ASSETS FORFEITURE AND RECOVERY IN NIGERIA*

Abstract

This study discussed the role of the Nigeria Judiciary in assets forfeiture and recovery in Nigeria criminal jurisprudence. The study discovers that the relevant provisions laws that prohibit corruption is exhaustive for considering and deciphering criminal liability and complicity of a person in a corruption case. The role of the judiciary in asset forfeiting and recovery cannot be over emphasis, cause without the participation of the judiciary, no anti-graft agency can lawfully hold the asset of a person, whether he is been investigated or not. The aim of this study is to examine the role of the judiciary in asset forfeiture and recovery. This study adopted doctrinal method of legal research, thus, has made use of primary source materials such as statutes, International Instrument and case law; and the secondary sources of data such as journal/article, online materials. The study also made recommendations, particularly in the area of quick dispensation of corrupt base trials.

Keywords: Assets, Forfeiture, Recovery, Interim, Final

1. Introduction

Upon arrest of a suspect by the Economic and Financial Crimes Commission, he is expected to disclose in the Assets Declaration Form specified in Form A of the Schedule to the Act his or her assets. The disclosed assets could be seized. The Commission can also seize any of the person's property or instrumentalities used in any manner to commit or to facilitate Commission of such offence not already disclosed in the Form. This is without prejudice to any other properties that may be confiscated.[1] In fact, the seizure or attachment of the assets or properties of a person arrested for an offence is a condition precedent before applying ex-parte to Court for interim order forfeiting the property concerned to the Federal Government.[2]The financial losses from corruption drain resources for development and provide corrupt elites with the means to pay off allies and undermine representative government. Poverty, healthcare, education and unemployment are all negatively impacted by the theft of public assets and money. There is no adequate provision of social amenities by the government to the citizen. Stolen assets from developing countries are often legally managed by some of the best known banks and financial centres around the world. Even when corrupt funds are located and frozen, banks continue to benefit from the interest. In trying to combat corruption in most countries and in the wider context of global crime control and the prevention of money laundering, the pursuit and recovery of illicit assets (whether proceeds of corruption or other crimes) has the reparative impact of taking away from individuals that which does not belong to them. Beyond that, it has the possible preventive impact on the prevalence of crime in general by denying criminals their most patent tool-money….[3]

2. Interim Forfeiture

Interim forfeiture presupposes that something is temporarily seized (vide an *ex parte* application to the court) before a final court order is given pending determination of substantive issues. For instance, a federal High Court in Lagos orders interim forfeiture of more assets linked to Mrs. Deizani Alison-Madueke and the sum of $5.8million linked to Mrs. Patience Jonathan. Thus, interim forfeiture is temporary impounding of the property of an accused person until the case is tried and closed. The seizure of a bank account, for example, takes place when you lose the right to use the money in your account. Forfeiture occurs when your rights to the seized property are permanently lost through a court order or judgment. The object of interim forfeiture is to temporarily give possession to the Economic and Financial Crimes Commission the assets of persons under investigation for alleged economic and financial crimes[4]or by any other investigating agency to prevent the persons from disposing the assets while investigation or trials are still going on. This is akin to a Mareva injunction granted to prevent party from transferring assets from the jurisdiction of the Court or disposing of his property so as to frustrate or render nugatory any judgment that the other party may obtain in the case before the Court.[5] Interim forfeiture of assets of accused persons in criminal trials is not peculiar to the E.F.C.C. Act nor is it new or unique in the administration of criminal justice in Nigeria as evidenced by similar provisions in other

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[1]S. 26 (1) EFCC (Establishment) Act 2004; *Nwaigwe v. FRN.*(2019) LPELR 46944 SC

[2]*supra*.

[3]Abdullahi A Shehu, *Strategies and Techniques of Prosecuting Economic and Financial Crimes* (Express Image Limited Lagos, 2012)p 89

[4]S. 9 (b) EFCC (Establishment) Act 2004

[5]*Sotuminu v Ocean Steamship* (1992) 5 NWLR (Pt. 239) 125. For detailed discussion on Mareva Injunction, see F Emiri& A. Giwa, *Equity and trust in Nigeria*, (Malthouse Press, Lgos2012).

statutes. It is particularly used where there are fears that the accused person may dissipate the proceeds of the crime before the actual trial. In other jurisdictions, interim forfeiture of assets of accused persons has also been given statutory recognition.

Interim forfeiture of assets by investigating agencies is a pre-emptive measure taken to avoid suspected criminals who may be under investigation from tempering with properties which are usually procured with the proceeds of crime. It is a safeguarding measure to preserve the *res*. Asset forfeiture simply means loss of some right of property as a penalty for some illegal acts. It entails loss of property or money because of breach of a legal obligation. Forfeiture occurs when your right to the seized property is temporarily or permanently lost through a court order or judgment. Forfeiture occurs after seizure, and seizure occurs in forfeiture. Assets likely to be forfeited include: property derived from commission of crime; property which facilitates the commission of crime; and substitutive assets.

3. Final Forfeiture

Final forfeiture of asset is the permanent loss of the fundamental right of ownership of property as a penalty for indulging in fraudulent acts through court order or judgment. This happens when no third party files a timely petition. In consequence, the interim order becomes the final order of forfeiture if the court is satisfied that the defendant (or any combination of defendants convicted in the case) had an interest in the property that is forfeitable under the applicable statute. All states and the federal governments allow law enforcement agents to seize and forfeit cash, property and other materials they believe are associated with illegal activities or are direct proceeds of crime. In criminal asset forfeiture proceedings, the action is directed against the person after being convicted of an underlying criminal offence, or where an interim forfeiture order had been obtained and within the period stipulated by law, nobody makes claim or show interest in the asset so forfeited. Thus, the action is against the property, not the person and can be seized even if the person is not charged or convicted of a crime. Hence, the former is technically referred to as *in rem forfeiture* (against the property) while the latter is *in personam forfeiture* (against the person). Criminal forfeiture is an *in personam* proceeding brought by the criminal prosecution against an offender, resulting in the forfeiture of the offender's property, assets, and proceeds directly or indirectly obtained from the criminal activity.

4. Asset Recovery

Asset recovery is defined according to the United Nations Convention against Corruption (for corruption and related offences, including money laundering)(UNCAC), 2004 as 'recovering the proceeds of corruption, rather than broader terms such as asset confiscation or asset forfeiture which refer to recovering the proceeds or instrumentalities of crime in general'.[6] Asset recovery refers to 'the legal process of a country, government and/or its citizens to recover state resources stolen through corruption by current and past regimes, their families and political allies, or foreign actors'.[7]Asset Recovery is the process by which the proceeds of corruption are recovered and returned to the country of origin.[8] Asset recovery for the purpose of this research work is acknowledged as a four-phase process:

Pre-investigative or intelligence gathering phase: during which the investigator verifies the source of the information, initiates the investigation, and determines its authenticity. If there are inconsistencies in the intelligence, or incorrect statements and assumptions, then the true facts must be established;

Investigative phase: during which proceeds of crime are located and identified in the pre-investigative phase and evidence of ownership is collated covering several areas of investigative work in more formal processes, e.g., through the use of requests for mutual legal assistance, to obtain information relating to off-shore bank accounts and other records, and financial investigations to obtain and analyze bank records. This phase involves substantiating the veracity of the intelligence and information and converting it into admissible evidence. The result of this investigation can therefore only be a temporary measure e.g., seizure in other to later secure a confiscation order through the court;

Judicial phase: during which the accused person/defendant is convicted (or acquitted), and the decision on confiscation is determined;

Disposal phase: where the property is actually confiscated and disposed of by the prosecution in accordance with the law, whilst taking into account international asset-sharing obligations, where applicable and in appropriate cases, as well as compensation for victims and or restitution where necessary. It is important to note

[6]Article 6 (1) (b) UNCAC, 2004.
[7]Article 31 (5) UNCAC 2004
[8]Transparency International 2009.

that in the Nigerian jurisdiction, asset recovery and management unit operates under the office of the Honourable Attorney General of the Federation. This specialized unit is responsible for the co-ordination of Law Enforcement and Anti-Corruption Agencies in matters related to asset tracing, recovery and management.

Challenges of Asset Forfeiture and Recovery

(i) Factors militating against asset forfeiture and recovery under Nigerian law are as follows:
(ii) Lack of political will
(iii) Weak domestic legal framework
(iv) Cash based economy and unregistered properties
(v) Lack of technical competence (proving the criminal case and following the money trail)
(vi) Complex and lengthy procedure or court proceedings
(vii) Improper management of recovered assets
(viii) Problem of dissipation, cost of recovery, and public confidence.
(ix) Political interference in the process of litigation and court proceedings
(x) Compromise by the investigating agency

5. Measures after Forfeiture and Recovery of Asset

Where the assets or properties of any person arrested for an offence under the Act has been seized by the Commission, the Commission shall bring an application ex-parte to the Court for an interim order of forfeiture of the property concerned to the Federal Government. The Court if satisfied that there is a prima facie evidence that the property concerned is liable to forfeiture, may make an interim order forfeiting the property to the Federal Government.[9] It is submitted that from the provisions of Section 29 of the Act, although the application is made ex-parte, the grant of it is not as a matter of course. The prosecution must place before the Court sufficient materials to enable it make the interim forfeiture order. Section 29 of the Act requires the Commission to produce 'Prima facie evidence'[10]. 'Prima facie' evidence is not defined in the Act but from the judicial authorities, prima facie evidence must be such as to link the suspect to the Commission of the crime and a relationship between the assets and properties and the crime. If there is no prima facie evidence of nexus between the offence and the asset the Court will not grant the interim order.

Where the owner of the Forfeited and recovered asset abscond

Non-conviction based confiscation, sometimes referred to as 'in rem confiscation', 'objective confiscation' or 'extinction de domino', authorizes the confiscation of assets without the requirement of a conviction. As it is typically a property based action against the asset itself, not against the person with possession or ownership, non-conviction based confiscation generally requires proof that the asset is the proceeds or instrumentalities of crime. In addition, a conviction is not required. Non-conviction based confiscation most often takes place in one of two ways. The first is confiscation within the context of criminal proceedings but without the need for a final conviction or finding of guilt. In these situations, Non-conviction based confiscation laws are incorporated into existing criminal codes, anti-money laundering acts or other criminal legislation, and are regarded as 'criminal' proceedings to which the criminal procedural laws apply. The second is confiscation through an independent statute which introduces a separate proceeding that can occur independently of, or in parallel to, related criminal proceedings, and is often governed by the rules of civil procedure (rather than criminal procedure laws). In jurisdictions applying civil procedure, a lower 'balance of probabilities' or 'preponderance of the evidence' is often the standard of proof required for confiscation. Non-conviction based confiscation is useful in a variety of contexts, particularly when criminal confiscation is impossible or unavailable, such as when: (i) the offender has died, fled the jurisdiction or is immune from prosecution; (ii) an asset is found and the owner is unknown; (iii) there is insufficient evidence to seek a criminal conviction or criminal proceedings have resulted in an acquittal (applies in jurisdictions which apply a lower standard of proof). Non-conviction based confiscation may also be useful in large and complex cases where a criminal investigation is in progress and there is a need to freeze and confiscate the assets before a formal criminal charge is brought. The word '*forfeiture* according to Kekere-Ekun JSC: 'Means the divestiture of property without compensation.The loss of a right, privilege or property because of a crime, breach of obligation or neglect of duty. It goes on to say 'title is instantaneously transferred to another such as the government, a corporation or a private person'.[11]

[9]S. 29 of EFCC (Establishment) Act 2004. See also S. 34(1) of the Act which empowers the Commission to apply to the Court ex-parte for an order to issue to freeze the accounts of suspect where the money in the account is the proceeds of economic or financial crime. This overrides the duty of confidentiality of the bank to its customer. See Ndombana, N.J.: *An analysis of the Economic and Financial Crimes Act, 2002* in Trends in Nigerian Law: Essays in Honour of D.V.F. Olateru-Olagbegi III, Edited, O. Oluduro et al, (Constillations Nig. Publishers, Ibadan 2007) 142, 166
[10]EFCC (Establishment) Act 2004.
[11]*Abacha .v. Federal Republic of Nigeria* (2014) JELR 40274 SC

Therefore, forfeiture connotes punishment for a crime committed and its effect is instantaneous. In the same vein, Black's Law Dictionary, forfeiture means: The divesture of property without compensation. The loss of right, privilege, or property because of a crime, breach of obligation or neglect of duty. Title is instantaneously transferred to another, such as government, a corporation, or a private person. Something (esp. money or property) lost or confiscated by this process; a penalty… Civil forfeiture, an in rem proceeding brought by the government against property that either facilitated a crime or was acquired as a result of criminal activity. Criminal forfeiture, a governmental proceeding brought against a person to seize property as punishment for the person's criminal behaviour.[12]

6. Plea Bargain Agreement and Asset Forfeiture and Recovery

Plea-bargain became prominent and frequently applied with the establishment of the Economic and Financial Crimes Commission (EFCC) following increased level of corruption based cases.[13] Subject to the provision of the Constitution of the Federal Republic of Nigeria 1999 (CFRN)[14]which relates to the power of the Attorney General of the Federation to institute, continue or discontinue criminal proceedings against any persons in any court of law, the Commission may compound any offence punishable under the EFCC Act by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence. This concept of Plea Bargain was boldly institutionalized by the enactment of the Administration of Criminal Justice Law 2011, Laws of Lagos State[15] which provides that:

1. the prosecutor and a defendant or his legal practitioner may before the plea to the charge, enter into an agreement in respect of:
a. A plea of guilty by the defendant to the offence charged or a lesser offence of which he may be convicted on the charge, and
b. An appropriate sentence to be imposed by the Court if the defendant is convicted of the offence to which he intends to plead guilty.
2. The prosecutor may only enter into an agreement contemplated in Subsection (1) of this Section:
a. After consultation with the Police Officer responsible for the investigation of the case and if reasonably feasible, the victim, and
b. With due regard to the nature of and circumstances relating to the offence, the defendant and the interest of the community.
3.The prosecutor, if reasonably feasible shall afford the complainant or his representative the opportunity to make representations to the prosecutor regarding:
a. The contents of the agreement; and
b.The inclusion in the agreement of a compensation or restitution order.
4. An agreement between the parties contemplated in subsection (1) shall be reduced to writing and shall:
a. State that, before conclusion of the agreement, the defendant has been informed
(i) that he has a right to remain silent;
(ii) of the consequences of not remaining silent;
(iii) that he is not obliged to make any confession or admission that could be used in evidence against him.
b. State fully the terms of the agreement and any admissions made and,
c. Be signed by the prosecutor, the defendant, the legal practitioner and the interpreter as the case may be.
5. The Presiding Judge, or Magistrate before whom criminal proceedings are pending shall not participate in the discussions contemplated in subsection (1). Provided that he may be approached by Counsel regarding the contents of the discussions and he may inform them in general terms of the possible advantages of discussions, possible sentencing options or the acceptability of a proposed agreement.
6. Where a plea agreement is reached by the prosecution and defence, the prosecutor shall inform the court that the parties have reached an agreement and the Presiding Judge or Magistrate shall then inquire from the defendant to confirm the correctness of the agreement.
7.The Presiding Judge or Magistrate shall ascertain whether the defendant admits the allegations in the charge to which he has pleaded guilty and whether he entered into the agreement voluntarily and without undue influence and may:
a. if satisfied that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty to that offence, or;
b. if he is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in conflict

[12] B. A Garner, *Black's Law Dictionary*, 10thedn (Thomas Reuters 2014)Dallas
[13]S.14 (2) EFCC (Establishment) Act, 2004
[14] S. 174 CFRN 1999 (as amended)
[15]S.76 ACJL, Laws of Lagos State, 2011.

with the defendant's rights referred to in subsection (4) of this Section, he shall record a plea of not guilty in respect of such charge and order that the trial proceed.
8.Where a defendant has been convicted in terms of subsection (7) (a), the Presiding Judge or Magistrate shall consider the sentence agreed upon in the agreement and if he is:
a. Satisfied that such sentence is an appropriate sentence impose the sentence; or
b. Of the view that he would have imposed a lesser sentence than the sentence agreed upon in the agreement impose the lesser sentence; or
c. Of the view that the offence requires a heavier sentence than the sentence agreed upon in the agreement, he shall inform the defendant of such heavier sentence he considers to be appropriate.
9. Where the defendant has been informed of the heavier sentence as contemplated in subsection.
8).Above, the defendant may:
a. Abide by his plea of guilty as agreed upon in the agreement and agree 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 maybe.
10.Where a trial proceeds as contemplated under subsection (9) (a) or de novo before another Presiding Judge, or Magistrate as contemplated in subsection (9) (b):
a. No reference shall be made to the agreement;
b. No admissions contained therein or statements relating thereto shall be admissible against the defendant; and
c. The prosecutor and the defendant may not enter into a similar plea and sentence agreement.

This brings about a situation where as described above, the accused and his counsel together with the prosecutor negotiate and agree on a charge acceptable to both parties and submit their agreement to the Judge to read as a judgment. A prosecutor having charged a suspect with money laundering, knows that the suspect has received cash in excess of the limit permitted by law, armed with the bank statement of the suspect but lacking further proof of the final destination of the money, knows that he can secure a conviction of money laundering but will not be satisfied knowing that the judgment is empty as there are no properties or money to recover will attempt to reach a strike a plea deal with the suspect who on other hand lacks confidence that his assets are untraceable to surrender a percentage of the laundered money and or assets with which it purchased with the opportunity of facing reduced charges and upon conviction a reduced sentence.

The implication of plea-bargain is that it provides a win-win situation for both the State and the accused it is a win for the state in such a way that the conviction upon a plea bargain adds in number to the successful conviction by the state and on the other hand, a win for the suspect because he receives a reduced charge and sentence admitting the crime. This situation though noble in that it saves the time of the Court and saves the tax-payers money, presents to the writer a situation where in the hands of the judge are tied this means that the judge cannot give the maximum sentence for the crime admitted because to do that would mean a violation of the fundamentals of plea bargain, Thus the sentence that will then be given by the judge may be of ridiculously small proportion in relation to the crime committed.

Antagonists of the concept of plea bargain in criminal cases have argued that the practice violates the fundamental human rights of the accused by the inducement of confession of guilt and a trail waiver for the promise of a reduced sentence. Okwori in his article 'Plea Bargaining: A Trial Procedure that Negates Fundamental Rights of the Accused Person'[16] argued that the process of plea bargaining violates the following rights guaranteed under the US Constitution and the 1999 Constitution of Nigeria which are, the 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, Section 36[17] and in Section 79[18] that persons arrested on suspicion of a crime are read the Miranda rights which developed from the case of *Miranda v. Arizona*[19] which state that: 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.

[16]Nicholson A. Okwori *Plea Bargaining*: A Trial Procedure that Negates Fundamental Rights of the Accused (SAGE Publication, 2010).
[17]CFRN 1999 (as amended)
[18]ACJL Lagos State, 2011, Laws of Lagos State
[19]*Miranda v. Arizona*, 384 US 436 (1966).

The Miranda rights which are 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 provision of the Miranda warning negates the position taken by *Okwori* as to the disadvantages of the use of In plea bargain in criminal trials furthermore, during a plea bargain which is entered into voluntarily, the accused is neither coerced, intimidated nor cajoled into accepting a plea. Furthermore, It has also been argued by Hallevy in his article 'Is Alternative Dispute Resolution (ADR) Philosophy Relevant to Criminal Justice? Plea Bargains as Mediation Process between the Accused and the Prosecution'[20] that plea bargaining privatizes the judiciary. He states that handing over the power to adjudge cases to individuals, in this case, the prosecutor and the accused counsel means turning the system of the judiciary over to individuals which is not and has never been the intention of the judiciary. In my opinion however, I do not see the criminal law system as being privatized but mediated because the judiciary still retains the right to accept or reject a plea bargain agreement.

Mediation is a practice whereby in a conflict, a third party seeks 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[21]. 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 times when both parties intend to achieve a win-win resolution to the conflict. The use of mediation in Nigeria dates back to the pre-colonial times, where it was used to resolve disputes between feuding families, communities and villages, the mediator was respected because of his standing in the community and in most occasions, his age. Mediation served well to maintain peace and preserve traditional values of the community.[22] This mode of dispute resolution has received judicial recognition in the case of *Okpuruwu v. Okpokam*[23] where the Court of Appeal stated that the people of Nigeria had before the establishment of courts a simple and inexpensive way of resolving disputes between themselves. Since the pre-colonial era till date, Nigeria has developed its use of mediation through the adoption of various laws and establishment of bodies such as the multi-door court house established in Lagos, Nigeria. Most recently in the development of mediation in Nigeria, is the launch of the International Criminal Court (ICC) Mediation Rules 2014. The said rules have been adapted to help parties resolve the most complex situations quickly. Generally, alternative dispute resolution methods and in particular, mediation are favoured over litigation and even arbitration because it takes less time to reach a resolution, the characteristics of mediation as an alternative dispute resolution method is that using it to resolve disputes saves time, saves cost and the parties negotiate their agreement usually in a way that favours both of them. 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 principles of plea bargain which is synonymous with that of mediation can be summarized as follows:
1. 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.
2.The plea bargain is at an advantage to the government who is usually on the benefiting end of this arrangement. This is because the hasty/speedy resolution of the case saves the government from spending tax-payers money also, properties/monies returned are returned to the government. It also, help to reduce the burden placed on the criminal justice system. Therefore, the parties achieve a win-win situation.
3. The parties make up the laws that guide the arrangement such as what charges to drop or keep and what sentences to lighten.
4. The Judge agrees/signs into judgment the 'agreement' reached by the parties, and is bound by the agreement of the parties.
5.The option to participate in plea-bargain is voluntary. Parties cannot be forced into it. Same as in mediation because every Nigerian citizen has a right of access to the national courts.
The rise in economic and financial crimes in Nigeria has resulted in a corresponding rise in plea bargains. Many examples as settled in Nigerian courts come to mind. Amongst which are:
1.The recent conviction of Yusuf John Yakubu, a former Assistant Director of the Police Pension Board. Yusuf had been accused of embezzling about N23 billion from the Police Pension funds he was meant to oversee. Following a plea bargain arrangement, the accused entered a guilty plea on the three count charge and was sentenced to payment of a fine of N750,000.00 (N250,000.00) for each count[24] and a the forfeiture of his assets acquired with the embezzled funds.

[20]Okwori Gabriel Hallevy, Is ADR (Alternative Dispute Resolution) Philosophy Relevant to Criminal Justice? Plea Bargain as mediation Process between the Accused and the prosecution.
[21]Mediation, Encyclopeadia Britannica, 1999 .
[22]A. O. Rhodes-Vivour, Mediation (A Face-Saving Device) The Nigerian Perspective), IV. Journal of the International Bar Association Legal Practice Division Mediation Committee Newsletter, 2008, p. 1.
[23](1998) 4 NWLR Pt 90.554, 586.
[24]unreported

2. Former Governor Lucky Igbinedion went through a similar process. Lucky Igbinedion, the former Governor of Edo State was considered 'lucky' indeed. Having being accused of looting about N 4.4 billion, he entered a plea bargain and at the end of the day, he was fined the sum of N 3.5 million while he forfeited three landed properties to the Federal Government[25].
3. In the case of *The Federal Republic of Nigeria v. Dr (Mrs) Cecilia Ibru*,[26] Justice Dan Abutu of the Federal High Court sitting in Lagos, convicted Cecilia Ibru, the former managing director of Oceanic Bank plc, of a three-count charge of authorizing loans beyond her credit limit, rendering false accounts and approving loans without adequate collateral. The court sentenced the accused to six months' imprisonment for each count, which ran concurrently, and ordered the forfeiture of related assets worth N191.4 billion.[27] In adjudicating this case, the prosecution and accused agreed on plea bargain by relying on section 17 of the Federal High Court Act[39] which encourages reconciliation among parties to facilitate amicable settlements in civil and criminal cases.
4. Also, former Governor of Bayelsa State, Governor Alamieyeseigha was charged for financial crimes and sentenced to 12 years in prison on a six -count charge. He was sentenced two years on each count but all sentences ran concurrently and the sentences ran from the day he was arrested and detained in 2005.[28] The above was as a result of plea bargain and because he has almost concluded two years in jail before brokering the bargain, he was released a few days after the judgment.

Comparatively, the Supreme Court of the United States of America supports the doctrine of plea bargain as early as 1971 by holding that Plea Bargaining is an essential component of the administration of justice. It should be encouraged if it can be properly administered because if every criminal charge was to be subjected to a full trial, the resources of the states and Federal Government will be overburdened *Santobello v. New York*. 260.[29] On the other hand, in France, there is a distinction between serious felonies crimes for which formal trials in the court of Assize are required from lesser offences which are triable under relaxed procedures in specialized courts called the correctional court. This distinction has given rise to charge reduction which is also called correctionalization where the prosecutor removes a case of crime to correctional court by treating it as a delict. Goldstein and Marcus claim that prosecutors regularly use this process 'avoid a judicial examination and a prolonged trial. They offer the accused a lesser sentence for a delict in exchange of the accused avoiding a full trial.[30] This process is the same in Germany where offences are classified as minor but which include crimes such as embezzlement, fraud and receiving stolen goods may at the behest of the prosecutor be adjudicated by a penal order in which the defendant waives his right to contest the charge and accept the penalty specified in the order[18]. The situation in Nigeria is closest to that of France and Germany which sees lesser charges such as white collar crimes pleaded to but more serious crimes such as felonies meriting the full trial by the courts.

While this paper is not to discuss the rightness or otherwise of the various situations of successful plea-bargain deals, it is clear that from the principles as adumbrated in the opening paragraph of the paper, the charges were duly and rightly plea-bargained. The discussion as above leads the writer to wonder whether plea-bargain cannot be rightly described as criminal mediation. It is pertinent to state at this juncture that as at the moment of writing this paper, there is nothing known in law as criminal mediation. But from a holistic read of the discussion above one can rightly say that plea bargain as practiced is in essence, criminal mediation because the parties make their own law as regarding their bargain such as what to concede to. Because the parties negotiate as to the terms of settlement, parties also determine what charges are appropriate in the circumstances as the charges admitted to directly affect the sentence given by the judge. The result of a successful plea-bargain is a 'win-win' situation. It saves the time of the Court, saves tax-payers money and achieves the general reason for criminal prosecution which is to convict offenders.

7. Conclusion and Recommendations

Evidently, this article, has critically examined the constitutionality or legality of assets forfeiture and recovery in the Nigerian legal context, this research explores the nature and character of the legal framework for assets forfeiture and recovery under the Nigerian jurisdiction. It critically examined the nitty-gritty of the law of the Federal Republic of Nigeria vis-à-vis confiscation and forfeiture of proceeds of crime by politically exposed persons. Through the discussion, the article has shown that there are two category of asset forfeiture viz: conviction based forfeiture (which is criminal in nature) and civil forfeiture. Asset recovery and Confiscation

[25](2014) JELR 39898 CA
[26]unreported.
[27] Cap F12, Federal High Court Act, LF N 2004.
[28]K. Oladele , Vanguard Newspaper, Plea Bargaining and the Criminal Justice System in Nigeria, 2010, http://www.vanguardngr.com.
[29]*Santobello v Newyork* 404 US 257 (1971).
[30]Goldstein and Marcus (1977).

aim at crime prevention also have dissuasive effect on criminal behavior**.** Significantly, confiscation of the proceeds of crime remains a global issue as criminals continue to move monies through financial systems with effortlessness and to procure legitimate assets across the world. In the context of corruption and fraud, which necessitated this research, and to put the problem into perspective, the World Bank announced that in one year alone over $1 trillion were paid in bribes. This statistic does not even represent the cost of large scale fraud or embezzlement from public funds. At a country level, the Nigerian Economic and Financial Crimes Commission puts Nigeria's own corruption and theft at approximately USD 420 billion since independence in 1960, more than the total amount of development aid provided to all of Africa by Western governments between 1960 and 1997. The knock on effect of this crime is that now an estimated 25% of the world's costs on government procurement is the result of corruption on a large and systematic scale. This is monies lost to public projects such as roads, schooling and the construction of hospitals. Even where the projects are commenced they often lead to the building of unnecessary infrastructure or infrastructure that is of dangerously poor quality. Nigeria is the 144 least corrupt nations out of 175 countries, according to the 2018 Corruption Perceptions Index reported by Transparency International. For this reason, efforts to prevent corruption, the wholesale plundering of state assets, systematic fraud and the manner in which the proceeds of such criminal activities move through financial centres have recently assumed a high international profile attracting great political interest. The answers to such problems are complex, transcending legal and political boundaries, and require an enormous effort in both the developing countries where the assets were stolen and the financial centres of the world where they reside, or once resided. It is no debate that corruption is an endemic killer disease in the wheel of Africa's economic development. Corruption, apart from distorting key macroeconomics indices, it ensures that basics such as Medicare, pipe borne water, schools, good roads and other infrastructures are unavailable.

The following measures may be helpful. **A**ppointment of heads of anti-corruption agencies should not be made the constitutional powers or statutory prerogative of the President and Commander-in-Chief of the Armed Forces in order to avoid unnecessary political interference by desperate and over-zealous politicians particularly members of same political party with the President who makes those appointments. There should be clear declaration of asset of public servant and close monitoring of assets of public officers during and after public offices by an independent agency. There is need for efficient and effective whistle blowing policy, to enable the anti-graft agencies gather sufficient information on illicit acquired wealth. The operation of anti-graft agencies in Nigeria should not be compromised in the course of investigation and prosecution of accused persons on the basis of party affiliation. There should be an effective budget monitoring team to ensure that lope holes are covered in the area of budget implementation, and monies budgeted for a particular purpose are used adequately.