

**TRIVIALISING PENALTY FOR INTERNET FRAUD: REVIEW OF THE FEDERAL REPUBLIC OF NIGERIA V AIFUWA COURAGE OSASUMWEN<sup>□</sup>**

**Abstract**

*The paper argues that the court judgement in the Federal Republic of Nigeria v. Aifuwa Courage Osasumwen does not support the objective of the Nigerian Cybercrimes Act 2015, especially with the increasing involvement of Nigerian youths in domestic and global internet fraud. It negates the existing cybercrime law and practice concerning the concept of plea bargain and, consequently, a stamp on Nigerian youths' perpetration of internet fraud. The court's reliance on Section 454(1) of the Administration Criminal Justice Act 2015 and the basis upon which the decision was reached arguably trivialises the offence of internet fraud. Again, when juxtaposed against similar decisions in the United States of America, the court's judgement falls short of any deterring effect on the proliferating nature of internet fraud.*

**Keywords:** Internet Fraud, Plea Bargain, Cybercrimes Act 2015, Administration of Criminal Justice Act 2015

**1. Facts**

The defendant was arraigned on the 22 September 2021 by the Economic and Financial Crimes Commission (EFCC) before the Federal High Court, Abuja, presided by Hon. Justice Taiwo O. Taiwo on a one-count charge of internet fraud contrary to section 22(2)(b)(ii) of the Cybercrimes (Prohibition, Prevention ETC.) Act 2015.<sup>1</sup> The defendant, sometime in 2020 at Abuja within the jurisdiction of the Federal High Court, was alleged to have fraudulently impersonated Van Diesel, a United States citizen, through his Facebook account geraldbuttler-01117@gmail.com intending to collect money from Patty Burrier. However, on 11 March 2021, the Prosecutor and Defendant entered into and signed a plea bargain agreement, filed before the court's registry on 16 March 2021, where the defendant pleaded guilty to the one-count charge. Upon resumed hearing of the matter, the parties brought to the knowledge of the court the signed plea bargain agreement between the parties. Consequently, they urged the court to convict the defendant and sentenced him based on the terms of the plea bargain agreement.

**2. Held**

In delivering its judgment on 24 September 2021, the court noted that once a defendant that a counsel represents in court pleads guilty to a charge, the plea satisfies the requirement for proof beyond reasonable doubt. Hence, the court is free to convict such a defendant, especially where a guilty plea to a charge is on its own a piece of conclusive evidence that the defendant committed the offence alleged against him.<sup>2</sup> It expressed the view that 'a plea bargain is a process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to the approval of the court.'<sup>3</sup> The court further examined the legality or otherwise of the plea bargain agreement entered by the parties. It justified the legality of the plea bargain agreement by referencing section 14(2) of the Economic and Financial Crimes Commission Act 2004 and the fact that the said plea bargain agreement satisfied all the requirements of a plea bargain agreement.<sup>4</sup> It, however, stated that 'the law is trite that the court may or may not give effect to the plea bargain agreement, although the court who is not involved must only ensure that the defendant was not induced, forced or harassed into signing the agreement.'<sup>5</sup> It noted that the charge against the defendant is an attempt to commit

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<sup>1</sup> Suit No. FHC/ABJ/CR/78/2021 - Judgment delivered on 24 September 2021 by Hon. Justice Taiwo O. Taiwo, Presiding Judge, Federal High Court, Abuja, Nigeria, (Unreported) 1-8 at 1

<sup>2</sup> Ibid. at 2.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid. at 3.

<sup>5</sup> Ibid.

internet fraud, having not been brought to fruition. In the same vein, it stated the importance of punishing a cybercriminal who is found guilty thus: ‘to meet the legitimate expectation of the society retribution, where the society strikes back at the offenders to deter potential offenders and make the commission of crime unattractive, protect the public and society and ensure that daredevil criminals and recalcitrant offenders are taken out of circulation to provide interregnum for dangerous criminals to reflect pending their rehabilitation to normalcy.’<sup>6</sup> In this regard, the court examined sections 22(2)(b)(ii) & 22(2)(b)(i) upon which the charge against the defendant is predicated and hinted at the absence of punishment or penalty in the said provision when it stated thus: ‘the punishment is not stated [in] section 22(2)(b)(i) of the Act, however, the court can look at alternative punishment contained in the section for other similar situations. In any case, there is a plea bargain agreement to which the court is not bound.’<sup>7</sup> Moreover, the court reasoned the prevalence and proliferating nature of Nigerian youths' involvement in internet fraud and the likelihood of seventy per cent of Nigerian youths being called ex-convicts if nothing is done to curtail the act. Additionally, the impact these may have on Nigerian youths and the society at large.<sup>8</sup> Consequently, the court refused to effect the parties' plea bargain agreement, thereby refusing to convict and sentence the defendant. It decided to exercise its powers provided under section 454(1)(a)(b)(c)(2)(a)(b) of the Administration of Criminal Justice Act 2015 thus:

454. (1) Where a defendant is charged before a court with an offence punishable by law and the court thinks that the charge is proved but is of opinion that having regard to:

(a) the character, antecedents, age, health, or mental condition of the defendant charged,

(b) the trivial nature of the offence, or

(c) the extenuating circumstances under which the offence was committed, it is inexpedient to inflict a punishment or any order than a nominal punishment or that it is expedient to release the defendant on probation, the court may, without proceeding to conviction, make an order specified in subsection (2) of this section.

(2) The court may make an order under subsection (1) of this section: Conditional release of defendant and payment of compensation for loss or injury and costs.

(3) (a) dismissing the charge; or

(b) discharging the defendant conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear at anytime during such period not exceeding 3 years as may be specified in the order.<sup>9</sup>

And in the final analysis, the court held thus:

Based on the provisions of ACJA 2015 which I have reproduced above, I have put into consideration the age of the defendant, that he is still young and thus can still turn a new leaf and be a responsible person; I have put into consideration the trivial nature of the offence and I have come to the conclusion that it is inexpedient to inflict punishment on the defendant but expedient to release him on probation. I shall therefore not convict the defendant but I shall discharge him conditionally by him entering into a recognizance and by this, he will depose to an affidavit to be of good behaviour and not to engage in any criminal activities henceforth...His father who was in court when he took his plea shall be his surety who shall also depose to an affidavit that he will hence forth counsel the defendant and monitor him so that he will not engage any longer in any criminal activity. It is hereby also ordered that once a month from the 1<sup>st</sup> October, 2021, for six(6) months inclusive of the month

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<sup>6</sup> Ibid. at 4.

<sup>7</sup> Ibid. at 5.

<sup>8</sup> Ibid. at 5-6.

<sup>9</sup> Administration of Criminal Justice Act 2015, s.454.

of October 2021, the defendant shall appear at the EFCC office in Abuja for counselling. His counselor will be the prosecutor or any officer in charge of counseling at the EFCC office. Let me warn the defendant here and now and his surety that the attendance of the defendant at the EFCC office for six(6) months from 1<sup>st</sup> October 2021 is mandatory and that the prosecutor must ensure that the defendant signs a register of attendance on each occasion, if he fails to attend in any month, the prosecutor shall inform the court and if the court is satisfied, the recognizance of the defendant will be forfeited and the court will give effect to the terms of the plea bargain forthwith, The defendant is hereby warned that if he is caught engaging in similar criminal act for which he is charge to this court or any other court in Nigeria or if he engages in any criminal activity. The court will not be lenient on him. He will be given the maximum sentence if found guilty of any offence. On this note, the defendant is hereby discharged.<sup>10</sup>

### 3. Comments

The court's judgment should not serve as a judicial precedent for subsequent internet fraud matters. Unfortunately, the court discharged the defendant despite Nigerian youths' widespread perpetration of internet fraud, especially against foreign victims. Furthermore, the basis upon which the judgment is reached is not convincing and unsupportable when weighed against current internet fraud realities in Nigeria and globally and the objective of Nigeria's cybercrime legal frameworks. According to section 1 of the Nigerian Cybercrimes Act 2015, preventing, prosecuting and punishing perpetrators of cybercrimes is one of the objectives of the Nigerian Cybercrimes Act 2015. This has also recently received judicial affirmation in the Court of Appeal decision in the case of *Raymond Akolo Julius vs Federal Republic of Nigeria*.<sup>11</sup> Furthermore, section 1 of the Administration of Criminal Justice Act 2015, an Act in which the court placed so much reliance on discharging the defendant, stated as one of its purposes 'the protection of the society from crime ... and interests... of the victim.' Discharging the defendant despite having pleaded guilty to the perpetration of internet fraud does not in any way prevent further occurrence of the crime, nor does it deter the defendant and others from engaging in internet fraud. Although the court considered the impact of the consequences of convicting and sentencing the defendant and the possibility of the defendant taking a new leaf, it failed to consider the interests of victims of internet fraud who are financially devastated, psychologically and emotionally traumatised. In essence, the court's judgment is in total conflict with section 1 of the Nigerian Cybercrimes Act 2015 and the Administration of Criminal Justice Act 2015. In similar circumstances, in a charge of internet fraud under section 22 of the Nigerian Cybercrimes Act 2015, the defendant pleaded guilty to the crime and plea bargain agreement entered into by the parties, which stipulated six months punishment for the defendant in the case of the *Federal Republic of Nigeria v. Hassan Adesegun Adewale*.<sup>12</sup> However, the court refused to abide by the parties' plea bargain agreement noting the prevalence of the crime among Nigerian youths against foreign victims and the negative image of Nigeria. Although the court sentenced the defendant to one year imprisonment contrary to the plea bargain agreement, Justice Abdulmalik noted thus: 'I sincerely without ado frown seriously at the prevalence of this type of offence amongst youths in Nigeria, who should otherwise be engaged in their educational pursuit. The offence of internet fraud otherwise popularly known as 'yahoo yahoo' in Nigeria has greatly depreciated the image of this country in the international community. *The commission of this offence is a serious one and should attract more than a tap on the wrist* as is the sentence agreement of six months reached by the EFCC, Ibadan zonal office and the Defence.'<sup>13</sup> Again in the *Federal Republic of Nigeria v. Ademosun Opeyemi*,<sup>14</sup> the parties entered a plea bargain agreement in which the defendant was meant to walk away without any punishment for internet fraud.

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<sup>10</sup> Ibid. at 7-8.

<sup>11</sup>(2021) LPELR-54201 (CA), 1-46.

<sup>12</sup>Suit No: FNC/1B/52C/2019, Judgment delivered on 27 May 2019 by Justice J.O. Abdulmalik. Federal High Court, Ibadan.(Unreported). Emphasis mine

<sup>13</sup> Ibid at 9.

<sup>14</sup> Suit No: FHC/AB/46C/2018, Judgment delivered on 24 October 2019 by Justice Ibrahim Watila Federal High Court, Abeokuta.(Unreported).

The presiding Judge, Justice Ibrahim Watila tongue-lashed the EFCC prosecutor and counsel for the defendant for their lack of seriousness and instead sentenced the defendant to one-year imprisonment.

The preceding judgments show that the judgment of the case under review is novel and unsupportable by the cybercrime law and practice in Nigeria. It proves that discharging the defendant after pleading guilty to the crime for whatever reason is a stamp on Nigerian youths' perpetration of internet fraud. This act ordinarily should not be encouraged in any guise. The defendant in the case under review is twenty years old and, consequently, a Nigerian youth. One basis for the court's judgment discharging the defendant is that he is twenty years old and believes he could change. The court failed to consider that the likes of the defendant are the ones tarnishing the image of Nigeria in the international community and deserve to be put out of circulation. The defendant's age should not affect his criminal responsibility in the case under review. Section 454(1) of the Administration Criminal Justice Act 2015 relied upon by the court also listed character as one of the factors the court should consider, which the court failed to do. Arguably, for a young man of twenty years old to be associated with internet fraud shows that he has criminal tendencies, which should have swayed the court to punish the defendant.

Most importantly, the court trivialised the offence of internet fraud against the defendant. The cases examined above portray the seriousness of the offence of internet fraud contrary to the position of the case under review. Although the court hinged the trivial nature of the offence on the defendant's intent or attempt to commit internet fraud, section 27(1) of the Nigerian Cybercrimes Act 2015 says otherwise. The said section makes any person who attempts to commit internet fraud to be criminally liable or punished the same way as the person who commits internet fraud. It states thus: '27(1) - A person who - (a) attempts to commit any offence under this Act, or (b) aids, abets, conspires, counsels or procures another person to commit any offence under the Act, commits an offence and *is liable on conviction to the punishment provided for the principal offence under the Act.*'<sup>15</sup> The defendant in the case under review was alleged to have attempted to commit internet fraud in violation of section 22(2)(b)(ii) of the Nigerian Cybercrimes Act 2015. The fact that the offence has not crystallised does not make the offence of a trivial nature according to the court, nor does it mean that the defendant should be discharged of internet fraud. Moreover, the court seems to have given the impression that there is no stipulated punishment for the defendant's act. In the true sense, section 22(2) of the Act provides a term of imprisonment of five years or seven million naira fine or both against cybercriminals who violate the said provision.

Furthermore, it needs to be asked if the court's analysis and facts of the case under review present any 'extenuating circumstances'<sup>16</sup> in accordance with section 454(1) of the Administration of Criminal Justice Act 2015 that warrants the defendant to be discharged. There is arguably no iota of justification or 'extenuating circumstances'<sup>17</sup> shown in the case that resulted in the commission of the offence by the defendant or served as a basis for the court's refusal to punish the defendant. The issue of the age of the defendant and trivial nature of the offence, and the impact of the consequence of conviction do not in any way favour the commission of the offence. It is also not a justification for discharging the defendant, especially with Nigerian youths' widespread involvement in internet fraud and its negative impacts. The corollary is that the defendant did not meet the requirements stated in section 454(1) of the Administration of Criminal Justice Act 2015 to enable the court to exercise its discretion in favour of the defendant by discharging him of the offence of internet fraud.

Interestingly, the court's judgment does not also find support when compared to other jurisdictions, such as the United States of America (US) where Nigerian youths have been prosecuted for their involvement in internet fraud. For instance, in the *United States of America v. Obinwanne Okeke*,<sup>18</sup> the

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<sup>15</sup> Cybercrimes (Prohibition, Prevention, ETC) Act 2015, s.27 (1), Emphasis mine

<sup>16</sup> Administration of Criminal Justice Act 2015, s.454(1)(c).

<sup>17</sup> Ibid.

<sup>18</sup> United States District Court for the Eastern District of Virginia, Case No 4:19mj, Filed 2 August 2019; Department of Justice(DOJ), U.S. Attorney's Office, Eastern District of Virginia, 'Nigerian Businessman Pleads Guilty to \$11 Million Fraud Scheme' 18 June 2020, available at

defendant, due to a plea bargain agreement, pleaded guilty and was consequently sentenced to ten years imprisonment.<sup>19</sup> Again, in the *United States of America v. Amechi Colvis Amuegbunam*,<sup>20</sup> the prosecutor and defendant entered into a plea bargain agreement. Consequently, the defendant pleaded guilty and was sentenced to forty-six months imprisonment. These US judgments show that internet fraud is not a trivial offence and should be meted with punishment, especially one that should keep perpetrators out of circulation. In addition, it sends a deterrent effect to perpetrators and others.

Another worrying part of the judgment under review is the conditions given by the court concerning the release on probation. This is arguably likened to a supervised release in the US. Since cybercrimes, including internet fraud, are perpetrated with the instrumentality of the computer system and network, judicial precedents from the US courts have suggested different ways that defendants can be monitored when they are on a supervised release which the judgment under review failed to consider. This is hinged on the premise that if the defendant is freely allowed access to his computer and network, there is the possibility of further involvement in the crime without being noticed or apprehended. The *United States v. White*,<sup>21</sup> *Freeman*,<sup>22</sup> *Holm*,<sup>23</sup> *Sofsky*,<sup>24</sup> and *Scott*,<sup>25</sup> suggests undisclosed search or scrutiny of a defendant's computer. This can be done randomly and more effectively in a sting operation by probation or designated officer. The application of filtering software or similar software can be useful in monitoring cybercrime perpetration. Unfortunately, none of these measures was suggested by the court in the case under review. Entering a recognisance by depositing to an affidavit to be of good behaviour and visiting the EFCC office for counselling once in a month for six months with the defendant having access to his computer system and internet without the same being monitored does not arguably prevent the defendant from engaging in internet fraud.

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<<https://www.justice.gov/usao-edva/pr/nigerian-businessman-pleads-guilty-11-million-fraud-scheme>> accessed 22 May 2022; DOJ, U.S. Attorney's Office, Eastern District of Virginia 'Nigerian National Sentenced to Prison for \$11 Million Global Fraud Scheme' 16 February 2021, available at <<https://www.justice.gov/usao-edva/pr/nigerian-national-sentenced-prison-11-million-global-fraud->> accessed 22 May 2022.

<sup>19</sup> Ibid.

<sup>20</sup>Case No. 3:15-cr-00411K, Filed 09/23/15, available at <<https://www.justice.gov/usao-ndtx/file/777821/download>> accessed 22 May 2022; Department of Justice(DOJ), 'Federal Grand Jury Indicts Nigerian Man for Role in 'Business Email Compromise' Scheme That Caused Attempted \$1.3 Million Loss to U.S. Companies' 23 September 2015, available at <<https://www.justice.gov/usao-ndtx/pr/federal-grand-jury-indicts-nigerian-man-role-business-email-compromise-scheme-caused>> accessed 22 May 2022; DOJ, 'Nigerian Man Sentenced for Role in 'Business Email Compromise' Scheme That Caused \$3.7 Million Loss to U.S. Companies' 28 August 2017, available at <<https://www.justice.gov/usao-ndtx/pr/nigerian-man-sentenced-role-business-email-compromise-scheme-caused-37-million-loss-us>> accessed 22 May 2022.

<sup>21</sup> 244 F.3d 1199 (2001) at 1201, 1204-07.

<sup>22</sup> 316 F.3d 386, 392 (3d Cir. 2003)

<sup>23</sup> 326 F.3d at 879 (7th Cir. 2003)

<sup>24</sup> 287 F.3d 122 (2002)

<sup>25</sup> 316 F.3d at 737