conferred on it by the Constitution or by some enabling statutes.⁴⁴ Section 244 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides as follows:

⁴⁰ *Buremoh v Akande* (2017) LPELR 41565 (SC); *Obiueubi v Central Bank of Nigeria* (2011) 7 NWLR (Pt 1247) 465.

⁴¹ (2019) All FWLR (Pt 985) 404, 408.

⁴² See *Egwumi v State* (2013) All FWLR (Pt 1372) 525.

⁴³ *NASU v Jacob* (2020) All FWLR (Pt 1053)1, 17.

⁴⁴ *Nwaigwe v Okere* (2008) All FWLR (Pt 431) 843.

An appeal shall lie from decisions of a Sharia Court of Appeal to the Court of Appeal as of right in any civil proceedings, before the Sharia Court of Appeal with respect to any question of Islamic personal law which the Sharia Court of Appeal is competent to decide

Section 245 (1) of the Constitution also provides as follows:

An appeal shall lie from decision of a Customary Court of Appeal to the Court of Appeal as of right in any civil proceedings before the Customary Court of Appeal with respect to any question of Customary law and such other matters as may be prescribed by an Act of the National Assembly.

Also, the exercise of appellate jurisdiction is statutory. The court must determine whether it has jurisdiction to hear the case on merit because jurisdiction is crucial to the competent of the court.⁴⁵

When an appeal has been entered in the Supreme Court, the Court of Appeal becomes *funtus officio* and ceases to have jurisdiction over the matter.⁴⁶ What flows automatically from appeal being entered is that, the appellate court which had now received the record of appeal is said to be seized of the whole of the proceedings in the sense that the *res* in the appeal shall also automatically pass into the custody of the said appellate court seized of the whole proceedings. There is no sharing of jurisdiction over the *res*, the subject matter of the appeal, between the court below (i.e, transmitting the record of appeal) and the appellate court now seized of the appeal (i.e, receiving the transmitted record of appeal). In the instance case, where an appeal has been entered in the Supreme Court over the live issues in the appeal before the Court of Appeal, it declined jurisdiction to determine same.⁴⁷

In the case of *Oni v Fayami*,⁴⁸ the Supreme Court held that, parties cannot by consent or acquiescence, give jurisdiction to a court which it does not otherwise possess. A private person has no power to impose on a judge of the Chancery Division a jurisdiction which has not been given by the procedure of the courts or by any statute.

The jurisdiction or authority of a court is controlled or bounded by the statute creating the court itself. Or it may be bounded by a condition precedent created by legislation which must be

⁴⁵ *Ogboru v Uduaghan* (2012) All FWLR (Pt 651) 1475

⁴⁶ See Constitution of the Federal Republic of Nigeria, 1999 (as amended) s. 233 (1).

⁴⁷ *Omamuyovwi v INEC* (2020) All FWLR (Pt 1044) 652, 655.

⁴⁸ (2020) All FWLR (Pt 1076) 950, 956.

fulfilled before a court can entertain a suit. These touch on legal authority of court to adjudicate in a matter. If a court lacks jurisdiction, then, it lacks necessary competence to entertain the claim before it.⁴⁹

4.1 Conditions Precedent to Exercise Jurisdiction by Court

For a court to be properly assumed jurisdiction over a matter, due process ought to have been followed before instituting an action in court. In other words, the conditions precedent to bring an action to court must have been fulfilled. We must however distinguish between a mere unsubstantial technicality which does not affect the competence of a court and a substantial technicality which affects the competence of the action and robs a court of its jurisdiction.⁵⁰ In the case of *City Eng. (Nig) Ltd v MAA*,⁵¹ the court held that, a distinction must be drawn between a mere or unsubstantial technicality in proceedings that are competent and within the jurisdiction of a trial court and a substantial technicality which amounts to a condition precedent to the commencement of an action and which renders the proceedings manifestly incompetent, thereby affecting the jurisdiction of the court and renders the same incurably defective whereas the former may be waived, the latter, as a general rule, may not be waived because acquiescence does not and cannot confer jurisdiction on a court. A rule of a court may be waived as long as there is no miscarriage of justice but statutory provisions which constitute condition precedent to commencement of actions ought not to be waived. A condition precedent to doing any act in court laid down by the Constitution or statute cannot be waived but must be strictly adhered to.⁵² If it is not complied with, the action is incompetent and the court is thereby robbed of jurisdiction. Where the requirements laid down by rules of court or subsidiary legislation, then, such provisions could be waived, varied or compromised.⁵³

General principles for the exercise of jurisdiction by a court of law are as follows:

- i. The subject matter of the case is within the jurisdiction of the court and there are no features in the case which prevents the court from exercising its jurisdiction;
- ii. The court is properly constituted as regards members and their requisite qualification and no member is disqualified for one reason or the other; and

⁴⁹ *Gyunka v Chane* (2019) All FWLR (Pt 1014)22, 25.

⁵⁰ *Starley-Idun M M and Agaba J A, Civil Litigation in Nigeria*, (Lagos, Nelag & Company Ltd, 2015) 104.

⁵¹ (1999) 11 NWLR (Pt 625) 80.

⁵² *Eze v Okechukwu* (1998) 5 NWLR (Pt 548) 56.

⁵³ *Ibid.*

- iii. The case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.⁵⁴

For a case to be initiated by due process of law, it presupposes that the jurisdiction of a court to adjudicate in a matter must be determined by the facts placed before it and more importantly, by the phraseology of plaintiff's case. No matter the claim nursed by any plaintiff, due process must be followed for the court to competently handle the case because justice is not a gamble or an accidental scheme borne on wings of any one's whims and caprices. It must be justice according to law.⁵⁵

- iv. Competence of parties as condition precedent to jurisdiction of court.

In the case of *Moses v NBA*,⁵⁶ Supreme Court held that, for an action to be properly constituted so as to vest jurisdiction in the court to adjudicate on the matter, there must be a competent plaintiff and a competent defendant. Where either of them is not a legal person, the action is liable to be struck out for being incompetent. In the instance case, where the appellant sued the Nigerian Bar Association (NBA) which is not a juristic person, the Supreme Court struck out the appeal.

- v. *Locus Standi* of Plaintiff as condition precedent to invocation of court's jurisdiction and rationale for, section 6 (6) (b) and 36 (1) Constitution of the Federal Republic of Nigeria 1999 (as amended).

By the provisions of sections 6 (6) (b) and 36 (1) of the Constitution, every person coming to a law court to invoke his judicial powers, is obliged to disclose his *locus standi* to initiate and maintain an action. *Locus standi* of a litigant is a condition precedent for invoking the jurisdiction of a law court. The necessary intendment for the condition precedent is to sieve and separate genuine litigants from mere busy bodies or impulsive *Don Quizotes* who may be more mindful to be seen only to fight other people's cause against imaginary enemies. The essence of *locus standi* rule is to protect the court from being used as a playground by professional litigants, busy bodies, meddlesome interlopers and cranks who have no real stake or interest in the subject matter of the litigation they pursue. In the instant case, where the appellants are the children of the

⁵⁴ *Madukolu v Nkemdilim* (1962) 2 SCNLR 341.

⁵⁵ *Abacha v Fawehinmi* (2000) NWLR (Pt 4), 533.

⁵⁶ (2019) All FWLR (Pt 1022)444, 447.

deceased, the Court of Appeal held that they had the *locus standi* to commence the action despite the fact that letters of administration had not been obtained.⁵⁷

The *locus standi* or the standing in law to initiate proceedings in court of law is the legal capacity and the condition precedent to initiate legal proceedings in law court for the determination of whatever legal rights or obligations being asserted. The determination of the question whether the plaintiff has or had disclosed his standing in law to initiate legal proceedings is quite distinct from merits of the case. At this state, it is not necessary to consider whether there is a genuine case on the merits. Where the plaintiff fails to disclose his standing to initiate legal proceedings against another suit or action, is incompetent and must be struck out.⁵⁸

Where a plaintiff's *locus standi* to maintain an action is challenged, it is the plaintiff's claim that determines the objection. If, however, the action is commenced by an originating summons, it is the averments in the affidavit in support alone that is examined in determining whether or not the court is competent to proceed.⁵⁹

5. Conclusion

This study examined the functions of court and jurisdiction as condition precedent for a court to perform its function. It also discussed the effects of plea bargain on the administration of justice system and how the practice of compromised agreement is whittling down the jurisdiction of courts in Nigeria.

The paper therefore recommends as follows:

- i. Plea bargain should be viewed from a holistic angle of both restoration and retributive models of justice to avoid giving the impression of immunity from punishment, freedom from guilt and escape from punishment. This will also reduce the chances of making a mockery of the criminal justice system.
- ii. Law enforcement agencies and their personnel should be equipped with forensic science capacities and hightech equipment that have capacity to, for instance, track down and incapacitate terrorism, financing, economic and financial transactions that border on criminality, cybercrimes and more.
- iii. Plea bargain should not be an exclusive preserve of the rich; it should be applicable to all criminal matters with great caution in criminal cases.

⁵⁷ Davies v Gov., Ekiti State (2020) All FWLR (Pt 1023) 97, 103-104; Edebiri v Edebiri (1997) 3 SCNJ 177.

⁵⁸ Davies v Gov. Ekiti State (2019) All FWLR (Pt 1023) 97, 103.

⁵⁹ Eze v PDP (2020) All FWLR (Pt 1064) 1013, 1018.

- iv. Before a plea bargain, the prosecution should consider several issues before issuing plea bargain, i.e, the age of the case, whether or not to call witnesses, availability of witnesses and the victims; and the emotional trauma caused.
- v. Practice direction should be given by Chief judge on the procedure to be followed as regards the quantum of restitution, restoration, compensation and sentence of imprisonment to be made in cases bothering on fraud, breach of public trust and corruption.
- vi. Court order/judgment should be obeyed and it should not be subject to variation by the parties. A court judgment should at all times remain binding as between the parties and should not be superseded by a subsequent agreement made by the parties.