THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO

CRIMINAL APPEAL NO. 004 OF 2017

(ARISING from Criminal Case No.0263 of 2017)

INENSIKO ADAMS::APPELLANT

VERSUS

UGANDA:::RESPONDENT

BEFORE HON.LADY JUSTICEMARGARET MUTONYI, JUDGE HIGH COURT

JUDGMENT

1. Inensiko Adams here in after referred to as the Appellant filed an appeal against the judgment and sentence of Her Worship Pamela M. Bomukama, Magistrate Grade One at Mukono Chief Magistrates Court, delivered on 23rd February 2017.

2. The appellant through M/s M. Mugoya & Co. Advocates filed this appeal on 1st March 2017 against the Respondent. The Respondent was represented by MS Nabisenke Vicky Principal State Attorney for the Directorate of Public Prosecutions Mukono regional office.

3. The grounds of Appeal were as follows:

(a) That the Trial Magistrate erred both in law and in fact when she wrongly considered the accused in her aggravating factors to be a habitual offender yet he had never been convicted of any offences in the courts of law.

(b) That the Trial Magistrate erred both in law and in fact in passing a sentence which was harsh in the circumstances where even the state had prayed that the accused serves a custodial sentence of 2 years.

(c) **That the Trial Magistrate erred both in law and in fact when she let her opinion, emotions, feeling and wishes take precedence over the law.**

(d) **That The Trial Magistrate erred both in law and in fact when she did not follow the proper plea bargain procedure when on 21st February 2017 court was informed by the accused that he(the accused) was on plea bargain and that the plea bargain agreement was being forwarded to court and in the circumstances, the appellant was misled to believe that he was in plea bargain taking fresh plea to the charges.**

(e) **That the Trial Magistrate erred both in law and in fact when she sentenced the accused without considering the period spent on remand before conviction and without agreeing on the punishment as a procedure in plea bargain.**

4. The Appellant prayed to Court to:

a) **Allow the appeal.**
b) **Set aside the sentence.**
c) **Quash the conviction.**
d) **Set the appellant free.**

5. The brief facts of the case is that the Appellant was charged with three counts of forgery contrary to section 349 , three counts of uttering false documents C/S 351 and three counts of theft C/S 254 all of the Penal Code Act, Laws of Uganda.

He pleaded not guilty at first and the hearing proceeded up to his defence. He however expressed his desire to enter into plea bargaining and indeed went ahead to change his plea before completing his defence.

The State Attorney however informed court that plea bargaining failed and if he was to pay any money to the complainant, he should pay while in prison.

At the time of informing court that he was in for plea bargaining, he proposed to be sentenced to the period he had spent on remand which was 8 months and compensate the complainant.

The Trial Magistrate went ahead to read for him the charges to which he pleaded guilty following the normal procedure when an accused changes plea in the course of the hearing.

After taking the allocutus and the mitigating factors, where the prosecution prayed for 2 years imprisonment and an order for compensation of the stolen money which was about Ug. Shs.7, 000,000/= (Uganda Shillings Seven Million) and the Accused prayed for 8 months imprisonment being the period spent on remand, the Trial Magistrate sentenced him to four years imprisonment on each count to run concurrently and made no order as to compensation.

(f) Both parties proceeded by way of written submissions which I have put into consideration while writing the judgment.

(g) RESOLUTION OF GROUNDS/ISSUES

It is trite law that the duty of the first Appellate court is to look at the proceedings and evidence on record afresh and apply the facts to the law and evaluate whether the trial court did proper evaluation of the evidence and application of the law to the facts before arriving at the decision.

It is akin to carrying out a post mortem which has to be done very carefully combing the body looking for the most likely cause of death.

The Appellate court, combs the record, from the time of plea taking, taking and recording evidence, evaluation of evidence, application of the law to the evidence or facts, judgment , verdict, sentencing process and the final sentence given.

In cases of plea of guilty like in the instant case, its trite law that no appeal is allowed except as regards to the legality of the plea or legality of the sentence. Section 204(3) of the Magistrates Courts Act Chapter 16 refers.

Both the Appellant and Respondent agree in their submissions that the Appellant pleaded guilty and therefore the issue of conviction is not contentious.

The Magistrate after a conviction goes ahead to exercise the judicial discretion of sentencing which lies with the trial court. The Case of ***Kyalimpa Edward versus Uganda SCCA NO 10 OF 1995 refers.***

The Trial Magistrate exercised her discretion after putting into consideration both the mitigating and aggravating factors and sentenced the Appellant to 4 years imprisonment.

Let me now revert to the grounds of Appeal and will resolve them in their chronological order.

1. ***Whether the trial Magistrate erred both in law and in fact by considering the Appellant as a habitual offender***.

In order to be labelled as a habitual offender, one has to be convicted of violating specific laws a certain number of times within a certain period of time.

If the court establishes that a convict is a habitual offender, it will certainly have an impact on sentencing. It may attract an enhanced and or severe punishment to deter the offender.

It is treated as an aggravating factor especially if it is a specific law that is violated. The prosecution has the obligation to provide court with all facts and circumstances of the offending behavior and the offender's criminal history and the impact of the offence on the victim or society. The prosecution should suggest what it considers to be an appropriate sentence in the circumstances.
Evidence of previous record is a matter of fact that must be provided to convince court because every conviction must be pronounced by a court vested with jurisdiction and as such must be in court records.

Where a conviction has been quashed by a higher court on appeal, it ceases to be a previous record.
The prosecution cannot therefore merely make mention of it to court. It must provide the facts of criminal history that confirms that the convict is a habitual offender.

In the instant case the Learned State Attorney submitted on page 27 of the proceedings that "***The accused is not a first offender he has been in and out of police in Mukono and Kampala".*** Basing on this submission, the Magistrate on page29 of the proceedings while considering the sentence mentioned habitual offending as one of the aggravating factors that influenced the sentence.

This finding was erroneous both in law and in fact because there was no evidence of previous conviction of violating a specific section of the law a number of times over a given period of time.

Complaints at the police however numerous remain mere allegations that do not take away the suspects constitutional right of presumption of innocence enshrined under Article 28(3) (a) of the 1995 constitution of the Republic of Uganda where very person charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.

In the result the first ground is resolved in favour of the Appellant.

1. ***Whether the trial Magistrate erred in law and in fact in passing a sentence which was harsh in the circumstances where the State had prayed for a sentence of 2 years imprisonment.***

A Trial Judge or Magistrate's job after convicting an accused person is to consider all submissions and determine an appropriate sentence in accordance with the law and relevant sentencing principles. I must admit that determining an appropriate sentence is a complex process in which one must balance based on a range of factors in accordance with the law. Reasons for the sentence imposed must be given.

The Constitution (sentencing guidelines for courts of Judicature) (Practice) Directions 2013, guide the judicial officer on the sentencing range and principles that apply during the exercise of this complex judicial discretion.

The prosecution as mentioned earlier has the duty to propose a sentence they consider appropriate depending on the aggravating factors. The defence personally or through an attorney may bring to court a number of circumstances that may move the Judge or Magistrate to impose a lighter sentence which is called mitigating factors. The trial Judge or Magistrate then exercises his or her discretion to impose the sentence they consider appropriate in the circumstances which vary from case to case. A plea of guilty and willingness to atone or make arrangements for financial reparation to the victim is certainly a mitigating factor since justice is for both the accused and victim.

The accused is entitled to a just and fair trial while the victim especially in a case where there was financial loss like in the instant case would be more interested in repayment of the stolen money.

The state in this case prayed for a sentence of 2 years imprisonment and an order of compensation. The convict/ Appellant prayed for imprisonment for 8 months which would mean his immediate release and an order for compensation. He requested to be allowed to deposit 2,000,000/ shillings in about a months' time.

He now contends that the Magistrate even went beyond the 2 years the state had proposed.

In view of the role of the judicial officer explained above during the sentencing process, he or she may depart from the proposed sentence made by both the convict and the prosecution and give reasons. It is not erroneous in law for the trial Judge or Magistrate to give a sentence more than what the prosecution prayed for. Whatever sentence is prayed for by the prosecution and the defence is a mere proposal.

The Trial court retains the discretion to pass the sentence that is appropriate.

Was the sentence of 4 years harsh in the circumstances?

The Magistrate considered the prescribed penalty for forgery, uttering false documents, and theft .which all attract a maximum sentence of 10 years. She considered asking for forgiveness and remorsefulness, willingness to compensate the victims, and having a family as the mitigation factors.

But when she came to aggravating factors, she ruled that the accused took court through full trial yet he changed his plea before completing the defence. Full trial entails hearing evidence for both prosecution and defence, recording submissions if any, writing the judgment and finally sentencing. This was not the case here because he changed his plea before completing the defence case. She erroneously considered him to be a habitual offender with no proof, and finally held that taking into consideration all these factors and the period spent on remand, I would have sentenced the accused to 5 years but since he has spent 8 months on remand, Accused is sentenced to 4 years imprisonment for each count. The sentences are to run concurrently. No orders are made regarding compensation.

She did not say the 8 months spent on pretrial remand were inclusive. They were merely considered.

She did not make any order as to compensation.

The appellant had 9 counts and was a first offender. He pleaded guilty before the case was concluded which should have been considered as a mitigating factor.
The complainant was interested in recovering the money and the accused asked for forgiveness and was willing to pay back the money.

A long custodial sentence was not beneficial to the victim.

In view of the above I do not fault her in passing the sentence harsher than what the state asked for since it was within her discretion, but it did not serve the interest of justice. A shorter sentence with an order for compensation of the complainant would have served the cause of justice. It was not judicious and as such I find it harsh in the circumstances.

The second issue is resolved in favour of the Appellant.

1. Whether the Trial Magistrate erred both in law and in fact when she let her opinion, emotion, feelings and wishes take precedence over the law

An opinion is a judgment formed about something not necessarily based on facts or knowledge. It is different from a judicial opinion which is a legal opinion written by a judicial officer in the course of resolving a legal dispute or making a legal decision indicating the facts which led to the dispute and analysis of the law applied to arrive at the decision.

Emotions are instinctive feelings that influence decisions without reasoning or applying knowledge.

It is a conscious experience characterized by intense mental activity and a certain degree of pleasure or displeasure while wishes are mere desires. The appellant wants court to engage in mental gymnastics.

Ordinary opinion, (not legal), emotion, feeling and wishes are the complexities of the inner man. They are not written down in the court record.

As an appellate court, it is impossible to discern what was in the mind and soul of the judicial officer at the time she was passing the sentence since she did not express her emotions, feelings and wishes in writing.

In view of the above I find this ground redundant

4. Whether the Trial Magistrate erred in law and in fact by not allowing the Applicant to proceed under plea bargain.

This issue arises from ground 4 of the Memorandum of Appeal.

It was stated that **The Trial Magistrate erred both in law and in fact when she did not follow the proper plea bargain procedure when on 21st February 2017 court was informed by the accused that he (the accused) was on plea bargain**

and that the plea bargain agreement was being forwarded to court and in the circumstances, the appellant was misled to believe that he was in plea bargain taking fresh plea to the charges.

The system of plea bargaining is regulated by the **Judicature (plea bargain) rules 2016 which were established under *The* Judicature Act section 41 (1)and(2) (e)**.

There is no doubt that plea bargaining is a new innovation in the Uganda Criminal justice system with almost no precedent. It is a response to challenges in the criminal justice system in Uganda and being new, most of the judicial officers and other stake holders in the criminal justice system are learning on the job. The procedure is yet to be internalized by both the prosecution and courts at both the trial and appellate level.

In order to appreciate the importance of plea bargaining as a response to challenges in the administration of justice, it's important to highlight the objectives of the process as enumerated under rule 3 (b) (c) (d) (e)(f) of the plea bargain rules (supra). They are as follows:

"***To enable the accused and the prosecution in consultation with the victim to reach an amicable agreement on an appropriate punishment, to facilitate reduction in case backlog and prison congestion, provide quick relief from the anxiety of criminal prosecution ,to encourage accused persons to own up to their criminal responsibility and to involve the victim in the adjudication process.***

What is plea bargaining.

"***Plea bargaining is a process between an accused person and the prosecution in which the accused person agrees to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offense, or recommend a particular sentence subject to approval by court". (Refer to rules)***

Once the plea bargain process is complete, it is reduced into a plea bargain agreement which is ***an agreement entered into between the prosecution and the accused person regarding the charge or sentence against an accused person***.
This process is intended to serve the interest of the accused, victim and the state

In the instant case, the accused was charged with 9 counts, as earlier on mentioned. Three counts of forgery, three counts of uttering false document and three counts of theft. All these led to the loss of 7,000,000 (seven million shillings) of the victim. The facts revealed that the accused and convict worked together and he forged the documents to steal the money in the course of his employment.

Perusal of the lower court record at page 25 revealed that on the 21st, February, 2017 the Appellant was in court. The State Attorney informed court ***that the case is for further defence hearing***. The accused person stated ***"I am for plea bargaining.*** The sate informed court "***The case came for trial, the accused was put on the list of plea bargaining but it failed.***

Accused responded in these words: I ***am willing to compensate the complainants. I admit I committed the offence. I will pay two million shillings on 20th March2017.***

The state then said ***"let him pay the two million shillings from prison".***
The trial magistrate then read the charges afresh to the accused and he pleaded guilty to all of them.

Counsel for the Appellant submitted that on 21st the Appellant is on record having stated that he was for plea bargaining as well as showing readiness and willingness to compensate the complainants. And indeed to date that is his position. That surprisingly the respondent without any proof oral or documentary informed court that plea bargain had failed.
Previously the Appellant had informed court that his advocate would come and witness or sign the plea bargain agreement and requested for an adjournment. He submitted all these was ignored irrationally by court.

On the other hand ,the respondent's state attorney submitted inter alia that it is on record that on 21st February 2017 when the Appellant appeared in court ,he indicated that he was for plea bargaining. The state then informed court that plea bargaining had failed where upon the Appellant responded that "I am willing to compensate the complainants. I admit I committed the offence. She went on to submit, that the learned trial magistrate was therefore right to read the charges afresh to the accused/appellant after admission of guilty in open court. The appellant willingly pleaded guilty to all preferred charges and was accordingly convicted. That this was not a plea bargain process and there was no plea bargain agreement. She concluded by submitting that the provisions of The Judicature (plea bargain) Rules 2016 were not applicable since the prosecution had indicated that the plea bargaining process had failed. According to her the process the trial magistrate took was proper and lawful.

It is apparent from the above flow of proceedings and submission of both Counsel that the Appellant informed court that he was for plea bargaining after he had earlier own entered a plea of not guilty and was now on defence. He changed his mind and wanted to benefit from the new innovation of plea bargaining.

He went ahead to admit the offences and bargained to deposit Ug. Shs.2,000,000 [Uganda Shillings Two Million] on 20th March 2017. He was asking for a month in other words to make the first deposit.

Four pertinent questions arise from this ground:1. How can plea bargaining be initiated, 2.Who can initiate the process, and 3. When can it be initiated? 4. Can the appellate court allow plea bargain after the accused is denied the opportunity?

The answers to the first three questions is found under Rule 5 of the plea bargain rules (supra)." ***A Plea bargain may be initiated orally or in writing by the accused or the prosecution at any stage before sentence is passed".***

The above rule implies that:

1.An accused person may by himself or through his attorney if he is represented ***make an oral communication in open court during the hearing of the case*** that he or she is interested in plea bargaining. This oral communication is addressed to the trial Judge or Magistrate.

If the accused is still under police custody or on pretrial remand or has been released on bail, he or she may initiate the ***process in writing in person, or through an Attorney or Prisons officer addressed to the prosecutor, or the administrator of the court.***

2. The prosecutor may initiate the process in the like manner communicating the offer to the accused person or to his or her Attorney.

3. The process can be initiated at any time before sentence is pronounced. This means that the option to plea bargain remains open until the judge or magistrate. Pronounces the sentence.

My understanding of Rule 5 is that even after judgment is delivered and submissions are made in allocutus for the accused and aggravating factors for the prosecution, a case can still be handled under plea bargain before sentence is pronounced if the parties are willing to enter into bargain because the core of plea bargain process is the sentence.

This is because dropping of counts if they are many, reducing the charge from a serious to a minor or less cognate offense, offering to be a state witness and involving the victim of crime is all aimed at having a lesser sentence at the end of it all.

However, the temptation of court rejecting the plea bargain process at this late stage of proceedings may be high, but a judicial officer should not be seen to flout the rules of procedure. The court is obliged to give the party initiating plea bargain a chance to discuss the case with the contending party.

In any case, the court would still be involved under rule 8 (2) where the trial Judge or Magistrate is consulted on the possible sentence before the agreement is signed.

Rule 8(2) provides that ,***"The parties shall inform court of the plea bargain negotiations and shall consult the court on its recommendations with regard to possible sentence before the agreement is brought to court for approval and recording."***

The rules give the judicial officer the opportunity to superintend over the proceedings to ensure there is no miscarriage of justice or abuse of the process making it a mockery of justice. The judge or judicial officer may recommend a particular sentence which in his or her opinion serves the justice of the case.

The above notwithstanding, the judicial officer does not have the discretion to impose his or her own sentence.

This is because under the rules an accused person is at liberty to reject the proposal by the trial judge or magistrate if it is not in his favour and opt out of plea bargain. In other words plea bargain limits the discretionary sentencing powers of the judicial officer. However where the court is satisfied that the agreement may occasion a miscarriage of justice, it may reject it under rule 13 of the above mentioned rules and refer the matter for trial subject to rule 8(3).

The challenge may arise if the trial Judge or Magistrate does not approve the agreed position, at this late stage. Would he or she have to comply with rule (8)3 where you may not preside over the trial in a failed bargain where one has heard the case up to the time of sentencing?

Rule 8(1) and (3) provides that (1)***"The court may participate in plea bargain discussions"*** and ***(3) "subject to sub rule (1) .a judicial officer who has participated in a failed plea bargain negotiation may not preside over a trial in relation to the same case".***

My humble view is that, such scenarios may be exceptions to the general rule if circumstances suggest that the introduction of plea bargain at the very end of the criminal trial is intended to fetter the discretionary sentencing powers of the trial court to pervert the cause of justice.

I am persuaded by the holding in the supreme court of India , Civil Appeal No 5066 of 2005 ***Rani Kusum versus Smt Kanchan Devi And others where it was held that "All the rules of procedure are handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. ….unless compelled by express and specific language of the statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice"***

Applying the principle in the above case that procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice, rule 8(1) and (3) may not apply where the trial has been held, judgment delivered and accused is convicted, submission are made by the prosecution and defence in allocutus and mitigation, and before sentence is pronounced, an accused person initiates plea bargain on sentence with ridiculous proposals that amounts to mockery of justice. Initiating plea bargain when the case is in its advanced stage of sentencing in my view presents extraordinary circumstances and the trial judge or magistrate should be at liberty to exercise their discretion and sentence the convict where plea bargain fails.

This would discourage accused persons from engaging in mental gymnastics and wasting scarce resources in terms of time, and money only to turn to plea bargain process at the end of the trial.

Like the name suggests, ideally plea bargain should be at the time of plea taking to enable the state, the accused and defence counsel agree on amending the charge sheet or indictment where necessary with a view of dropping some counts if they are multiple, reducing the charge to a minor cognate offence, using accused as state witness or taking responsibility of the criminal conduct early enough etc before taking plea.

In the case under review, the Trial Magistrate blocked the option of plea bargain when the case was still for defence hearing. She did not consider his prayer at all yet the rules allow him to initiate plea bargain before sentencing.

She did not explain to the Appellant who was not represented by counsel what it means to plead guilty under plea bargain, even under the normal process.

It is very important that an accused who wishes to plead guilty whether under plea bargain or not should be explained properly about his or her constitutional rights to a fair trial and confirm that his plea is unequivocal with full knowledge of the consequences there of.
Mukono Chief Magistrates Court was selected to be a pilot court under plea bargain for magistracy. The Trial Magistrate was expected to know the procedure to adopt when an accused person requests for plea bargain.

She took the accused through what he thought was a plea bargaining process. The charges were read to him again, he pleaded guilty to all of them hoping for an order for a refund of the sum lost to the complainants and a less sentence of period spent on remand.

He was shocked with a sentence of 4 years imprisonment without an order for compensation.

In view of rule 5 supra, I do not agree with submission of the learned principal state Attorney that since there was neither a plea bargain process, nor an agreement to that effect, the Judicature (plea bargain) Rules were not applicable.
The rules cease to apply only after sentence but not at any stage of proceedings before sentence.

The court is obliged under the rules to embrace plea bargain any time before sentence when either party before it expresses interest in the process unless it is intended to pervert the cause of justice as explained above(after judgment).

The learned State Attorney submitted that the accused was listed for plea bargain but it failed.

The rules are silent on how many times one may enter into plea bargain after the first plea bargain fails.

Rules of equity and natural justice would dictate that as many times as are reasonable as long as the proceedings are still ongoing and not used as a delaying tactic by either party.

The duty of the Trial Judge or Magistrate at this stage is to communicate there quest or proposal to the other party, suspend the hearing and allow the parties to enter into bargain and assign an advocate to help the accused in the process if he or she is un represented like it happens in the lower court and wait for the outcome.

My opinion is that the court should not have just listened to the state submission about failed plea bargain without giving the appellant second chance if at all it failed in the first instance. In any case, rule 8(1) supra allows the trail judicial officer to participate.

She had every legal mandate to participate by finding out why it failed in the first instance. Since she was not the sole judicial officer at the station, the case would easily be re allocated to another magistrate.

In view of all the above, I find that the trail Magistrate erred in law and in fact when she failed to follow the Judicature (plea bargain) rules 2016 which came into force on 1/4/2016. She ought to have assigned an advocate to the Appellant and encouraged the state Attorney to consult the victim with a view of settling the matter under plea bargain.

Ground 4 is resolved in favor of the Appellant.

What remedy is available to the Appellant? Can the appellate court allow plea bargain in the circumstances.

The Judicature (plea bargain) rules are silent about the appeal process ***where the court denies an accused to proceed under plea bargain or imposes its own sentence.***

Rule 13 provides for rejection of plea bargain agreement by court while rule 14 provides for withdrawal from the plea bargain agreement.

Much as facts in this case do not show that there was plea bargain agreement within the context of the rules, I cannot talk about remedies without referring to the provisions of rules 13 and 14.

Rule 13 provides:

13(1)The court may reject a plea bargain agreement where it is satisfied the agreement may occasion a miscarriage of justice.

(2) Where the court rejects a plea bargain agreement,

- ***(a) It shall record the reasons for the rejection and inform the parties.***
- ***(b) the agreement shall become void and shall be inadmissible in subsequent trial proceedings or in any trial relating to the same facts and***
- ***(c) The matter shall be referred for trial subject to sub rule 8(3*).**(Trial shall be before another judge or magistrate)

And Rule 14 provides: ***either party may at any stage of the proceedings before the court passes sentence withdraw a plea bargain agreement.***

The above rules presupposes that the plea bargain agreement is prepared and possibly executed by the accused, his attorney and the state prosecutor but court declines to endorse it, or one of the parties change their mind and withdraw before the court endorses it.

The rules seem not to cover the scenario before court, where the court refuses to give a chance to the accused to benefit from plea bargain process and therefore no agreement is prepared but court goes ahead to convict and sentence under normal criminal procedure where the accused made it clear that I am pleading guilty under plea bargain.

Ideally where one chooses to give up ones constitutional right to trial in a criminal case and enters a plea of guilty, you will not only be giving up your right to a trial but the right to appeal any legal or factual issues to a higher court. Once you plead guilty the judge or magistrate will convict you based on your admissions and

you will ordinarily have no grounds to undo that conviction. You may however be able to appeal against the sentence.
But a plea of guilty presupposes that an accused person understood the consequence of his plea and made an admission based on the facts of the case.

This may however not be automatic under plea bargain unless your case presents exceptional circumstances like enhancement of sentence by the court contrary to the agreed position.

Facts are different in this case. The appellant was not represented, and nobody advised him about his legal rights, not even the court.

He did not plead guilty from an informed perspective. Entering a Plea of guilty in the circumstances was unlawful in view of the fact that he was not informed of the consequence thereof. Much as his counsel seems to maintain his plea of guilty according to the submissions, he is praying for quashing the conviction at the same time.

He has been in custody for about two years as a result of an erroneous Plea of guilty. I would have ordered for plea bargain to enable him enter into an agreement with the respondent but the Respondent is not interested in the process

Like any other contract, for it to be valid the parties must be willing to enter into negotiations and agree. The respondent in this case is not interested and court cannot impose it on them.

It would be different if the respondent was willing to bargain on the sentence and possibility of recovery of the stolen money. The prosecution seems to be content with the decision of the trial magistrate.

However after serious consideration of how the process was flawed at the time of changing plea under plea bargain, justice of the case demand that the prayers of the appellant be allowed.

In the result the Appeal is allowed with the following orders:

1. The conviction is quashed
2. The sentence is set aside.
3. The appellant should be released unless held over some other lawful charges.

Right of Appeal to the state explained.

GIVEN under my hand and the Seal of this Honorable Court this **24th** day of **AUGUST**, **2018.**

_____
Margaret Mutonyi
JUDGE
MUKONO HIGH COURT