

The Judicature (Plea Bargain) Rules, 2016

(Under section 41(1) and 41(2) (e) of the Judicature Act, Cap.13)

IN EXERCISE of the powers conferred upon the Rules Committee by section 41(1) and 41(2)(e) of the Judicature Act, these Rules are made thisday of April, 2016.

PART I – PRELIMINARY

1. Title.

These Rules may be cited as the Judicature (Plea Bargain) Rules, 2016.

2. Application.

These Rules apply to all the courts of judicature.

3. Objectives.

The objectives of these Rules are-

- (a) to enhance the efficiency of the criminal justice system for the orderly, predictable, uniform, consistent and timely resolution of criminal matters;
- (b) to enable the accused and the prosecution in consultation with the victim, to reach an amicable agreement on an appropriate punishment;
- (c) to facilitate reduction in case backlog and prison congestion;
- (d) to provide quick relief from the anxiety of criminal prosecution;
- (e) to encourage accused persons to own up to their criminal responsibility; and
- (f) to involve the victim in the adjudication process.

4. Interpretation.

In these Rules, unless the context otherwise requires-

“court” means a court of judicature established by or under the authority of the Constitution;

“minor and cognate offence” means a lesser offence that is related to the greater offence and shares several of the elements of the greater offence and is of the same class or category;

“plea bargain” means the 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; and

“plea bargain agreement” means an agreement entered into between the prosecution and an accused person regarding a charge or sentence against an accused person.

PART II – PLEA BARGAIN

5. Initiation of plea bargain.

A plea bargain may be initiated orally or in writing by the accused or the prosecution at any stage of the proceedings, before sentence is passed.

6. Scope of plea bargain.

- (1) A plea bargain may be in respect of-
- (a) a promise to plead guilty to a charge in exchange for a recommendation for a lesser sentence;
 - (b) a promise to cooperate as a witness for the prosecution in exchange for reduced charges or a reduced sentence, or both; or
 - (c) a plea of guilty to-
 - (i) a minor and cognate offence;
 - (ii) a lesser offence; or
 - (iii) some charges or counts in exchange for a withdrawal of one or more charges or counts, in case of multiple charges.
- (2) Where there is more than one accused person, a plea bargain may be entered into in respect of any one of the accused persons and the subsequent plea agreement shall apply and be binding only on the accused person who entered into the agreement.

7. Disclosure.

- (1) The prosecution shall, in the interest of justice, disclose to the accused all relevant information, documents or other matters obtained during investigations to enable the accused to make an informed decision with regard to plea bargain.
- (2) Disclosure under sub rule (1) shall not compromise State security, security of witnesses or the integrity of judicial process.

8. Court participation in plea bargain.

- (1) The court may participate in plea bargain discussions.
- (2) The parties shall inform court of the ongoing 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.
- (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.

PART III – PLEA BARGAIN AGREEMENT

9. Form of plea bargain agreement.

(1) Where the parties are voluntarily in agreement, a plea bargain agreement shall be executed as prescribed in the Form set out in the Schedule 1 and filed in court.

(2) Subject to sub rule (1), where the plea bargain agreement involves a child, the agreement shall be executed by either the parent, guardian, probation and social welfare officer or the legal representative of the child.

10. Plea bargain agreement to be explained to accused person.

A plea bargain agreement shall, before being signed by the accused, be explained to the accused person by his or her advocate or a justice of the peace in a language that the accused understands and if the accused person has negotiated with the prosecution through an interpreter, the interpreter shall certify to the effect that the interpretation was accurately done during the negotiations and execution in respect of the contents of the agreement.

11. Interests of victim, complainant and community to be taken into consideration.

The prosecution shall, before entering into a plea bargain agreement, take into consideration the interests of the victim, complainant and the community and shall have due regard to—

- (a) the nature of and the circumstances relating to the commission of the offence;
- (b) the criminal record of the accused if any;
- (c) the loss or damage suffered by the victim or complainant as a result of the offence;
- (d) the interests of the community; and
- (e) any other relevant information.

12. Recording of plea bargain agreement by the court.

(1) Subject to the procedure prescribed in the Schedule 2, the court shall inform the accused person of his or her rights, and shall satisfy itself that the accused person understands the following—

- (a) the right—
 - (i) to plead not guilty, or having already so pleaded, the effect of that plea;
 - (ii) to be presumed innocent until proved guilty;
 - (iii) to remain silent and not to testify during the proceedings;
 - (iv) not to be compelled to give self-incriminating evidence;
 - (v) to a full trial; and
 - (vi) to be represented by an advocate of his or her choice at his or her expense or in a case triable by the High Court, to legal representation at the expense of the State;
- (b) that by accepting the plea agreement, he or she is waiving his or her right as provided for under paragraph (a);
- (c) the nature of the charge he or she is pleading to;
- (d) any maximum possible penalty, including imprisonment, fines, community service order, probation or conditional discharge;
- (e) any applicable forfeiture;
- (f) the court's authority to order compensation and restitution or both; and

(g) that by entering into a plea agreement, he or she is waiving the right to appeal except as to the legality or severity of sentence or if the judge sentences the accused outside the agreement.

(2) The charge shall be read and explained to the accused in a language that he or she understands and the accused shall be invited to take plea.

(3) The prosecution shall lay before the court the factual basis contained in the plea bargain agreement and the court shall determine whether there exists a basis for the agreement.

(4) The accused person shall freely and voluntarily, without threat or use of force, execute the agreement with full understanding of all matters.

(5) A Plea Bargain Confirmation shall be signed by the parties before the presiding Judicial officer in the Form set out in the Schedule 3 and shall become part of the court record and shall be binding on the prosecution and the accused.

13. Rejection of plea bargain agreement by court.

(1) The court may reject a plea bargain agreement where it is satisfied that 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).

PART IV - WITHDRAWAL AND PROTECTION OF PLEA BARGAIN

14. Withdrawal from plea bargain agreement.

Either party may, at any stage of the proceedings before the court passes sentence, withdraw a plea bargain agreement.

15. Protection of plea bargain process.

(1) Any statement made by an accused person or his or her advocate during plea bargain discussions is not admissible for any other purpose beyond the resolution of the case through a plea bargain.

(2) The court shall not impose a sentence more severe than the maximum sentence recommended in the plea bargain agreement.

(3) Where the court is of the opinion that a particular case is deserving of a more severe sentence than that recommended in a plea bargain agreement, the court shall reject the plea bargain agreement.

Hon. Bart M. Katureebe

CHIEF JUSTICE