



NLS

SAMPLE DRAFT

on

CRIMINAL LITIGATION



Highlights

- ▶ Motions
- ▶ Charges
- ▶ Trial plan
- ▶ Search warrant
- ▶ Bail pending Appeal
- ▶ Ex-parte Applications
- Appeal ▶
- Summons ▶
- Letters ▶
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Week 3

INTRODUCTION TO CRIMINAL LITIGATION

The word criminal derives from the word “crime” and it is synonymous to “offence”. It simply refers to any act or omission which the law of the land forbids and against which the law prescribes sanctions or punishment. See **Section 2 CC, Section 28 PC, Section 2 CPA, Section 371 ACJL 2011, and Section 494 ACJA** for the definition of an offence. For an act or omission to constitute a crime, such act or omission must be specifically regarded as a crime in a written law. See **Section 36(12) CFRN 1999**. On the other hand, “Litigation” generally refers to legal proceedings in a court; a judicial contest to determine and enforce legal rights or to ascribe legal obligations.

Thus, criminal litigation is a legal proceedings in court that deals with criminal matters. It involves processes used by courts in entertaining criminal proceedings or cases before them. The processes include complaints, summons, arrest, bail, conclusion of investigations, charge, arraignment, trial, defense, judgment, sentence and appeals which are all considered as part of the scope of criminal litigation.

Laws Applicable to Criminal Litigation

The applicable laws as regarding criminal litigation are broadly divided into two, Principal Enactments and Secondary Enactments.

a. Principal Enactments

1. **The Criminal Procedure Law (CPL):** This is the principal statute applicable in all states in Southern Nigeria excluding Lagos and Ekiti states. These states domesticated the now repealed Criminal Procedure Act, thus giving each one a Criminal Procedure Law.
2. **The Criminal Procedure Code Law (CPCL):** This is generally a domestication of the Criminal Procedure Code and is the principal statute applicable in the States of Northern Nigeria.
3. **The Administration of Criminal Justice Law (ACJL):** This is applicable only in Lagos state. It came into force in 2011. The first ACJL was enacted in 2007 and the extant one in 2011. The extant one is the ACJL 2011.
4. **The Administration of Criminal Justice Act (ACJA):** This was enacted in 2015 and is applicable to the High Court of the FCT and all other Federal Courts. *Section 2(1)* provides that the provisions of the Act shall apply to criminal trials for offences established by an act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. Therefore, where a Federal Offence is being tried in a State High Court, the ACJA will also apply.

b. Secondary Enactments

The secondary enactments are not wholly devoted to criminal litigation. However, they contain provisions that relate to criminal litigations. They include:

1. **The Constitution of the Federal Republic of Nigeria:** The Constitution, being the grundnorm, has certain provisions on Criminal Litigation .Chapter 4 on Fundamental Rights is sacrosanct in the trial of an accused person, *Sections 174 & 211* provide for the power of the Attorneys General to initiate, take over, or discontinue criminal proceedings ,*Sections 175(1) & 212(1)* provide for the power of the president and the various governors to grant pardons, and Chapter 7 vests the various Courts of Record appellate jurisdiction. Aside the foregoing, the constitution confers validity on other statutes, for instance if certain provisions of the primary enactments are inconsistent with the constitution, they will be void to the extent of their inconsistency by virtue of *Section 1(1) & (3)*.
2. **Criminal Code and Penal Code:** These contain substantive law on crime. They define the various crimes and prescribe their punishment. Furthermore, they contain certain provisions that deal directly with procedure.
3. **The Evidence Act:** It is relevant in every trial proceeding. It determines various factors, such as admissibility, burden of proof and the onus of proof.
4. The Police Act
5. The Armed Forces Act (Disciplinary Proceeding Special Provisions) Act
6. Coroner's Law
7. Children and Young Person's Law
8. Supreme Court Act
9. Supreme Court Rules
10. Court of Appeal Act
11. Court of Appeal Rules
12. Federal High Court Act
13. Federal High Court Rules
14. High Court Laws
15. Magistrate Court Laws

Week 4
ARREST, SEARCHES & CONSTITUTIONAL RIGHTS

A summons is a document issued by the court directing the person named therein to appear in court at a stipulated date and time to answer to the charge or allegation or complaint against him. This is usually preceded by a complaint laid before a Magistrate or a judge. The complaint need not be on oath.

Sample Draft of Summons

SUMMONS TO DEFENDANT/ACCUSED

**IN THE HIGH COURT OF EBONYI STATE
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI**

Charge No: EB/HC/2021/032

SUMMONS TO DEFENDANT

To: All Police Officers in charge of criminal prosecution

Complaint has been made this day by the Criminal Investigating Department of Nigeria Police Force, Ebonyi State Command that you, Mr. Kenneth Samuel, on the 1st day of October, 2020 at the International market in the Abakaliki Judicial Division did unlawfully stole a laptop belonging to Mr. Nwali Emmanuel.

You are hereby summoned to appear before the High Court of Ebonyi State sitting at Abakaliki Judicial Division on the 21st day of December, 2020 at the hour of 9:00am in the morning or so soon afterwards to answer to the said complaint.

Dated this 6th day of January, 2021

Judge

SUMMONS TO WITNESS

**IN THE HIGH COURT OF EBONYI STATE
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI**

Charge No: EB/HC/2021/032

SUMMONS TO WITNESS

To: Ugwu Dominic (Inspector of Police)

Mr. Kenneth Samuel has been charged by this High Court for that he on the 1st day of October, 2020 at the International market in the Abakaliki Judicial Division, did unlawfully stole a laptop belonging to Mr. Nwali Emmanuel and it appeared to me by the oath of Mr. Kenneth Samuel that you are likely to give material evidence therein on behalf of the Defendant and will not voluntarily appear for that purpose.

You are hereby summoned to appear before the High Court of Ebonyi State sitting at Abakaliki Judicial Division on the 21st day of December, 2020 at the hour of 9:00am in the morning or so soon afterwards, to satisfy what you know in such matter.

Dated this 6th day of January, 2021.

Judge

Sample Draft of Warrant of Arrest

WARRANT FOR APPREHENSION OF DEFENDANT IN FIRST INSTANCE

**IN THE HIGH COURT OF EBONYI STATE
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI**

Charge No: EB/HC/2021/032

WARRANT FOR ARREST OF DEFENDANT IN FIRST INSTANCE

To: Each and all Police Officers.

Complaint on oath has been made on Mr Kenneth Samuel, the Defendant that on the 1st day of October, 2018 at International market in the Abakaliki Judicial Division, the Defendant did unlawfully stole a laptop belonging to Mr. Nwalil Emmanuel.

You are therefore commanded to bring the Defendant before the Abakaliki Judicial Division sitting at Abakalki forthwith to answer the said complain and be dealt with according to law.

Dated this 6th day of January, 2021.

Judge

**WARRANT FOR ARREST OF DEFENDANT WHO HAS DISOBEYED
SUMMONS**

**IN THE HIGH COURT OF EBONYI STATE
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI**

Charge No: EB/HC/2021/032

**WARRANT FOR ARREST OF DEFENDANT WHO HAS DISOBYED
SUMMONS**

To: Each and all Police Officers.

Complaint on oath has been made on Mr Kenneth Samuel, the Defendant that on the 1st day of October, 2020 at International market in the Abakaliki Judicial Division, the Defendant did unlawfully stole a laptop belonging to Mr. Nwali Emmanuel.

And the Defendant was thereupon summoned to appear before the High Court of Ebonyi State in the Abakaliki Judicial Division sitting at Abakaliki on the 21th day of December, 2020 at the hour of 9:00am in the morning or so soon afterwards to answer to the said charge.

An oath has been made that the Defendant was duly served with the summons, but did not appear, and that such complaint is true.

You are therefore commanded to bring the Defendant before the Abakaliki Judicial Division sitting at Abakaliki forthwith to answer the said complain and be dealt with according to law.

Dated this 6th day of January, 2021

Judge

SEARCHES

The word “search” consists of looking for or seeking out that which is lost or otherwise concealed from view. In legal parlance, it may mean an examination of a person’s body, property or other area that the person would reasonably be expected to consider as private, conducted by a law officer for purpose of finding evidence of crime.

As a pre-trial procedure, the essence of searches is to obtain evidence with which to prosecute a person accused of or suspected to have committed an offence. The object is to obtain any material that may be used as evidence in a criminal trial. The result of a search usually gives clue as to the strength of the prosecution’s case and so, determines whether to proceed or continue with the prosecution of a particular case.

Thus, whenever a person is arrested by the police or any other law enforcement agent or indeed, a private person, there is usually a need to conduct a search on the body of the person arrested especially where evidence of the alleged offence is capable of being found on or around the body of the suspect.

Sample Draft of Search Warrant

**IN THE HIGH COURT OF KANO STATE
IN THE KANO JUDICIAL DIVISION
HOLDEN AT KANO**

CASE NO.....

SEARCH WARRANT

To: Corporal Abdurrazak Bello or any other police officer.

Following the investigation of Mr Bashir Mohammed of No. 45 Kuku Street, Bagauda Kano of being in possession of a fake currency printing machine on the compliant of Chief Ibori Taribowei made on the 4th Day of January 2021, you are therefore commanded to search the premises of the suspect, and to bring any of the item related to the offence before the State High Court sitting at Kano forthwith to aid the trial of the case according to Law.

Dated This 6th Day of January 2021

.....
Judge of the High Court
Kano State

WEEK 4 ASSIGNMENTS AND TASKS – LAGOS CAMPUS
SCENARIO 1

Brown Brussel and Bradle Brutus were childhood friends living and trading in Lokoja area of Kogi State. Recently they had a terrible fight over the Governorship election of the State regarding who will emerge victorious as they were supporting different political parties. By Saturday 20th November, 2019 the winner of the Governorship election was announced and Brussel's candidate, Chief zingo Solomon won the election.

Since this feud between them, Braddle had been looking for ways to incriminate his friend. Exactly two weeks later Braddle informed the Divisional Police Officer of Abednego Police Station, Lokoja (DPO) Ainoko Kanapi by way of complaint that his friend Brussel had brought in several bags of imported rice which he was sure were smuggled through the Seme border, and that he kept same in a lockup garage in his house at No 25 Zangi Lanre street, Lokoja, Kogi State. At about 1:30am on the same day the DPO dispatched four Police Officers with a search warrant duly signed by him to Brussel's house.

On getting to the residence the officers pressed the bell, and when there was no response they broke the gate and entered. Brussel and his entire household were startled.

The Police informed him of their mission in his house. Brussel complained about their timing and asked for their warrant. They could not produce it because in their haste they had left it behind at the Station. He said he would like to invite his next door neighbour, Chief Magaji to witness the search but the leader of the team refused, on the assertion that it was a bid to escape and to call in tugs to attack them. In order not to be accused of obstructing police officers from carrying out their duties, Brussel allowed them to search his house.

He however told them that the women quarters were forbidden ground for strangers, and that unless they had police women with them, they couldn't go there for searches as his wives was in seclusion. Nonetheless, two officers (Okon and Bassey) pushed Brussel out of the way and ransacked the women's rooms. The women quickly got up to cover their faces. They searched their rooms thoroughly and while searching, they found imported Gold ornaments suspected to have been illegally brought in from Liberia. The two women in whose room the exhibits were found were immediately handcuffed and put in the Police van by the officers and taken to the Police Station. Brussel was also taken to the station whilst he was trying to show them the Custom papers for the one

bag of rice found in his house. On the next day he sent for his lawyer Alhaji Menakaya Thompson and narrated everything that happened in his house the previous day. His lawyer advised him to seek redress for the maltreatment.

Answer the following questions based on the above scenario, supporting your answers with relevant authorities:

1. Comment on the search carried out by the Police officers in the premises without a search warrant. Is the search legal? Give reasons.
2. Assuming the police officers erred in law with the search carried out in the women quarters, comment on the admissibility of the exhibits recovered therein in court?
3. Comment on the propriety or otherwise of the search warrant issued by the Divisional Police Officer.
4. Brussel is intending to seek redress. He wants to sue his friend Brutus and the Police officers. As his counsel, how would you advise him in order to succeed?
5. In the course of the search carried out in the above scenario, some rights of the suspects have been violated. Mention them and draft the Search warrant (Form D).

SCENARIO 2

Ebun Abalaka of No 6 Jango street, Ajah Lagos has been on the wanted list of the police for some months now for kidnapping for ransom. One fateful Friday recently on 26th October 2018, Police Sergeant Kusapa and 5 others heavily armed while on routine patrol at Epe area of Lagos State was called by the Principal of Brighter Kids International High School Epe, Mrs. Bruce Adebajo that they had a hunch that Ebun Abalaka was in the school vicinity dressed like a parent. Sergeant Kusapa immediately called the Senior Magistrate Hanks Anjola informing her of the development. She quickly issued a warrant of arrest, signed it for the officers to pick up.

Sergeant Kusapa and his team wasted no time in getting to the scene where Ebun and his gang were just preparing to strike. Kusapa and his team rounded up Ebun Abalaka and his boys, handcuffed their hands and feet and bundled them in the waiting van to the Epe Divisional Police Station. Five days later before they could arraign them in court, Ebun escaped from custody. Still with the same warrant Kusapa dispatched two police officers to his last known address in

Ajegunle, Egbeda, Lagos. When they got to his house the occupants told the police that he took few of his things and hurriedly left informing them that he is traveling to Ghana. They immediately arrested his father for him to show up.

The following day the two policemen, Yusuff and Braimoh, upon a solid piece of information as to Ebun's where about, travelled in the police vehicle to Calabar , Cross river State, armed with the warrant to effect his arrest. On getting to Calabar they found him in a beer parlour on Slessor Street where he was relaxing. The officers handcuffed him and bundled him into the waiting van to Lagos. On getting to Lagos he was asked to make a statement but he refused and demanded to see his lawyer. He was tortured and deprived of food for three days before he now agreed to write the statement.

With the aid of statutory and judicial authorities answer the following questions:

1. What is the propriety or otherwise of the warrant of arrest issued by the Magistrate upon the phone call received from the police officer?
2. Assuming the Magistrate was wrong state the correct procedure and who are those empowered to issue warrant of arrest under the law?
3. Is there anything wrong in the mode of arrest of the suspects in the School? State the errors if there are any.
4. Comment on the re-arrest of Ebun on the same warrant of arrest in Calabar.
5. Comment on the propriety or otherwise on the mode of arresting Ebun in Calabar. State the correct procedure for executing warrant of arrest outside of the State or jurisdiction that issued it.
6. Assuming the Senior Magistrate wants to issue a new warrant of arrest, assist her to draft a warrant of arrest in the first instance (using Form 6). State the Contents of a warrant of arrest.
7. Comment on the propriety or otherwise on the arrest of the father of Ebun by the Police.
8. Assuming Ebun was hiding in his brothers office at the Cross Rivers State House of Assembly, could the Police have gone on there to arrest him?
9. What are the rights available to these suspects on their arrest?

Week 5

PRE-TRIAL INVESTIGATIONS AND POLICE INTERVIEW

Investigation is the process of inquiring into a matter through research, follow up, study or formal procedure for discovery. It also refers to subjecting a suspect to inquiry. In pre-trial investigation, the police is expected to establish whether or not an offence has been committed, who committed the offence and the circumstances under which the offence was committed. The pre-trial investigation will also seek to establish the extent of the injury or danger done or caused by the offence, the gain (if any) obtained by the offender and the demands of the injured party most especially where the crime is a personal injury case and more particularly, where it is possible to compound the offence or plea bargain same.

The power of the police to investigate crimes and in the process, arrest and detain persons suspected to have committed an offence derives from the provisions of **Section 4 of the Police Act. Section 23 Police Act** went further and gave the police power to prosecute an offender in any court of competent jurisdiction, whether or not the information or complaint is laid in his name. The Supreme Court reiterated the power of the police to investigate in the case of **Onyekwere v State¹** as follows, "If a complaint is made to the police that an offence has been committed, it is their duty to investigate the case not only against the person about whom the complaint was made, but also against any other person who may have taken part in the commission of the offence.

Types of Bail

1. Bail by the police - that is pending investigation
2. Court bail- pending trial
3. Court bail- pending appeal

POLICE BAIL

Police bail is the bail granted to a suspect at the police station upon fulfillment of certain conditions pending the investigation of the matter. Generally, there is no bail for capital offences. If the crime is not a capital offence, the officer in charge of the police station or place of detention may admit the accused to bail on such terms and conditions as may be appropriate, pending investigation. The essence of police bail is to ensure that the accused enjoys liberty while ensuring that he is available. Where there is a significant flight risk, the police is less inclined to grant bail.

¹ (1973) 8 NSCC 250

Sample Draft of Police Bail Application

EYEKE KENNETH & CO
BARRISTERS AND SOLICITORS
NO 15 AFIKPO STREET, ABAKALIKIEBONYI STATE.
(Eyekekennethsamuel@gmail.com)

Our Ref:

Your Ref:

Date: 6th January, 2021

To:
The Divisional Police Officer,
Police Divisional Headquarters,
Plateau State.
Sir,

APPLICATION FOR BAIL

We are solicitors to Mrs. Tonia Samuel, Our Client, of No. 8 Obudu Street, Calabar, Cross River State who is currently under arrest and detention at your station.

We apply for her bail pending your arraignment of our client. Our client pledges to appear at the station anytime requested by you.

Mr Emediong Essien of No. 44 Bank Street Calabar, Cross River State an in-law to our client, is available & willing to stand as a surety for our client's bail.

Thanks for the anticipated cooperation.

Yours faithfully,

.....
Eyeke Kenneth Esq.
(Principal Partner)
For: Eyeke Kenneth & Co.

LEGAL AID SCHEME

The legal aid scheme is set up by the Legal Aid Act. It is only available to indigent citizens and not in all proceedings. The scheme is to be administered by the legal aid council and its main responsibilities are legal aid and advice through criminal defence. Legal aid is absolutely free. By **Section 7(1) and the second schedule to the Act**, legal aid is available only for the following criminal offences

1. In south – murder, manslaughter, maliciously wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm.
2. In north – culpable homicide punishable with death and that not punishable with death, grievous tort, criminal force occasioning bodily hurt
3. Generally: Affray, stealing, common assault and Rape

Eligibility: **Section 9(1)** provides that only persons whose annual salary does not exceed the national minimum wage are eligible for legal aid; and by **section 9(2)** persons who are entitled to receive legal aid on a contributory basis not minding that their salaries exceed the minimum wage. Automatically, person who do not earn any wages are entitled to legal aid.

Court can also refer a matter to the legal aid council through **FORM NO LAC 1**

DRAFT: APPLICATION FOR LEGAL AID

NOTE THAT THE APPLICATION FOR LEGAL AID SHOULD NEVER BE DRAFTED BY A LEGAL PRACTITIONER. THIS IS BECAUSE THE PRESUMPTION IS THAT THE APPLICANT IS INDIGENT AND CANNOT AFFORD A LEGAL PRACTITIONER THUS LETTER WILL NOT BE IN A LAWYER'S LETTER HEAD PAPER.

THE APPLICATION IS MADE TO THE DIRECTOR GENERAL AND MUST STATE THAT THE APPLICANT DOES NOT EARN UP TO THE MINIMUM WAGE AND THE OFFENCE MUST BE ONE STATED IN THE SECOND SCHEDULE.

NOTE THAT WHEN YOU ARE WRITING ANY LETTER, IF YOU ARE NOT USING A LETTER HEAD, THEN YOUR NAME WILL APPEAR IN YOUR ADDRESS. IN SUCH A CASE, YOU DO NOT NEED TO INTRODUCE YOURSELF IN THE FIRST PARAGRAPH ANYMORE.

Temitope Veronica Babatunde,
No 3, AngwaRogo Road
Abuja.
6th January, 2021

The Director General,
Legal Aid Council,
No 5 Maitama Street,
Abuja.

Dear Sir,

APPLICATION FOR LEGAL AID

I apply for legal representation from the Legal Aid Council to assist me in conducting my defence.

I was arrested for the offences of stealing and affray and I have been informed that I will be charged to court.

My annual income is #21, 500, as shown on my annual payment slip which is attached to this letter.

Thank you.

Yours faithfully,
(signature)

Temitope Veronica Babare

WEEK 5 ONLINE ASSIGNMENT

1. Ibrahim Uche and Chinedu Okiki are both businessmen with shops at the Blessed Assurance Plaza, Wuse 2 Abuja. The two have had cordial relationship since they knew each other. Trouble however started when Ibrahim borrowed some money from Chinedu and could not pay back on time. After asking for the payment of the money incessantly without success, Chinedu decided to report the matter to the police. Corporal Sanja was deployed to arrest Ibrahim. At the police station he was detained for two weeks, tortured and refused to see his family and Lawyer. After three days of staying without food, he wrote a statement confessing to stealing the sum of 2.5 Million Naira from the safe in Chinedu's shop.

Answer the following questions:

- a. comment on the investigative power of the police in this case
 - b. comment on the detention of Ibrahim for two weeks
 - c. comment of Ibrahim's right that were breached if any while at the police station
 - d. comment on the confessional statement made by Ibrahim.
 - e. Draft the bail application for Ibrahim
2. The residents of Abule Egba have been terrorized for the past One Month by a gang of hoodlums who call themselves One Million Boys. Luck, however ran out on them last week when the vigilante group majorly comprising of young men from the neighborhood decided to repel them. In the process, so many of them ran away but three of them Banjo, Sule and Ugochukwu were arrested and taken to the police station. At the police station they were stripped naked and severely beaten. During interrogation, they confessed to the commission of many crimes within the last one month in the area and they also told the police where to get the leader of the gang named Moore, who led the operation on the day they were arrested.

The police immediately went to the house described and saw Moore sitting outside with some boys drinking local Gin. He was immediately arrested. At the police station he denied participating in the operation and stated that on that day he was at Ibadan where he went to see a friend, he however, did not mention the name of the friend, he was ignored. The following day, an Identification parade was conducted where the four of them were lined up with two other inmates. Last week Friday, they were arraigned before the Chief Magistrate on a three count charge of Rape, Assault and Armed Robbery. At the court, the Magistrate was not happy that they are not represented by Counsel, he therefore adjourned the case to enable them access legal assistance from the Legal Aid Council.

Answer the following questions:

- a. Comment on the treatment of the suspects at the police station
- b. what was the need for the interrogation by the police
- c. Comment on the alibi raised by Moore and the Police reaction
- d. comment on the propriety or otherwise of the Identification Parade conducted in relation to;
 - i. the necessity
 - ii the procedure
- e. What is your view on the Magistrate's decision to refer them to the Legal Aid Council for assistance.

WEEK 5 TASKS: KANO CAMPUS

1. Students should state how to obtain confession and admissions in the Police Station.
2. Students are to discuss and make presentation on the scope of the legal Aid Scheme.
3. Students should prepare and make presentation on the procedure for granting police bail and draft application for bail at the police Station.
4. Students are to discuss and make presentation on how exhibits are kept at the Police Station.
5. Identify and discuss the issues arising from the following scenario and draft the relevant documents vis-à-vis pre-trial investigation and police interview.

SCENARIO: [ENE AGBO]

Mrs. Ene Agbo went to Unity Bank, Bwari to withdraw some money. On her way out of the Bank, she flagged a motorcycle rider at the JAMB gate to take her to the Law School. She climbed the bike and the rider rode past the Law School gate towards Kuchiko village. Mrs. Agbo tried to stop the rider but he increased the speed of the bike. About 2 kilometers away from the Law School gate, the rider, Mr. Ikpo, turned into a bush path and stopped.

Suddenly, a young man came out from a nearby bush and joined Ikpo and with no resistance. Mrs. Agbo was dispossessed of her N20, 000. The duo climbed the same bike and zoomed off. Mrs. Agbo reported the incident to the police at the Bwari Police Station. The police have arrested Ikpo and one Burago for the alleged crime. On invitation by the police, Mrs. Ene Agbo came to the police station and subsequently the police brought out Ikpo and Burago from the cell for Mrs Ene to identify if they were the culprits. Mrs Ene Agbo immediately identified them as those responsible for the crime.

Mr Ikpo and Burago made separate statements to the police where they both denied committing the offence but stated that they were with their friends at Jollywell Hotel in Wuse, celebrating. A brother to Burago, Alhaji Mohammed briefed a lawyer, Chris Bamba to apply for police bail. The application for bail was refused on the ground that the suspects were notorious criminals.

The duo has been arraigned before the court. Meanwhile, Burago is an out-patient at the Gwagwalada Specialist Hospital where he has been undergoing treatment for renal failure. His counsel intends to make an application for bail.

Week 6

JURISDICTION & VENUE OF CRIMINAL COURTS

Jurisdiction is the authority which a court has to decide matters that are litigated before it, or take cognizance of matters presented in a formal way for its decision. The source of a court's jurisdiction is the Constitution or statutes. Every court is bound by the provisions of the Constitution and statutes vesting jurisdiction in them. See **Nyame v FRN**

Where the offence committed is a federal offence, any of the Federal High Court within the country have jurisdiction to try the offender. This is because there is only one Federal High Court with nationwide jurisdiction. Thus, ordinarily, if a federal offence is committed in Lagos State, the offender may be tried before a FHC in Maiduguri. However, in **Ibori v. FRN**, the appellant was charged in the FHC of Kaduna State rather than in the FHC of the State where the offence was committed. The appellant brought an application for the transfer of the case to the appropriate judicial division but the court held that it had jurisdiction since the offences were federal offences and the jurisdiction of the FHC is nationwide. On appeal, the Court of Appeal reversed the decision of the FHC.

DETERMINATION OF VENUE OF COURTS

In determining the venue for criminal trials, the following are to be considered:

1. Subject matter of the dispute-**Olowu v. Nigerian Army** (failure to perform military duty tried at military tribunal).
2. Judicial division or magisterial district of a state in Nigeria.

An action may be commenced in a judicial division or magisterial district of a state as follows:

1. Where the offence was wholly or partly committed- **Ibori v. FRN**
2. Where a consequence of the offence has occurred
3. Where property or person (subject matter) has been transported or found –
Section 64 CPL; Section 134 CPCL; Section 58 ACJL.

Where venue is uncertain, any of the places it was committed can be the venue –
Section 64(d) CPL; Section 135 CPCL; Section 58(d) ACJL, George v. FRN

WEEK 6 ONLINE ASSIGNMENT

There have been a lot of security challenges following the Covid 19 pandemic with high incidence of crimes committed in various parts of Nigeria. Nosa and Tive are friends who specialize in snatching new SUV's. On 25 April 2020 amidst the lockdown in Lagos, the duo snatched a white 2020 G- wagon belonging to Baba Agba at gun point at a fuel station in Lekki Phase 1. They drove the car at night from Lagos to Lokoja in Kogi State where they took it to Chief Victor Barawo to spray the car to a black colour and got a new number plate for it. On 5th May 2020 due to the easing of the lockdown in the FCT they were able to drive the car into Abuja and sold it for N10m.

Meanwhile, Tor another of their friend was apprehended after breaking into an NCC facility and carting away sensitive equipment and assaulting the security guard. The punishment for stealing is a minimum of 10 years in prison and for assault a minimum of 6years.

In Keffi in Nasarawa State, Chu Jung a Chinese was alleged to have battered his girlfriend Aisha Bello who refused to give in to his sexual demands due to fear that he may be carrying the dreaded corona virus.

Answer the following questions

1. In which jurisdiction can Nosa and Tive be tried for armed robbery?
2. Assuming the duo were brought before a Magistrates' Court in the FCT for the offence of armed robbery, and the Magistrate makes an order remanding them for 14 days, comment on the legality of the order.
3. Assuming the accused persons are to be tried in Lagos, draft the heading of the court and the parties.
4. Comment on the jurisdiction of a Magistrates' Court in Lagos to impose consecutive sentences against Tor if he is convicted of both offences. Would your answer be different if
 - (1) It was a Magistrate in Kano that tried him?
 - (2) It was a Magistrate in the FCT that tried him?
5. Comment on the power of the Upper Area Court in Keffi to try Chu Jung. If Chu Jung had committed this offence in Ibadan, can the Customary Court try him?
6. Assuming Tor is 16 years old, comment on the jurisdiction of the Magistrates' court to try him. Would your answer be different if Tor had been charged for armed robbery?

Case Scenario and Task 2

Oduntan Mike and Ambo Bright who are both employees of Sleek Technologies Ltd a private IT firm were arrested aboard an aircraft owned by Tranquility Air in Lagos for illegal possession of drugs suspected to be cocaine. They were on

their way to France. Oduntan resisted the NDLEA officer who arrested them from handcuffing him and in the altercation that ensued, Oduntan punched the NDLEA officer twice on the face before he was eventually subdued and taken away. Meanwhile, because of the expensive lifestyle of the duo, which is believed to be beyond their means, they have been arraigned before the Code of Conduct Tribunal.

Answer the following questions.

1. Which court has jurisdiction to try the duo for illegal possession of drugs?
2. Would your answer in question 1 above be different if the duo were only charged for assaulting an NDLEA officer on board an aircraft?
3. Comment on the arraignment of Oduntan and Ambo before the code of conduct Tribunal. What is the composition of the Tribunal?

Case Scenario and Task 3

General Dragon Gboza is the Commanding officer of Operation Wipe Out Terrorism. He is known to be a no-nonsense man and ruthless. In a bid to achieve his mandate on time, he issued an order for drone attacks on Kilishi village where terrorists were suspected to be hiding despite the fact that this will put the lives of 5,000 people including women and children living there in danger. The exercise led to the death of over 2,000 people mostly children. The Nigerian Army has convened a General Court Martial to try General Dragon and appointed Captain Cobra as chairman with 3 others.

There was massive international condemnation of the exercise with calls for General Dragon's trial at the International Criminal Court (ICC)

1. Comment on the jurisdiction of the General Court Martial to try General Dragon.
2. What is the difference between a General Court Martial and a Special Court Martial?
3. Mention the non-voting members of a General Court Martial and outline their roles
4. What are the possible avenues of bringing General Dragon to justice before the ICC? What possible offence can he be charged with before the ICC?

Week 7

INSTITUTION OF CRIMINAL PROCEEDINGS

When an offence has been committed, such offence is said to have been committed against the state. Thus it is the state and not the victim of such offence that can institute criminal proceeding. However, certain persons are authorized by statute to institute a criminal proceeding on behalf of the state. These are:

1. The Attorney-General; whether of federation or state
2. The police
3. Private persons; and
4. Special prosecutors
5. Private legal practitioners

There are also various modes of instituting criminal proceedings in the various courts and jurisdictions. Institution of criminal proceedings can either be through complaint, charge, information or first information report

MODES OF INSTITUTING CRIMINAL PROCEEDINGS

There are different ways of bringing criminal proceedings in the north, south and Lagos state with regard to the different courts of original jurisdiction

Magistrate Court

1. By laying a complaint before the magistrate – North/South/FCT
2. By bringing a person arrested without a warrant before a magistrate upon a charge – South/Lagos/FCT
3. By laying a first information report (FIR) before a magistrate - North/FCT

Area Courts (Same like Magistrate Courts in the North)

1. Laying a complaint before an Area Court Judge
2. First Information Report

Customary Courts (Same like Magistrate Courts in the South)

1. Laying a complaint before a Customary Court Judge
2. Bringing an Accused Person arrested without a warrant before a Customary Court Judge upon a charge signed by a Police Officer.

Sharia Courts

1. Written complaint by the Attorney General
2. Complaint by the victim
3. First Information Report See **Section 385 CPC (Amendment) Law Kano 2000**

State High Court

1. Information filed with the Direction or Consent of the High Court Judge (South)
2. By a Charge filed with the Leave of a High Court Judge (North)
3. Laying Complaint before a High Court Judge:

High Court of Lagos State: In Lagos state by virtue of **Section 77 ACJL** commencing criminal proceeding in the HC is only by INFORMATION. Consent of a HC judge is not included in the provision.

Federal High Court/National Industrial Court/High Court FCT: by virtue of **Section 109 ACJA** proceedings at the FHC/NIC/HC FCT is commenced by
(a) Charge (consent of a judge is also not needed).
(b) Information

*However, since the FHC is a court of summary jurisdiction, only charges are used. **Section 33(2) of FHC Act** provides that all criminal causes and matter shall be tried summarily.*

Sample Applications

Application for Consent to File an Information (Formal Letter)

Director of Public Prosecution
Ministry of Justice,
Umuahia.
Abia State.

The Chief Judge of Abia State,
Hon. Justice Umunakwe Micheal,
Abia State Judiciary,
Umuahia.
Abia State.

6th January, 2021

My Lord,

APPLICATION FOR CONSENT TO FILE AN INFORMATION

I am the Director of Public Prosecution in the Abia State Ministry of Justice and I hereby apply for consent to file an information in respect to the offence of stealing against one Mr Mohammad Sani.

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

Investigation into the case has been concluded and all the witnesses that the prosecution intends to call in proof of its case are available. Attached to this application are the following documents:

1. A copy of the proposed Information (charge);
2. The unedited statement of the alleged offender;
3. The proof of evidence; and
4. List of Exhibits to be relied upon.

This application is made on behalf of the Attorney General of Abia State.

No previous application for consent has been made and I have utmost belief in the case against the alleged offender.

I am most grateful for your Lordship's kind consideration.

Yours faithfully,

Nwosu Juliet

Director of Public Prosecution

Motion Exparte for Leave to Prefer a Charge against an Accused Person

IN THE HIGH COURT OF JIGAWA STATE
IN THE DUTSE JUDICIAL DIVISION
HOLDEN AT DUTSE

CASE NO: _____

BETWEEN

STATE.....COMPLAINANT/APPLICANT

AND

ATIKA ABDULLAHI.....ACCUSED PERSON/RESPONDENT

MOTION EX-PARTE

BROUGHT PURSUANT TO SECTION 185(B) OF THE CRIMINAL PROCEDURE CODE AND RULE 3(1) AND (2) OF THE CRIMINAL PROCEDURE (APPLICATION FOR LEAVE TO PREFER CHARGE) RULES 1970 AND UNDER THE INHERENT JURISDICTION OF THIS COURT

TAKE NOTICE that this Honorable Court will be moved on the day of

2021 at the Hour of 9:00 in the forenoon or so soon thereafter as counsel to the complainant/applicant may be heard praying the court for the following reliefs:

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

6. AN ORDER granting leave to prefer the attached proposed charge against the accused person.
7. AND FOR SUCH ORDERS OR FURTHER ORDER as this Honourable Court may deem fit to make in the circumstances.

DATED THIS DAY OF2021

.....
Muazu Umar Muazu
Director of Public Prosecution
Ministry of Justice, Jigawa State
For: Attorney General, Jigawa State

NB- WHEN DRAFTING THE MOTION EXPARTE FOR CONSENT IN THE SOUTH- BRING IT UNDER SECTION 363 OF CPL AND THE INDICTMENTS PROCEDURE RULES 1970. Also don't forget that affidavit is required.

Affidavit in Support of Application for Leave
IN THE HIGH COURT OF JIGAWA STATE
IN THE DUTSE JUDICIAL DIVISION
HOLDEN AT DUTSE

CASE NO: _____

BETWEEN
STATE.....COMPLAINANT/APPLICANT
AND
ATIKA ABDULLAHI.....ACCUSED PERSON/RESPONDENT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE

I, Mr. Muazu Umar Muazu, a male, Muslim, adult, legal practitioner and Nigeria citizen residing at No. 37, Alhaji Umar Drive, Dutse, Jigawa State, make oath and states as follows:

10. I am the Director of Public Prosecution in the Jigawa State Ministry of Justice and by virtue of which I am conversant with the facts of this case and the circumstances leading to this application.
11. I have the consent of the Attorney General of Jigawa State to make this application and to depose to this affidavit.

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

12. I know as a matter of fact that the accused persons were arrested during the EndSARS Protest by the police on the 10th day of October, 2020 for the offence of arson.
13. I know that no similar application has been made before any Judge of the High Court of the High Court of Jigawa State.
14. The Honourable Attorney General of Jigawa State has decided to prosecute the accused persons for the said offence. A copy each of the proposed charged, proof of evidence, list of witnesses as well as the unedited statements of the accused persons are hereby attached and marked respectively as Exhibits A, B, C, D1 and D2.
15. The proposed witnesses are resident within the state and shall be available at the trial of the accused persons.
16. To the best of my knowledge and belief, every information contained here is true.
17. I make this oath in good faith, conscientiously believing same to be true and correct in accordance with the Oath Act currently in force.

.....

Deponent

SWORN at the High Court Registry Jigawa State

This..... day of 2021

BEFORE ME

COMMISSIONER FOR OATHS

Written Address in support of Application for Leave to Prefer Charges

IN THE HIGH COURT OF JIGAWA STATE
IN THE DUTSE JUDICIAL DIVISION
HOLDEN AT DUTSE

CASE NO: _____

BETWEEN

STATE.....COMPLAINANT/APPLICANT

AND

ATIKA ABDULLAHI.....ACCUSED PERSON/RESPONDENT

WRITTEN ADDRESS

INTRODUCTION

My Lord, before this honorable court is an application to prefer a charge against the accused person brought pursuant to Section 185(B) Criminal Procedure Code Law of Jigawa State.

SUMMARY OF CASE

My lord, the fact of the case is that on the.....

ISSUES FOR DETERMINATION

My Lord, the issue for determination here is whether the leave to prefer the propose charge sheet be granted considering the proof of evidence and exhibit attached.

LEGAL ARGUMENT

My Lord, Section 185(B) Criminal Procedure Code Law state that.....

CONCLUSION

My Lord, we urge the court to grant this application so that the prosecution can file the charges.

INDEX OF AUTHORITIES CITED

1.....

Dated this _____ day of _____ 2021

.....

Muazu Umar Muazu

Director of Public Prosecution

Ministry of Justice, Jigawa State

For: Attorney General, Jigawa State

WEEK 7 ONLINE ASSIGNMENT
SCENARIO 1

While Chief Tackson and wife, Bentley, were away in Abuja attending the thanksgiving party of a family friend who had just won an election into the Senate, a gang of armed robbers stormed their house at No. 5 Independence Avenue, Enugu. The five-man gang broke into the house in the early hours of 5th August, 2019. They shot the gateman and forcefully had sexual intercourse with the house help aged 12 years. They also carted away all electronic items in the house.

Following intense investigation, five students of the Institute of Management Sciences, Enugu were arrested in connection with the robbery. The suspects: Pixa, Hexa, Mega, Crux and Kodo were all detained at the Independence Police Station, Enugu.

The Attorney-General of Enugu State filed an Information in the Chief Magistrate's Court, Independence Way, Enugu on the 5th day of November, 2019 against Pixa, Hexa and Mega for murder, armed robbery and defilement. Crux and Kodo were not charged along with them as they were released and asked to go home. On 6th November, 2019, the trio were arraigned and they all pleaded not guilty to the three offences.

Without withdrawing the charge in the Magistrate Court, the AG initiated the same action before the High Court No. 3, Enugu by preferring a charge without the leave of the High Court Judge.

Aggrieved by the decision of the AG to charge only three out of the five suspects to court, Chief Tackson filed a complaint in the High Court against Crux and Kodo on 30th of November, 2019.

The AG, who was on pilgrimage to the Holy Land directed the DPP, Dinkpa Kasul, through the telephone, to enter a *nolle prosequi* in the matter filed by Chief Tackson. Following the nolle entered by the DPP, the learned trial Judge discharged and acquitted Crux and Kodo. Chief Tackson was very aggrieved and swore to sue the AG for abuse of office when he returns.

While the matter against Pixa, Hexa and Mega was still pending in court, there was a cabinet shake up and the AG was removed, leaving the Solicitor-General to discharge the functions of that office.

The parents of Pixa, Hexa and Mega approached the Solicitor-General of the state, Mrs Ewu and pleaded with her to enter a *nolle prosequi* in their children's case. On the next adjourned date, Mrs Ewu entered a *nolle* in the matter after seeking the consent of the High Court Judge. They were however immediately re-arrested by the police outside the courtroom.

The prosecution intends to appeal the judgment. With the aid of statutory and judicial authorities, answer the following questions:

1. Comment on the competence of the Information filed by the AG in the Chief Magistrate's Court.

2. Comment on the failure of the AG to charge Crux and Kodo to court.
3. Comment on the decision of the AG to initiate the same action against the accused at the High Court by preferring a charge without the leave of the court.
4. Comment on the complaint filed by Chief Tackson at the High Court.
5. What other options are open to Chief Tackson to ventilate his grievances against the AG.
6. Comment on the *nolle prosequi* entered by the DPP on behalf of the AG and the Order made by the court.
7. Comment on the *nolle posequi* entered by the Solicitor-General in the case of Pixa, Hexa and Mega and their subsequent re-arrest by the police.

SCENARIO 2

A case of illegal possession of firearms was reported against Chief Ukpala at the Surulere Police Station on the 5th of August, 2019. The Police, after investigation, arraigned him at the Federal High Court, Ikeja through an Information prepared by the DPO, CSP Udara on the 5th of December, 2019. The Defence filed a preliminary objection on the following grounds:

1. That Chief Ukpala, being a staff of the Ministry of Defence, is a public officer and hence the matter is statute-barred.
2. That the Police can only prosecute in the Magistrate's Court.
3. That the case was filed without leave of the FHC Judge.

The matter was adjourned to 6th December, 2019 for ruling on the preliminary objections. On the adjourned date, the AG of Lagos State, Chief Iyala Isolo (SAN) announced appearance and applied to take over the prosecution of the matter. The Defence objected and the Judge ruled that the AG was a meddlesome interloper, since he did not file the matter in the first place. The matter has been adjourned to 20th of June, 2020 for hearing.

Discuss the following issues citing relevant authorities:

1. The competence of the Police to file the matter and the mode of initiating the action
2. The grounds of P.O. filed by the defence.
3. The application of the AG to take over the case and the ruling of the court

Week 8

CHARGES I

Charges in criminal litigation are what writ of summons, originating summons, petition and originating application are to civil litigation. Charges give the accused person notice of the offences against him. There are three definitions given to charges under the CPL, CPCL and ACJL. **Section 2 CPA**, defines it as the statement of offence or statement of offences with which an accused is charged in a summary trial before a court. This definition is quite restrictive as it relate only to summary trial. **Section 1 CPC** defines it as including any head of charge when the charge contains more heads than one. This definition only distinguishes between the charge sheet being the entire document and charges contained in the charge sheet. Section 3 ACJL defines it as the statement of offence or statement of offences with which a defendant is charged in a trial whether by way of summary trial or trial by way of information before a HC or any court or tribunal established by law. The above is a holistic definition of charges. See also, **Section 494 ACJA**. The form of a charge depends on three main considerations:

1. The place of trial
2. The court of trial
3. The person or authority drafting the charge or instituting it.

Contents of a Charge Sheet

1. **Heading of the Court:** this consist of the name of the court, its judicial or magisterial district and where the court is sitting. The heading of the court gives the accused person and any person coming into contact with the charge sheet a signpost on where the charge is filed so that at a glance, the question of jurisdiction can be located.

*IN THE HIGH COURT OF KOGI STATE
IN THE LOKOJA JUDICIAL DIVISION
HOLDEN AT LOKOJA*

*IN THE MAGISTRATE COURT OF NIGER STATE
IN THE MINNA MAGISTERIAL DISTRICT
HOLDEN AT MINNA*

- 2. Reference Number:** this is written beneath the heading. Its importance is on proper identification of a case/charge against an accused. It is possible that an accused has against him different charges in the same court. In the southern courts, FHC, NIC, and HC of FCT it is *CHARGE NO*.....
In the northern courts reference number is *CASE NO*.....
- 3. Parties:** this refers to the litigants in a criminal matter. The accused is known as DEFENDANT in the FHC, NIC, HC of FCT, and HC of Lagos, or ACCUSED PERSON in southern courts and northern courts. The prosecutorial authority is the FEDERAL REPUBLIC OF NIGERIA in the FHC, NIC, HC of FCT, and SHC when it is a federal offence; in Lagos state, it is THE STATE OF LAGOS; in other SHCs, it is THE STATE; and in the Magistrate Court in both north and south it is the COMMISSIONER OF POLICE or INSPECTOR GENERAL OF POLICE (only Abuja).
The name(s) by which the accused person is known must be stated. His surname and forenames must be stated in the charge sheet so that no one is left in doubt that it is the accused person and no other person being charged. In addition, the accused may be describe by adding alias if he has any so as to sufficiently describe him.

BETWEEN

*THE STATE OF LAGOS.....COMPLAINANT
AND*

IGWEOGU MAXWELL (alias Palliative)DEFENDANT

- 4. Preamble:** a preamble is only required in the high court's in southern states where an offence is to be tried by information. Some northern states like Taraba and Adamawa now use information, thus the charge contains preamble. Preamble comes after the parties' clause.

"At the session holding at the Imo Judicial Division of the High Court of Imo State on the 6th day of January, 2021 the Court was informed by the Honourable Attorney General of Imo State on behalf of the state that you IGWEOGU MAXWELL is charged with the following offences:"

- 6. Charge/Count:** Every head of offence in southern courts; FHC; NIC; HC of FCT; HC Lagos, HC of Taraba and Adamawa is COUNT. Every head of

offence in other northern courts is CHARGE. In high courts where information is used, the head of offence - COUNT has two paragraphs: Statement of offence and Particulars of offence. In the southern magistrate court, northern high courts, and HC of FCT, the head of offence is in one paragraph. In the Magistrate courts in the north, the head of the offence has three paragraphs (Introduction, Charge – Body and Directional).

One Paragraph

CHARGE 1

Abarkaka Ahmad on or about 2nd January 2021 at No 5 Abubakar Way, Bauchi within Bauchi Judicial Division stole a bag containing the sum of ₦45,000 belonging to Mrs Joy Edoziem thereby committed an offence of theft punishable under Section 287 of Penal Code Law of Bauchi State.

Two Paragraphs

COUNT 1

STATEMENT OF OFFENCE

Stealing, contrary to Section 382 and punishable under Section 390 of Criminal Code Law of Ogun State.

PARTICULARS OF OFFENCE

Abarkaka Ahmad on or about 2nd day of January 2021 at No 5 Omotunde Avenue within Abeokuta Judicial Division stole a bag containing the sum of ₦45, 000 belonging to Mrs Joy Edoziem.

Three Paragraphs

I, SELZING FABONG, Chief Magistrate Grade 1 hereby charge you, Abarkaka Ahmad and Ahmed Ibrahim as follows:

CHARGE

That you, Abarkaka Ahmad and Ahmed Ibrahim, on 2nd January, 2021 at Sabon Gari within the Kano Magisterial District agreed to do an illegal act to wit: a bag containing the sum of ₦45,000 belonging to Mrs Joy Edoziem thereby committed an offence of theft punishable under Section 285 of Penal Code Law of Kano State.

I, hereby direct that you be tried for the said offences by this court.

Every charge or count regardless of the paragraphs will have to contain the following:

- (a) **Name of Offender/Accused:** the name stated in the heading should be the one in the body of the charge. The name must be the correct name of the accused and could be followed by an alias if any.
- (b) **Date/Time of Commission of Offence:** the precise date on which the offence was committed should be stated. Do not use 'on' or 'about' If the date is given, use it, if not don't use ellipses. The time of commission of the offence must not be necessarily stated except where it is relevant in establishing the time the offence was committed such as offences of House Breaking and Burglary.
- (c) **Place of Commission of Offence/Judicial Division or Magisterial District:** The place where the offence was committed should be stated along with the magisterial district or judicial division in that state.
- (d) **Statement of Offence Committed:** the name of the offence should be used in describing the offence or much description like for rape; having unlawful carnal knowledge without consent.
- (e) **Person/Thing against Whom/Which the Offence was Committed:** this is the victim of the offence or the property against which the offence was committed. (Individual, Corporate entity or the State)
- (f) **Section of the Law:** there is argument as to which section of the law should be used; the definition section or the punishment section. Generally, the punishment section should be used but where both the definition and punishment are stated in a particular section, then it can be used. See *Harb v. FRN*.
- (g) **Enactment/State Contravened:** the statute itself
7. **Date and Signature of the Drafting Authority:** the date at which the charge was drafted has to be stated. The signature of the drafting authority, his/her name and title will also have to be stated. It is mandatory that a charge sheet is signed. This is because the capacity in which a person is filing a charge is important – *Okafor v. State; Olatunji v. State*.

DATED THIS _____ DAY OF _____, 2020

Selzing Fabong
Chief Magistrate Grade I

WEEK 8 ASSIGNMENT

Scenario 1

Audu Okon, Bola Madu and Abdullahi Dagogo conspired to rob Mr. and Mrs. Buba Tella on the night of the Nigeria's 2019 May Day celebration at their residence at No. 4, Ibru Road, Ikoyi Lagos State. The gateman was thoroughly beaten before tying him to a pole with his mouth strapped with a piece of dirty cloth. The trio successfully dispossessed Mr. Tella of the N500,000.00 (five hundred thousand Naira) he had in the house. Abdullahi thereafter ordered Mrs Tella to lead him to their guest room as he suspected that they had more money in the guest room. Abdullahi raped Mrs Tella in the guest room threatening to kill her if she gave any slightest sign of what was happening to her in the room.

Now answer the following questions:

1. Identify the court that has the jurisdiction to try the offenders as well as the prosecutorial authority.
2. Identify the offences and the parties to the identified offences.
3. Draft the heading and the parties only.
4. How many charge sheets would you prepare? Give reasons for your answer.

Scenario 2

Mairo Stanley and Dan Ahmed were brought before Mallam Shehu Malami, Chief Magistrate I upon a First Information Report for offences of theft and receipt of stolen property respectively on the 7th and 18th October 2019 respectively. A goat belonging to Mallam Abdul Auta was alleged to have been stolen from his residence at No 4, Funtua Road, Katsina State, while it was tethered to a pole within the compound. It was also alleged that the goat was disposed off at the 'Rago' section of the Katsina Main Market, Katsina. The two accused persons denied the allegations on the FIR whereupon the court requested the prosecutor to supply evidence in support of the allegations. The Magistrate was satisfied that a prima facie case was disclosed by the evidence adduced by the prosecutor against the two accused persons.

Answer the following questions:

1. Who has the authority to draft the charge in the above scenario?
2. Describe (without drafting) the form and contents of the charge sheet.

Scenario 5

Due to the ban on rearing of cattle in the city of Abuja, Mr. Adamu Bawa informed Mallam Miyetti Yusuf that he has acquired verse hectares of virgin land on the outskirts of Abuja which he would exclusively lease to him for grazing of his cattle. In consideration of a two year lease of the said grazing area Mallam Miyetti Yusuf gave Mr. Adamu Bawa, a calf in addition to payment of the sum of N500,000 on 5th September 2019 at Adamu's residence located at Adamu Bawa Crescent, Lugbe, Abuja. It turned out that Miyetti was in fact duped.

Find below a draft of the heading and parties for a charge for filing in the High Court of FCT.

**IN THE HIGH COURT OF ABUJA
IN THE LUGBE JUDICIAL DISTRICT
HOLDEN AT ABUJA**

SUIT NO.....

The State.....Complainant

AND

Mr. Adam BubaDefendant

- 1. Which rule of drafting of charges is breached by the above draft?**
- 2. Redraft as appropriate.**
- 3. Discuss the effects of breach of the Rules of drafting charges.**

WEEK 9 CHARGES II,

• CONTENTS

- HOW TO DRAFT A CHARGE IN MAGISTRATE COURT AND HIGH COURT BOTH IN THE SOUTH AND NORTH.
- HOW TO DRAFT A CHARGE IN THE FEDERAL HIGH COURT AND NATIONAL INDUSTRIAL COURT.
- ✓ THE EFFECT OF A DEFECTIVE CHARGE
- ✓ AMENDMENT OF CHARGES.

• OUTCOMES

- ✓ DRAFT A CHARGE IN THE VARIOUS COURTS IN NIGERIA
- ✓ EXPLAIN THE EFFECT OF A DEFECTIVE CHARGE
- ✓ AMEND A DEFECTIVE CHARGE

SAMPLE DRAFT OF CHARGES

(1) MAGISTRATE COURT IN THE NORTH

(*HEADING*)

**IN THE MAGISTRATE COURT OF BENUE STATE
IN THE GBOKO MAGISTERIAL DISTRICT
HOLDEN AT GBOKO**

CASE NO:.....

BETWEEN:

COMMISSIONER OF POLICE

-

COMPLAINANT

AND

IBRAHIM MUSA

-

ACCUSED PERSON

(*BODY OF CHARGE*)

I, DANJUMA ALIYU, Chief Magistrate Grade 1, do hereby charge you Ibrahim Musa, as follows:

CHARGE ONE:

That you, Ibrahim Musa on or about the 5th day of March, 2019 at No. 10 Modibbo street, Gboko in the Gboko Magisterial District committed the theft of a Tecno Mobile Phone, Property of Chief Tolu Agbatar and thereby committed an offence punishable under section --- of the Penal Code Law of Benue State, Cap --- Laws of Benue State and triable by this court.

And I hereby direct that you be tried by this court on the said charge.

Dated this 18th day of May, 2019.

Danjuma Aliyu
Chief Magistrate

Grade 1

(2) MAGISTRATE COURT IN THE SOUTH
(HEADING)

**IN THE MAGISTRATE COURT OF BAYELSA STATE
IN THE YENAGOA MAGISTERIAL DISTRICT
HOLDEN AT YENAGOA**

CHARGE NO:.....

BETWEEN:

**COMMISSIONER OF POLICE - COMPLAINANT
AND
GBALE GOODLUCK - DEFENDANT**

(BODY OF CHARGE)

COUNT ONE:

That you, Gbale Goodluck on or about the 15th day of May, 2019 at No. 10 Law School Avenue, Agaduma, in the Yenagoa Magisterial District, stole a Tecno Mobile Phone belonging to Madam Victoria Gbaraba and thereby committed an offence punishable under SECTION --- of the Criminal Code Law of ---- Cap --- Laws of Bayelsa State 2004.

Dated this ----- day of -----, 2019.

Inspector James Timaya
Police Officer

(3) HIGH COURT IN THE NORTH
(HEADING) CHARGE

**IN THE HIGH COURT OF KADUNA STATE
IN THE ZARIA JUDICIAL DIVISION
HOLDEN AT ZARIA**

CASE NO:.....

BETWEEN:

**THE STATE - COMPLAINANT
AND
GARBA SULEIMAN - ACCUSED PERSON**

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

(BODY OF CHARGE)

CHARGE ONE:

That you, Garba Suleiman on the 25th day of March, 2019 at No. 5 Sultan Machido Street, in the Zaria Judicial Division, Kaduna State, unlawfully converted goat property of Mrs. Inuwa Dada without her consent and thereby committed an offence of theft punishable under section 270 of the Penal Code Laws of Kaduna State.

Dated this ----- day of -----, 2019.

E. A. Tanko, Esq.,
Principal State counsel,
For the Attorney General,
Kaduna State

**(4) HIGH COURT IN THE SOUTH
(HEADING) INFORMATION**

**IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA**

CHARGE NO:.....

BETWEEN:

STATE OF LAGOS

-

COMPLAINANT

AND

ONILE ADEYEMI

-

DEFENDANT

(BODY OF CHARGE)

(preamble)

At the sessions of the Court holden at Ikeja on the ----- day of -----2018, the Court is informed by the Attorney General of the state on behalf of the state that: Onile Adeyemi is charged with the following offence:

**COUNT ONE:
STATEMENT OF OFFENCE**

Armed robbery contrary to section 1(2) (a) of the Robbery and firearms (Special Provisions) Act, Cap. R11LFN, 2004.

PARTICULARS OF OFFENCE

Onile Adeyemi on or about the 17th day of May, 2019 at No. 15 Lejok Brown Street, Ikeja in the Ikeja Judicial Division, whilst armed with gun broke into the vaults of Diamond Bank plc and carted away one large box containing the sum of (50) Fifty Million Naira, belonging to Diamond Bank plc.

Dated this ----- day of -----, 2019.

Oyanta Basi, Esq.,
Principal State counsel,
For the Honorable Attorney General of Lagos State

(5) FEDERAL HIGH COURT AND NATIONAL INDUSTRIAL COURT
(*HEADING*)

**IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT YOLA**

CHARGE NO:.....

BETWEEN:

**FEDERAL REPUBLIC OF NIGERIA
AND
LAWAN BABUBA**

**- COMPLAINANT

- DEFENDANT**

(BODY OF CHARGE)

CHARGE ONE:

That you, Lawan Babuba on or about the 15th day of May, 2019 at No. 6 Bishop Street, within Yola judicial division, without lawful authority engaged in selling of drugs otherwise known as “cocaine” to truck drivers and thereby committed an offence contrary to section 11 (b) of the National Drugs Law Enforcement Agency Act, 2004.

Dated this ----- day of -----, 2019.

Aliyu Mohammad, Esq.,
Senior law officer,
For the chairman, NDLEA

Week 9 CHARGES II

DEFECTIVE CHARGES: A charge will be said to be accurate when it complies with all the rules of drafting, leaving the accused person and the court in no doubt as to the nature of the charge against the accused. A defective charge is when a charge is not in compliance with the rules of drafting (ambiguity, duplicity, joinder of offences and joinder of offenders).

SAMPLE DRAFT OF CHARGES IN THE VARIOUS COURTS Checklist of Information on Drafting of Charges

Court/ Location	Charge Sheet	Complainant & Offender	Referenc e Number	Paragraphs	Signatur e/ Franking
Magistrate Court (North)	Charge by First Information Report	Commissioner of Police/ IGP (Abuja) v. Accused Person/ Defendant (Abuja)	Case No	(3 Paragraphs) 1. Introduction 2. Charge 3. Direction	Presiding Magistrat e
Magistrate Court (South)	Charge	Commissioner of Police v. Accused Person/ Defendant (Lagos)	Charge No	(1 Paragraph) Count-Body	Police Officer/ Law Officer
High Court (North)	Charge	The State v. Accused Person	Case No	(1 Paragraph) Charge-Body	AG of State
High Court (North) Taraba/Adamaw a	Information	The State v. Accused Person	Case No	(2 Paragraphs) (Count) 1. Statement of Offence 2. Particulars of Offence	AG of State

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

High Court (South)	Information	The State v. Defendant	Charge No	(2 Paragraphs) (Count) 1. Statement of Offence 2. Particulars of Offence	AG of State
High Court (Lagos)	Information	The State of Lagos v. Defendant	Charge No	(2 Paragraphs) (Count) 1. Statement of Offence 2. Particulars of Offence	AG of State
High Court (FCT Abuja)	Information	Federal Republic of Nigeria v. Defendant	Charge No	(2 Paragraphs) (Count) 1. Statement of Offence 2. Particulars of Offence	AG of Federation
Federal High Court/National Industrial Court	Charge	Federal Republic of Nigeria v. Defendant	Charge No	(1 Paragraph) Charge-Body	AG of Federation

Magistrate Court in the North

IN THE MAGISTRATE COURT OF KANO STATE
IN THE KANO MAGISTERIAL DISTRICT
HOLDEN AT KANO

Case No:.....

BETWEEN

COMMISSIONER OF POLICE.....COMPLAINANT

AND

1. ABARKAKA AHMED

2. AHMED IBRAHIM (alias Scorpion).....ACCUSED PERSONS

I, Selzing Fabong, Chief Magistrate Grade 1 hereby charge you, Abarkaka Ahmed and *Ahmed Ibrahims* follows:

1ST CHARGE

That you, Abarkaka Ahmad and Ahmed Ibrahim, on 21st August, 2020 at Sabon Gari within the Kano Magisterial District agreed to do an illegal act to wit: a bag containing the sum of ~~N~~45,000 belonging to Mrs Joy Edoziem thereby committed an offence of theft punishable under Section 285 of Penal Code Law of Kano State.

2ND CHARGE

That you, Abarkaka Ahmad and Ahmed Ibrahim on 30th September 2020 at First Bank Plc, Sabon Gari, Kano, within the Kano Magisterial District presented a forged cheque leaf to First Bank Plc, being property of Mrs Joy Edoziem thereby committing an offence punishable under Section 364 of Penal Code, Laws of Kano State.

I, hereby direct that you be tried for the said offences by this court.

Dated this _____ day of _____ 2020

Selzing Fabong
Chief Magistrate Grade 1
Magistrate Court of Kano State

Magistrate Court in the South

IN THE MAGISTRATE COURT OF LAGOS STATE
IN THE EPE MAGISTERIAL DISTRICT
HOLDEN AT EPE

Charge No:.....

BETWEEN
COMMISSIONER OF POLICE..... COMPLAINANT
AND
FEMI JUDE (alias BrodaZone)..... DEFENDANT

COUNT 1

That you Femi Jude on or about 2nd March 2020 at Epe Market Square, within Epe Magisterial District stole a Toshiba Laptop belonging to Mrs Warefiniere Rachael thereby committed an offence of stealing contrary to Section 285 of Criminal Code Law of Lagos State 2011.

COUNT 2

That you Femi Jude on or about 2nd March 2020 at Epe Market Square, within Epe Magisterial District assaulted Warefiniere Rachael thereby committed an offence contrary to Sections 169 and 170 Criminal Code Law of Lagos State 2011.

Dated this..... day....., 2020

Eyeke Kenneth Esq.
Assistant Commissioner of Police
For: Commissioner of Police

High Court in the North

IN THE HIGH COURT OF KATSINA STATE
IN THE KATSINA JUDICIAL DIVISION
HOLDEN AT KATSINA

Case No:.....

BETWEEN
THE STATE.....COMPLAINANT
AND
FEMI JUDE.....ACCUSED PERSON

CHARGE 1

Femi Jude on or about 2nd March 2020 at No 15 Mohammed Buhari Way, Katsina within Katsina Judicial Division stole a Toshiba Laptop belonging to Mrs Warefiniere Rachael thereby committed an offence of theft punishable under Section 287 of Penal Code Law of Katsina State.

CHARGE 2

Femi Jude on or about 2nd March 2020 at No 15 Mohammed Buhari Way, Katsina within Katsina Judicial Division assaulted Mrs Warefiniere Rachael thereby committed an offence of criminal assault punishable under Section 265 of Penal Code Law of Katsina State.

Dated this..... Day of..... 2020

Eyeke Kenneth Esq.
Senior State Counsel
Ministry of Justice Katsina State
For: Attorney General Katsina State

High Court in the South

IN THE HIGH COURT OF ONDO STATE
IN THE OKA JUDICIAL DIVISION
HOLDEN AT OKA

Charge No:.....

BETWEEN

THE STATE..... COMPLAINANT

AND

FEMI JUDE.....DEFENDANT

At the session holding at Oka on the 2nd day of March, 2020, the court was informed by the Attorney-General of the state on behalf of the State that Femi Jude is charged with the following offences:

COUNT 1

STATEMENT OF OFFENCE

Stealing, contrary to Section 382 and punishable under Section 390 of Criminal Code Law of Ondo State.

PARTICULARS OF OFFENCE

Femi Jude on or about 2nd day of March 2020 at No 5 Obaju Quarters Oba-Akoko within Oka Judicial Division stole stole a Toshiba Laptop belonging to Mrs Warefiniere Rachael.

COUNT 2

STATEMENT OF OFFENCE

Assault, contrary to Section 252 and punishable under Section 253 of Criminal Code Law of Ondo State.

PARTICULARS OF OFFENCE

Femi Jude on or about 2nd March 2020 at No 5 Obaju Quarters Oba-Akoko within Oka Judicial Division assaulted Mrs Warefiniere Rachael.

Dated this..... day of....., 2020

Eyeke Kenneth Esq
Senior State Counsel
Ministry of Justice Ondo State
For: Attorney General of Ondo State

High Court of Lagos State
IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA

Charge No:.....

BETWEEN:

THE STATE OF LAGOS..... COMPLAINANT
AND

FEMI JUDE..... DEFENDANT

At the session holding at Lagos on the 2nd day of March 2020, the court was informed by the Attorney-General of the State on behalf of the State that Femi Jude is charged with the following offences:

COUNT 1

STATEMENT OF OFFENCE

Stealing, contrary to Section 382 and punishable under Section 390 of Criminal Code Law of Lagos State.

PARTICULARS OF OFFENCE

Femi Jude on or about 2nd day of March 2020 at No 5 Obaju Quarters Ikorodu within Ikeja Judicial Division stole a Toshiba Laptop belonging to Mrs Warefiniere Rachael..

COUNT 2

STATEMENT OF OFFENCE

Assault, contrary to Section 252 and punishable under Section 253 of Criminal Code Law of Lagos State.

PARTICULARS OF OFFENCE

Femi Jude on or about 2nd March 2020 at No 5 Obaju Quarters Ikorodu within Ikeja Judicial Division assaulted Mrs Warefiniere Rachael.

Dated this..... day of..... , 2020.

Eyeke Kenneth Esq.
Senior State Counsel
Ministry of Justice Lagos State
For: Attorney General of Lagos State

High Court of FCT Abuja

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE APO JUDICIAL DIVISION
HOLDEN AT APO

Charge No:.....

BETWEEN

FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT

AND

FEMI JUDE..... DEFENDANT

At the session holding at Apo on the 2nd day of January 2020, the court was informed by the Attorney-General of the Federation that Femi Jude is charged with the following offences:

COUNT 1

STATEMENT OF OFFENCE

Stealing, punishable under Section 287 of Penal Code Act

PARTICULARS OF OFFENCE

Femi Jude on or about 2nd day of March 2020 at No 5 Obaju Quarters Oba-Akoko within Oka Judicial Division stole a Toshiba Laptop belonging to Mrs Warefiniere Rachael.

COUNT 2

STATEMENT OF OFFENCE

Assault, punishable under Section 265 of the Penal Code Act

PARTICULARS OF OFFENCE

Femi Jude on or about 2nd March 2020 at No 5 Obaju Quarters Oba-Akoko within Oka Judicial Division assaulted Mrs Warefiniere Rachael.

Dated this..... Day of....., 2020

Eyeke Kenneth Esq.
Director of Public Prosecution
Federal Ministry of Justice
For: Attorney General of the Federation

Federal High Court

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI

Charge No:.....

BETWEEN
FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT
AND
FEMI JUDE..... DEFENDANT

COUNT 1

Femi Jude on or about 20th October 2020 at No 33 Azugwu Road, Abakaliki, Ebonyi within Abakalik Judicial Division bribed Mr. Johannes Mudi, a Director in the Nigerian Export Promotion Council, with the sum of ₦1, 000,000 thereby committed an offence of bribery of public officer contrary to Section ____ of the Independent Corrupt Practice and Other Related Offences Commission Act, Laws of the Federation of Nigeria, 2004.

COUNT 2

Femi Jude on or about 20th October 2020 at No 33 Azugwu Road, Abakaliki, Ebonyi within Abakalik Judicial Division committed fraud in the office of Nigerian Export Promotion Council thereby committed an offence contrary to Section ____ of the Economic and Financial Crime Commission Act, Laws of the Federation of Nigeria, 2004.

Eyeke Kenneth Esq.

Director of Prosecution

Economic and Financial Crime Commission

For: Attorney General of the Federation

WEEK 9 ONLINE LECTURES CHARGES II,
SAMPLE DRAFT OF CHARGES

(1) MAGISTRATE COURT IN THE NORTH
(HEADING)

IN THE MAGISTRATE COURT OF BENUE STATE
IN THE GBOKO MAGISTERIAL DISTRICT
HOLDEN AT GBOKO

CASE NO:.....

BETWEEN:

COMMISSIONER OF POLICE

-

COMPLAINANT

AND

IBRAHIM MUSA

-

ACCUSED PERSON

(BODY OF CHARGE)

I, DANJUMA ALIYU, Chief Magistrate Grade 1, do hereby charge you Ibrahim Musa, as follows:

CHARGE ONE:

That you, Ibrahim Musa on or about the 5th day of March, 2019 at No. 10 Modibbo street, Gboko in the Gboko Magisterial District committed the theft of a Tecno Mobile Phone, Property of Chief Tolu Agbatar and thereby committed an offence punishable under section --- of the Penal Code Law of Benue State, Cap --- Laws of Benue State and triable by this court.

And I hereby direct that you be tried by this court on the said charge.

Dated this 18th day of May, 2019.

Danjuma Aliyu
Chief Magistrate

Grade 1

(2) MAGISTRATE COURT IN THE SOUTH
(HEADING)

**IN THE MAGISTRATE COURT OF BAYELSA STATE
IN THE YENAGOA MAGISTERIAL DISTRICT
HOLDEN AT YENAGOA**

CHARGE NO:.....

BETWEEN:

**COMMISSIONER OF POLICE - COMPLAINANT
AND
GBALE GOODLUCK - DEFENDANT**

(BODY OF CHARGE)

COUNT ONE:

That you, Gbale Goodluck on or about the 15th day of May, 2019 at No. 10 Law School Avenue, Agaduma, in the Yenagoa Magisterial District, stole a Tecno Mobile Phone belonging to Madam Victoria Gbaraba and thereby committed an offence punishable under SECTION --- of the Criminal Code Law of ---- Cap --- Laws of Bayelsa State 2004.

Dated this ----- day of -----, 2019.

Inspector James Timaya
Police Officer

(3) HIGH COURT IN THE NORTH
(HEADING) CHARGE

**IN THE HIGH COURT OF KADUNA STATE
IN THE ZARIA JUDICIAL DIVISION
HOLDEN AT ZARIA**

CASE NO:.....

BETWEEN:

**THE STATE - COMPLAINANT
AND
GARBA SULEIMAN - ACCUSED PERSON**

(BODY OF CHARGE)

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

CHARGE ONE:

That you, Garba Suleiman on the 25th day of March, 2019 at No. 5 Sultan Machido Street, in the Zaria Judicial Division, Kaduna State, unlawfully converted goat property of Mrs. Inuwa Dada without her consent and thereby committed an offence of theft punishable under section 270 of the Penal Code Laws of Kaduna State.

Dated this ----- day of -----, 2019.

E. A. Tanko, Esq.,
Principal State counsel,
For the Attorney General,
Kaduna State

(4) HIGH COURT IN THE SOUTH
(HEADING) INFORMATION

**IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA**

CHARGE NO:.....

BETWEEN:

**STATE OF LAGOS
AND**

ONILE ADEYEMI

-

COMPLAINANT

-

DEFENDANT

(BODY OF CHARGE)

(preamble)

At the sessions of the Court holden at Ikeja on the ---- day of -----2018, the Court is informed by the Attorney General of the state on behalf of the state that: Onile Adeyemi is charged with the following offence:

COUNT ONE:

STATEMENT OF OFFENCE

Armed robbery contrary to section 1(2) (a) of the Robbery and firearms (Special Provisions) Act, Cap. R11LFN, 2004.

PARTICULARS OF OFFENCE

Onile Adeyemi on or about the 17th day of May, 2019 at No. 15 Lejok Brown Street, Ikeja in the Ikeja Judicial Division, whilst armed with gun broke into the vaults of Diamond Bank plc and carted away one large box containing the sum of (50) Fifty Million Naira, belonging to Diamond Bank plc.

Dated this ----- day of -----, 2019.

Oyanta Basi, Esq.,
Principal State counsel,
For the Honorable Attorney General of Lagos State

(5) FEDERAL HIGH COURT AND NATIONAL INDUSTRIAL COURT
(HEADING)

**IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT YOLA**

CHARGE NO:.....

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

- COMPLAINANT

AND

LAWAN BABUBA

-

DEFENDANT

(BODY OF CHARGE)

CHARGE ONE:

That you, Lawan Babuba on or about the 15th day of May, 2019 at No. 6 Bishop Street, within Yola judicial division, without lawful authority engaged in selling of drugs otherwise known as “cocaine” to truck drivers and thereby committed an offence contrary to section 11 (b) of the National Drugs Law Enforcement Agency Act, 2004.

Dated this ----- day of -----, 2019.

Aliyu Mohammad, Esq.,
Senior law officer,
For the chairman, NDLEA

WEEK 9 ONLINE ASSIGNMENT

QUESTION 1.

Anthony Baka, Samuel Doga and Michael Jagwa were former employees of Mr Lanre Shittu of 1, Churchgate street, Victoria Island, Lagos who were sacked in February, 2019 by their employer Mr Lanre Shittu for laziness and persistent lateness to work.

On the 11th of March 2019, the trio jointly agreed at No.10 Agbabiaka street Ajegunle, Lagos to kill Mr. Lanre Shittu in his house. About three hours before their planned attack, they decided to visit a local wine seller (Ogogoro joint) at Obalende within the Lagos metropolis. While they were busy enjoying their drinks, Michael Jagwa excused himself to visit the toilet but sneaked into the house of his ex-girlfriend Tina Giwa that is situated behind the Ogogoro joint and set the house ablaze completely. After that he returned back to join his friends at the joint and they all proceeded to Mr Lanre's house.

Anthony Baka stabbed Mr Lanre with a jack knife on the chest and he died instantly, while Michael jagwa and Samuel Doga took turn and had sexual intercourse with Cynthia, Mr Lanre's 12 years old daughter.

Two weeks after the incidence, they were apprehended by the police.

The Law; Criminal Code Laws of Lagos state

172. Any person who unlawfully assaults another is guilty of a misdemeanour, and is liable, if no greater punishment is provided to imprisonment for one year.

233. Any person who conspires with any other person to kill any person, whether such person is in the State or elsewhere, is guilty of a felony, and is liable to imprisonment for fourteen years.

339(1) Any act which causes damage to public property or property of another and which is done without his consent is unlawful, unless it is authorized or justified or excused by law and it is immaterial If the person did not know the property is public property or the property of another.

(2) when a lawful act which causes damages to property, is done with intent to defraud any person, It becomes an unlawful act

(6) the term 'damage' used in relation to property includes loss, destruction or alteration of property.

(7) A property is damaged when the property has been rendered inoperative or imperfect for the purpose for which the property was procured such as to impose on the owner the need to expend money or effort in restoring it to the original state.

341. Any person who negligently causes fire to any of the things mentioned in Section 339 of this Law is guilty of a felony and is liable to imprisonment for seven years.

223. Subject to the provisions of any other Law, a person who commits the offence of murder shall be sentenced to death.

260 (1) Any man who has unlawful sexual intercourse with a woman or girl, without her consent, is guilty of the offence of rape and liable to imprisonment for life.

Answer the following Questions

1. Assuming the Attorney General of Lagos has instructed you to draft a charge for filing against them at the State High Court, draft the charge(s)
2. Assuming the charge is defective what will be its effect upon conviction?
3. In numbered paragraphs, set out the procedures for post amendment of charges.

QUESTION 2

**Redraft this charge
IN THE MAGISTRATE COURT OF LAGOS STATE
IN THE IKEJA MAGISTERIAL DIVISION
HOLDEN AT LAGOS**

CASE NO.....

BETWEEN

COMMISSIONER OF POLICE.....PLAINTIFF

AND

PETER OLASUKANMI.....ACCUSED

Statement of offence;

Arson punishable under section 341 of the criminal code law of Lagos State.

Particulars of offence;

That you, Peter Olasukanmi on the 5th of January 2019 at Obasanjo Street, Ikeja Lagos in the Ikeja Magisterial division set ablaze the house of one Akin Adelabu, causing damages to his properties and thereby committed an offence of Arson

Dated thisDay2019

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

.....
Insp. John Marshall
Investigating police Officer
State Police Command Lagos

QUESTION 3.

**REDRAFT THIS CHARGE
IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ABUJA**

CASE NO.....

**BETWEEN
FEDERAL GOVERNMENT OF NIGERIA-----COMPLAINANT
AND
NELSON OKORO }ACCUSED PERSON
DAUDA BALA }**

CHARGE 1

I, Justice Bola Sabo, judge of the Federal high Court hereby charge you Nelson Okoro and Dauda Bala as follow;

That you Nelson okoro and Dauda Bala on 10th May 2020 at No. 2 Raskimono street in Apo within Abuja judicial Division of federal Capital territory were found to be in possession of a hard drug know as Cocaine contrary to section 11(b) of National Drug Law Enforcement Agency Act 2004

I herby direct that you be tried on he said charge by this court.

Being in Possession of hard drugs

Dated this day of.....2020

.....

Lekan Ogunwale
Chief legal officer
For the Chairman

NDLEA.

QUESTION 4

Redraft this charge.

**IN THE MAGISTRATE COURT OF FEDERAL CAPITAL TERRITORY
IN THE ZUBA JUDICIAL DISTRICT
HOLDEN AT ABUJA**

CASE NO.....

**BETWEEN
COMMISSIONER OF POLICE.....PETITIONER
AND**

SALISU MAIKASUWA.....ACCUSED

Statement of offence

Abduction contrary to section 275 of the Penal Code law of Federal Capital Territory Abuja.

Particulars of offence;

That you Salisu Maikasuwa on the 15th of February 2020 in the Zuba judicial district abducted one Musa Abubakar and thereby committed an offence of abduction punishable under section 275 of the Penal code law of Federal Capital Territory Abuja. You are hereby charged by the Chief Magistrate of Zuba, Mr Rilwanu Rotimi with the above mentioned offence.

And I hereby direct you to take your plea.

Dated thisDay2020

.....
Investigating Police Officer
FCT Police Command
Garki II Abuja

Week 10

BAIL PENDING TRIAL

Before trial commences and upon the arraignment of the accused, the defense counsel would seek a temporary release of the accused from the court. This is called Bail Pending Trial. The police bail granted to the accused usually elapse upon arraignment of the accused person in court. A bail is the process by which an accused person is released from state custody to sureties (or on personal recognizance) on conditions given to ensure his attendance in court whenever he is required to do so until the determination of the case against him – **Onyebuchi v. FRN**.

A bail is considered a constitutional right this is drawn from **Section 35(1) of CFRN 1999** on the constitutional right to personal liberty; **Section 36(5) CFRN 1999** on presumption of innocence and **Section 41 CFRN 1999** on freedom of movement. Even though bail is a constitutional right, it is still subject to the discretion of the court. However, the discretion must be exercised judicially and judiciously- **George v. FRN**.

Generally, only the court and police are the authority to grant bail to an accused and the object of a bail is principally to secure the presence or attendance of the accused person in police station for investigation or the court to face trial.

FACTORS THAT GOVERN GRANT OF BAIL BY THE COURT

In **Bamaiyi v. The State**, the Court of Appeal stated the following: as a matter of law, courts have discretion to grant or refuse bail. Such discretion must however be exercised judicially and judiciously. The guiding principles for court's consideration in granting or refusing are among others:

1. Gravity or Severity of the Offence and Its Punishment: See **Dogo v. COP**.
2. Nature of the Charge: (capital, felony or misdemeanour or simple offence)
3. Likelihood of the Accused Interfering with the Evidence or Investigation
4. Likelihood of the Accused Committing an Offence While on Bail
5. Criminal Record of the Accused Person: **Eyu v. State** & **Ajuadua v. FRN**.
6. Prevalence of the Offence: **State v. Felix**,
7. Health Condition of the Accused Person: See **Fawehinmi v. State**.
8. Likelihood of the Accused Jumping Bail: **Orji v. State**. **Abacha v. State**.
9. Strength of the Evidence in Support of the Charge: -**Ukalu v. COP**.
10. Detention for the Protection of the Accused
11. Possibility of Delay in Trial/Long Detention without Trial/ACJA **S.161(2) ACJA**

SAMPLE DRAFTS OF BAIL APPLICAITON

Summons For Bail at the High Court

IN THE HIGH COURT OF EKITI STATE
IN THE ADO-EKITI JUDICIAL DIVISION
HOLDEN AT ADO EKITI

CHARGE NO:.....

BETWEEN
STATE
AND

COMPLAINANT/RESPONDENT

Ayankoya Jadesola

DEFENDANT/APPLICANT

SUMMONS FOR BAIL

BROUGHT PURSUANT TO SECTION 35 OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED) AND SECTION 118 OF THE CRIMINAL PROCEDURE LAW OF EKITI STATE AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

LET ALL PARTIES attend at the High Court of Ekiti State holden at 9 O'Clock in the forenoon or so soon thereafter on the hearing of an application for:

1. **AN ORDER OF COURT ADMITTING THE DEFENDANT/APPLICANT TO BAIL.**
2. **AND FOR SUCH FURTHER ORDER OR ORDERS** as the honourable court may deem fit to make in the circumstances.

Dates this _____ day of _____ 2020

JUDGE

FOR SERVICE ON:

COMPLAINANT/RESPONDENT
Attorney General of Ekiti State,
Ministry of Justice,
Ado Ekiti.

DEFENDANT/APPLICANT
Ayankoya Jadesola,
C/O Counsel Advocate Chambers,
17, Fajuyi Park, Ado Ekiti.

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

NOTE: **Summons** is necessary after an application for bail is made to a Magistrate Court and it is refused and is to be further made to the High Court in the South. This is decision of the court in **SIMIDELE v. COP (1966) NMLR 116**.

Application before High Court after refusal by a Magistrate
IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

CHARGE NO _____

BETWEEN

FEDERAL REPUBLIC OF NIGERIA _____ COMPLAINANT/RESPONDENT
AND

1. NWEYENE STANLEY _____ DEFENDANT

2. EZE VICTOR [alias IG] _____ DEFENDANT/APPLICANT

MOTION ON NOTICE

BROUGHT PURSUANT TO SECTION 341(2) AND (3) OF THE CRIMINAL PROCEDURE CODE ACT AND SECTION 35(4), (5) AND SECTION 36(5) OF THE CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA, 1999 (AS AMENDED) AND THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable court will be moved on the 19th day of November, 2020 at the hour of 9'O clock in the forenoon or so soon thereafter as applicant's counsel will be heard on behalf of the applicant praying for the following orders:

1. AN ORDER admitting the accused/applicant to bail pending his trial
2. AND such further orders as this Honourable court may deem fit to make in the circumstances of this case.

Dated this.....day of..... 2020

Eyeke Kenneth Esq.
Applicant's Counsel
Eyeke Kenneth & Co
No 54 Buhari Road, Abuja

FOR SERVICE ON:

The Hon. Attorney-General of Federation
Ministry of Justice
Abuja

Affidavit in Support of Bail at High Court after refusal by a Magistrate

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

CHARGE NO _____

BETWEEN

FEDERAL REPUBLIC OF NIGERIA _____ COMPLAINANT/RESPONDENT
AND

1. NWEYENE STANLEY _____ DEFENDANT

2. EZE VICTOR [alias IG] _____ DEFENDANT/APPLICANT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR BAIL

I, Victor Eze, male, adult Nigerian, resident at 15, Awolowo Street, Surulere, Lagos, do hereby make oath and state as follows:

1. I am the accused/applicant in this case and by virtue of my position, I am conversant with the facts of the case and the circumstances leading to this case.
2. I was arrested along with Nweyene Stanley by the police officers of the Bwari Division, Abuja on Friday the 2nd of October, 2020 on the allegation of robbery of one Mrs. Egbu Amarachi on the that date.
3. We were arraigned before the Bwari Chief Magistrate in the Bwari Magisterial District, Abuja on 20th November 2020 on a charge of robbery. The charge sheet is hereby attached and marked as EXHIBIT A.
4. I have never been arrested, charged nor convicted of any offence before.
5. I was with my wife on the said day and the time in which the offence was said to have been committed.
6. I am a bus driver plying the route of Bwari to Lokoja before the arrest.
7. I am an out-patient at the Gwagwalada Specialist Hospital where I have been undergoing treatment for tuberculosis and Respiratory infection. The medical report is hereby attached and marked EXHIBIT B.
8. The prison which I am kept has no facilities for the treatment of the kind of ailment.
9. I can barely stand on my feet for more than 10 minutes at most.
10. An application for bail was before the Bwari Chief Magistrate of the Bwari Magisterial District which was refused. The ruling of the Magistrate is hereby attached and marked EXHIBIT C.

11. I make this affidavit in good faith believing same to be true by virtue of the Oaths Act.

Deponent

SWORN to at the High Court Registry, Abuja
This 9th day of December, 2020

BEFORE ME

COMMISSIONER FOR OATHS

Motion for Bail at the High Court

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY ABUJA
IN THE BWARI JUDICIAL DIVISION
HOLDEN AT BWARI

CHARGE NO:

BETWEEN

FEDERAL REPUBLIC OF NIGERIA _____ COMPLAINANT/RESPONDENT
AND

1. NWEYENE STANLEY _____ DEFENDANT

2. EZE VICTOR [alias IG] _____ DEFENDANT/APPLICANT

MOTION ON NOTICE

BROUGHT PURSUANT TO SECTION 164 AND 165 OF THE
ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015; SECTION 35 AND
36(5) OF THE CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA 1999
AND UNDER THE INHERENT JURISDICTION OF THE COURT

TAKE NOTICE that this honourable court will be moved on the 4th day of
December, 2020 at the hour of 9 O'clock in the forenoon or so soon afterwards
as the counsel for the Accused/Applicant may be heard on the application
praying the honourable court for the following orders:

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

1. AN ORDER admitting the Defendant/Applicant to bail pending his trial.
2. AND FOR SUCH FURTHER ORDER OR ORDERS as this honourable court may deem fit to make in the circumstances.

Dated this 1st day of December, 2020

DEFENDANT/APPLICANT'S COUNSEL:

Nwokeke Chidera Esq.

Eyeke Kenneth & CO.

No. 11 Law School Street, Bwari,
Abuja.

FOR SERVICE ON:

RESPONDENT'S COUNSEL

Director of Public Prosecution,

Office of the Deputy Director of Public Prosecution,

Federal Ministry of Justice,

Abuja.

Affidavit in Support of Motion for Bail at High Court

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY ABUJA

IN THE BWARI JUDICIAL DIVISION

HOLDEN AT BWARI

CHARGE NO: HCA/020/006

BETWEEN:

FEDERAL REPUBLIC OF NIG.....COMPLAINANT/RESPONDENT

AND

1. NWEYENE STANLEY_____DEFENDANT

2. EZE VICTOR [alias IG]_____DEFENDANT/APPLICANT

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE

I, Mr Eze Success, male, Christian, Business Man, Nigerian citizen of No. 6 Goodluck Road, Bwari, Abuja do hereby make oath and state as follows:

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

1. I am the brother of the defendant/applicant by virtue of which I am quite conversant with facts of this case.
2. I have the authority and consent of the defendant/applicant to depose to this affidavit.
3. I know the defendant was arrested by men of Nigerian Police on the 2nd day of October, 2020 on the allegation of stealing and I know that the applicant was arraigned before this honourable court on the 20th day November, 2020 and the court directed that he be remanded in prison custody.
4. On the 25th day of November, 2020, at about 4.00pm I was at the Kuje Central Prison, Abuja with the applicant where I was informed by the applicant of the following fact which I verily believe to be true:
 - (a) He was arrested by police at the Bwari Shopping Complex but he did not commit the alleged offence.
 - (b) In the morning of the said robbery, he was at the Gwagwalada Specialist Hospital and after a series of tests, he was given the laboratory test reports showing that he has Symptom tuberculosis, hypertension and cronic bronchitis. A copy of the lab test was shown to me and attached to this application. It is marked "EXHIBIT A1".
 - (c) He went back to the doctor who carried out further physical examinations on him and issued him with a medical certificate. The said medical certificate was shown to me and attached with this application. It is marked as "EXHIBIT A2".
 - (d) By the report and the doctor's advice, he was to visit three different consultants once every week for routine check up and he has remained in prison custody since then and he has not had access to medical treatment.
 - (e) Upon inquiry, he was informed that the facilities and personnel required for this type of ailment are not available in the Kuje Central Prison.
 - (f) Since he entered the prison, he has suffered untold rejection, and dejection as all the other inmates run away from him because of the severe cough which they fear could infect them.
 - (g) If he is granted bail, he would not jump bail.
 - (h) He is prepared to provide reasonable sureties.
5. I swear to this affidavit in good faith believing same to be true and correct to the best of my knowledge and in accordance with the Oaths Act.

.....
DEPONENT

Sworn to at the High Court Federal Capital Territory Registry, Abuja

This 9th day of December, 2020

BEFORE ME

.....
COMMISSIONER FOR OATHS

Written Address in Support of Motion for Bail at High Court

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY ABUJA
IN THE BWARI JUDICIAL DIVISION
HOLDEN AT BWARI

CHARGE NO: HCA/020/006

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT/RESPONDENT
AND

1. NWEYENE STANLEY_____DEFENDANT

2. EZE VICTOR [alias IG]_____DEFENDANT/APPLICANT

WRITTEN ADDRESS IN SUPPORT OF MOTION FOR BAIL

INTRODUCTION

Before this honourable court is a motion on notice dated and filed on the 9th day of December, 2020. This motion/application is brought pursuant to Section 164 and 165 of the Administration of Criminal Justice Act, 2015; Section 35(4) and 36 of the Constitution of Federal Republic of Nigeria 1999; and under the inherent jurisdiction of this court praying for an order of this Court admitting the Defendant/Applicant to bail pending his trial.

The jurisprudence and legal philosophy behind the granting of bail is founded on the constitutional right of freedom of personal liberty.

STATEMENT OF FACTS

On the 2nd day of October, 2020, at around 7:00pm at Bwari Shopping Complex, Bwari, Abuja, the Applicant was arrested by officers of the Nigerian Police Force and has been in prison custody. The Applicant has applied for bail at the Police station on grounds of health and this was refused. The facts surrounding the Applicants deteriorated state of health are as contained in the affidavit in support of this motion, the test report and medical report annexed there to. This has necessitated this application for bail pending the trial of the Applicant.

ISSUE FOR DETERMINATION

It is the humble contention of the Applicant that a sole issue calls for determination, to wit:

Whether the Applicant is entitled to be admitted to bail considering his deteriorated state of health and the high possibility of his dead before the conclusion of his trial?

LEGAL ARGUMENT IN SUPPORT

My Lord, we respond to the sole issue raised in affirmation that the Applicant is entitled to be granted bail due to the cogent and sufficient ill health condition that may highly lead to his dead before the conclusion of his trial. My Lord, bail is a basic conditional and constitutional right which is guaranteed under **Section 35 of the Constitution of the Federal Republic of Nigeria 1999**, as amended, as the constitutional right to freedom of personal liberty. In fact my Lord, the main objective of bail is in consonance with the spirit and intendment of the constitutional presumption of innocence as provided for under **Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999**, as amended.

This Honourable Court is empowered by law to grant bail in all criminal cases that come before it, however the grant of such bail is not automatic because **Section 341(2) of the Criminal Procedure Code, Cap C42, LFN 2004**, provide as follows: “persons accused of an offence punishable with imprisonment for a term exceeding three years shall not ordinarily be released on bail, but the Court may on application release on a bail, a person as aforesaid if it considers:

- a. That by reason of the granting of bail, the proper investigation of the offence would not be prejudiced; and
- b. That no serious risk of the accused escaping from justice would be occasioned; and
- c. That no grounds exist for believing that the accused, if released would commit an offence.”

This provision was cited with approval and applied in the case of ***Ogbuawa v Federal Republic of Nigeria (2011) 12 NWLR (Pt. 1260) 100 at 105 – 106***. My Lord, the facts deposed to in the affidavit in support of this application clearly showed that the Applicant will not commit any offence and will not interfere with police investigations or temper with any of the witnesses for the Prosecution. See also, ***Dokubo Asari v Federal Republic of Nigeria (2007) 12 NWLR (Pt.1048) 320; Olatunji v Federal Republic of Nigeria (2003) 3 NWLR (Pt. 807) 406; and Ani v State (2002) 1 NWLR (Pt. 747) 217***.

My Lord, it is the contention of the Applicant that he does not have any criminal records. The question of the probability of guilt does not even arise because the Applicant is presumed to be innocent until he is proven guilty, more so, there is no likelihood that any other charge would be brought against the Applicant and the Applicant will not suppress any evidence that may incriminate him.

The Applicant urges this Court to take special notice of his poor health. In ***Abacha v The State (2002) 5 NWLR (Pt.761) 638***, it was held that it is well accepted that whatever the stage at which bail is sought by an accused person, ill-health of the accused is a consideration weighty enough to be reckoned with as a special circumstance. Also, in ***Ani v State (2001) All FWLR (Pt.81) 1715***, *Obadina JCA* stated that: “Indeed I am of the view that the appellant has not only placed some materials before the learned trial judge but has shown by his affidavit in support, exceptional circumstances why he should be admitted to bail. As it is only the living that can praise God, so it is only the living that can be tried, convicted and punished for an offence, no matter how heinous the offence may be.”

It is conceded without reservation that it is not every allegation of ill-health that will automatically entitle the Applicant to the grant of bail. Accordingly, in ***Ofolue v Federal Republic of Nigeria (2005) 3 NWLR (Pt. 913) 571***, it was held that where an Applicant relies on ill health as a ground for seeking bail, he must by his affidavit, show any of the following:

1. That there is a positive, cogent, and convincing medical report issued by an expert in that field of medicine of which the accused suffering the ill health is referable;
2. That the prison or other detention authorities have no access to such medical facilities as are required in treating the accused person’s ailment;
or
3. That the ill-health is of such a nature as would affect other inmates of the detention place where the Applicant is detained or is being held.

A close perusal of the affidavit in support of this application would reveal that a medical report is attached to this application and the said medical report reveals the poor health condition of the Applicant.

Finally, the grant or refusal of an application for bail is a matter which is at the discretion of this Honourable Court. Having shown that there are no grounds which may militate against the admission of the Applicant to bail; the Applicant urges this Court to exercise its discretion judicially and judiciously by granting bail.

CONCLUSION

On the whole, counsel to the Applicant urges this Honourable Court to resolve the sole issue raised and argued in this application in favour of the Applicant and admit the Applicant to bail pending his trial. This is to ensure that the Applicant does not die before the conclusion of his trial. So we submit.

LIST OF AUTHORITIES

1. STATUTES:

- (a) Constitution of the Federal Republic of Nigeria, 1999 as amended.
- (b) Criminal Procedure Code, Cap C42, Laws of the Federation of Nigeria, 2004

2. CASES REFERRED TO:

- (a) Ogbuawa v Federal Republic of Nigeria (2011) 12 NWLR (Pt. 1260) 100 at 105 – 106;
- (b) Dokubo Asari v Federal Republic of Nigeria (2007) 12 NWLR (Pt, 1048) 320;
- (c) Olatunji v Federal Republic of Nigeria (2003) 3 NWLR (Pt. 807) 406;
- (d) Abacha v State(2002) 5 NWLR (Pt. 761) 638;
- (e) Ani v State (2002) 1 NWLR (Pt.127) 486
- (f) Fawehinmi v State (1990) 1 NWLR (Pt. 127) 486
- (g) Ani v State (2001) All FWLR (Pt. 81) 1715
- (h) Ofolue v Federal Republic of Nigeria (2005) 3 NWLR (Pt.913) 571

Date This 9th Day of December, 2020

DEFENDANT/APPLICANT'S COUNSEL:
Nwokeke Chidera Esq.

Eyeke Kenneth & CO.
No. 11 Law School Street, Bwari,
Abuja.

FOR SERVICE ON:
RESPONDENT'S COUNSEL
Director of Public Prosecution,
Office of the Deputy Director of Public Prosecution,
Federal Ministry of Justice,
Abuja.

Counter Affidavit Opposing Bail Application at the High Court

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY ABUJA
IN THE BWARI JUDICIAL DIVISION
HOLDEN AT BWARI

CHARGE NO: HCA/020/006

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT/RESPONDENT
AND

1. NWEYENE STANLEY_____DEFENDANT
2. EZE VICTOR [alias IG]_____DEFENDANT/APPLICANT

COUNTER AFFIDAVIT OPPOSING BAIL

I, Chikere Chidera Emmanuel, Christian, State Counsel, Nigerian citizen of No. 6 Law Clinic Avenue, Bwari, Abuja do hereby make oath and state as follows:

1. I am a Counsel in the Federal Ministry of Justice and by virtue of which fact I am quite conversant with facts of this case.
2. I have the authority and consent of the respondent to depose to this affidavit.
3. I know the defendant/applicant was arrested by men of Nigerian Police on the 2nd day of October, 2020 on the allegation of stealing.
4. I know that the applicant was arraigned before this honourable court on the 20th day of November, 2020 and the court directed that he be remanded in prison custody.

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

5. He was arrested by police at the Bwari Shopping Complex for an alleged offence he committed.
6. Since he has been remanded, no report of illness has been made concerning the defendant/applicant either by the Prison officials or the Doctor in charge of the Prison Clinic.
7. The Controller of Prison affirmed that the facilities and personnel of the Prison Clinic were recently equipped for all ailments especially those common among prisoners. A copy of the memorandum duly signed by the Controller of Prison conveying this fact is hereby attached as "EXHIBIT M".
8. If the Applicant is granted bail, he will likely influence the course of investigation.
9. The offence in question is very rampant in the area.
10. The defendant/applicant is not a first time offender and he has records of criminal conviction on the same alleged offence.
11. I swear to this affidavit in good faith believing same to be true and correct to the best of my knowledge and in accordance with the Oaths Act.

.....

DEPONENT

Sworn to at the High Court Federal Capital Territory Registry, Abuja
This 9th day of December, 2020

BEFORE ME

.....

COMMISSIONER FOR OATHS

WEEK 10 ASSIGNMENT

Bolanke Manitoba Scenario on bail

On the 10th day of September 2019 a gang of armed robbers numbering about six armed with firearms invaded Muson International Supermarket at No 10 Awolowo Road, Victoria Island Lagos and stole at gun point from the supermarket till the sum of two million Naira and carted away two Samsung curved Large screen televisions worth two million and five hundred thousand naira only. The names of the armed robbers are Bolanke Manitoba, Kamanga Zaki, Fakinama Abunga, Zampari Bungu, Brutus Saforova and Yansinbe Cantona.

Security personnel in the adjoining building observed the irregular movement in the supermarket and alerted the police. Exchange of gunfire ensued when the police arrived before the robbers ran away leaving their injured colleague Zampari Bungu behind. The police carried him to the hospital for medical attention. After two weeks at the hospital he recovered and was immediately arrested and taken to the Alagbon Division of the Nigerian Police, Lagos Island where he was detained for questioning and prosecution. After five days of mental torture which includes regularly hanging him in a ceiling fan in the interrogation room, throwing him into a tank full of water for five minutes daily and denying him food regularly, he eventually gave information that led to the arrest of the other gang members after one month.

The father of Zampari Bungu employed the services of a lawyer Burukutu Henry who was called to the Bar on 21st November 2018 to apply for his son's bail at the police station. When he visited his client at the station he gave two thousand naira to the constable in the counter to assist in buying tissue paper in order to secure access to see his client. He also informed the constable that he will settle him if he facilitates his client's release on bail and that he is ready to act as surety. He was eventually retained by the other accused persons as their counsel. He submitted their bail application to the Divisional Police Officer but his application was refused more particularly that it was a woman (the mother of Zampari Bungu) who was presented as a surety and that the offence is unbailable.

Curiously, the Police brought an application via motion on notice to the High Court Igboere, Lagos for remand requesting for a period of two months pending completion of investigation and it was granted despite opposition by the defence lawyer. The counsel two days after the grant of the remand order

filed an application in court for enforcement of his client's fundamental rights. Zampari Bungu while in detention developed pneumonia as a result of constant exposure to cold and has become hypertensive. Bolanke Manitoba is an out-patient at the Lagos State University Teaching Hospital as he is suffering from tuberculosis and cardiopathy whilst others have developed severe heart burn and acute ulcer.

Answer the following questions as counsel to the accused persons:

1. Draft an application for Police bail on behalf of the suspects at the Police Station as their counsel Burukutu Henry.
2. Draft the bail application for Zampari Bungu and Bolanke Manitoba to be filed at the Lagos State High Court with the supporting affidavit of not more than 7 paragraphs excluding the written address.
3. Assuming the scenario is in the FCT draft the bail application for Zampari Bungu and Bolanke Manitoba to be filed at the Federal Capital Territory, Abuja, Maitama High Court without the supporting affidavit and written address.
4. Assuming the defendants were brought for arraignment at the Magistrate Court Igboere and the Police applied for their remand orally in Prison custody pending completion of investigation, what would be your reaction as counsel?
5. Comment on the propriety or otherwise of the remand order application brought by the Police before the High Court.
6. Comment with the aid of decided cases on the reasons given by the Police for refusing them bail.
7. Assuming the scenario revolves around incidents of stealing and your bail application was filed at the Magistrate's Court Igboere, Lagos but it was refused, draft a subsequent application to be filed at the High Court for all the accused persons.
8. Comment on the ethical issue (s) if any, based on the conduct of the Legal Practitioner at the Police Station.
9. Comment on the propriety or otherwise of the procedure used by the Police in bringing the application for remand in the court in the scenario.
10. Comment on the propriety or otherwise of the application for enforcement of fundamental human rights brought by the defence counsel two days after the remand order was granted.

Week 11 & Week 12
**CONSTITUTIONAL SAFEGUARDS TO ENSURE FAIR TRIAL OF AN
ACCUSED**

An accused person is in a disadvantage position when compared with the prosecutorial authority which is the state. Thus, the constitution and some statutes have certain provisions to safeguard the interest of the accused person during trial. The constitutional safeguard aside from other things give a good face to the Nigerian Criminal Justice System. The constitution, FRN 1999 (as amended) in Chapter IV, the Criminal Procedure Act, the Criminal Procedure Code, the Administration of Criminal Justice Law of Lagos State 2011, and the Administration of Criminal Justice Act 2015 are the relevant statutes. Generally, depending on the right of an accused that was breached, it can nullify the entire criminal proceeding no matter how well it was conducted.

The constitutional safeguards are as follows

1. Right to fair hearing – **Section 36(1) & (2) (4) CFRN**
2. Right to be tried in public – **Section 36(3) & (4) CFRN**
3. Right to trial within reasonable time (speedy trial) – **Section 36(4) CFRN**
4. Right to be presumed innocent – **Section 36(5) CFRN**
5. Right to be informed of the crime alleged – **Section 36(6)(a) CFRN**
6. Right to be given adequate time to prepare for his defence – **Section 36(6)(b) CFRN**
7. Right to a counsel – **Section 36(6)(c) CFRN**
8. Right to examine witnesses – **Section 36(6)(d) CFRN**
9. Right to an interpreter – **Section 36(6)(e) CFRN**
10. Right against trial upon retroactive legislation and heavier penalty – **Section 36(8) CFRN**
11. Right to one trial for one offence – right against double jeopardy – **Section 36(9) CFRN**
12. Right against trial for an offence for which accused has been pardoned – **Section 36(10) CFRN**
13. Right to remain silent – **Section 36(11) CFRN**
14. Right to be tried only for an offence known to law – **Section 36(12) CFRN**

WEEK 11 & 12 ONLINE ASSIGNMENT

QUESTIONS

Mr Deyinde Adams was arrested on an allegation of armed robbery and rape for which he was subsequently arraigned before the Federal High Court, Kano on 19th December 2019. During the arraignment, the prosecution informed the court that there was no need to read the charges to the defendant as same has already been read to him at the police station. When asked by the trial judge if he wants to continue, the defendant informed the trial Judge that he does not understand English only Yoruba and the court told him that there was nobody on ground to interpret for him and considering the fact that he intends to round up the matter in 2 (two) days as he was going on leave on 22nd December 2019, there was no time to waste and then asked the prosecution to open their case.

The prosecution called 6 witnesses and when asked to cross examine them, the defendant applied that he would like an adjournment to engage the services of a counsel. The learned trial judge angrily informed him that he should have thought well to do that before the arraignment. The Judge then went on to thoroughly cross-examine the witnesses on behalf of the defendant. Mr Lulu Dengi, a legal practitioner with the Legal Aid Council who happened to enter into the court while the medical doctor was giving evidence and seeing the turn the matter was taking immediately stood up and informed the Judge that he would be interested in representing the defendant. He equally applied for an adjournment to enable him study the case and cross-examine the medical doctor but the court refused the application.

On 21st December, 2019, after the prosecution closed their case, the trial judge called on the defendant to open his defence but he chose to say nothing. The prosecution thereupon informed the court that “of course, he cannot say anything since it is obvious that he is guilty as charged, my Lord we implore you without wasting further time to convict him and send him to the gallows”. The trial judge thereupon duly convicted him.

Answer the following, using relevant statutory and judicial authorities:

- a) Comment on the propriety or otherwise of the request by the prosecution not to read the charge as same has been read to the defendant at the police station
- b) Comment on the request of the defendant for an interpreter and the reply of the learned judge with regards thereto

- c) Comment on the refusal of the trial judge for an adjournment sought by the defendant
- d) Comment on the propriety or otherwise of the trial judge conducting the cross-examination
- e) Comment on the propriety or otherwise of the refusal of the trial judge to the adjournment sought by Mr. Dengi
- f) Comment on the propriety or otherwise of the silence of the defendant in this case
- g) Comment on the propriety or otherwise of the comment made by the prosecution as to the guilt of the defendant
- h) Assuming the defendant is subsequently arraigned before the High court of Justice, Kano for the offence of robbery and sexual assault, can he raise the bar plea. Give reasons
- i) What are the elements to be proved for a person to successfully raise a bar plea

Assuming during the course of trial, the Kano State House of Assembly due to the spike in rape cases amended the Penal Code and increased the punishment to include castration, would the learned judge be right to subsequently impose the said punishment? Give reasons.

Week 13

TRIAL I: ATTENDANCE OF PARTIES AND ARRAIGNMENT

ATTENDANCE OF PARTIES I. Presence of the Accused Person at the Trial A. General Rule The accused must be present at every sittings of the Court from commencement to arraignment to sentence or acquittal. There is no trial in absence of an accused in Nigeria - **Section 210 of the CPL, Section 153 of the CPCL, Section 208 of the ACJL and Adeoye v. the State**. Trial is a nullity if the accused is tried in absentia - Lawrence v. King. Trial of an accused person in absentia is unknown to the Nigerian law. Even when the trial leaves the court room, the accused person must be in such place.

Exceptions where an accused presence will be dispensed with are:

1. He misconducts himself in the Court by interrupting the proceedings thus rendering his trial in his presence impracticable/impossible – Section 208 ACJL; Section 210 CPL; Section 153 CPCL. E.g. –violence etc. Note that appearance or reputation is irrelevant.
2. He has pleaded guilty in writing and or appears in court and pleads guilty through his counsel represented by a counsel on a charge whose penalty does not exceed N100 fine or 6 months imprisonment or both - Section 100 of the CPL (SOUTH ONLY)
3. Where the accused person is of unsound mind or he stands mute before the court – Section 223(2) CPL, Section 320(2) CPCL & Section 217(2) ACJL. Absence of the accused person in the enquiry as to the sanity is allowed.
4. The appearance of an accused person against whom a summons is issued may be dispensed with if he has legal representation or pleads guilty in writing – Section 154(2) of the CPCL (NORTH ONLY). However, the accused person must be present for sentencing – Section 154(3) CPCL.

ARRAIGNMENT: is the mandatory process of taking the plea of an accused to the charge before the Court. Arraignment is the commencement or beginning of trial. It is the process whereby the accused is placed before the court unfettered, the charge is read to him and he takes his plea which the court shall record such plea. Trial commences once the accused person pleads to the Charge –**Section 215 CPL, Section 211 ACJL, Section 161 & 187 CPCL** and **Fawehinmi v. IGP**. Plea is fundamental to the jurisdiction of the court. When the accused has not pleaded to the charge, the court cannot assume jurisdiction - **Nwafor Okegbu v. State**. While the CPL, ACJL and the ACJA relate to trial in any court, Section 187 CPCL refers only to proceedings before the High Court

WEEK 13 ONLINE ASSIGNMENT

QUESTIONS

Alhaji Barak Belema recruited Malik Babados, Mitch Rapp, and Stan Hurley as his foot soldiers. On January 14, 2020 Malik Babados concealed in the sole of his shoe 20 kilograms of cocaine, Mitch Rapp concealed in the sole of his shoe 15 kilograms of cocaine and Stan Hurley concealed in his hand luggage 25 kilograms of heroine. They were all scheduled to fly from Murtala Muhammed Airport Lagos to The Netherlands, Singapore and United Arab Emirates respectively.

Inspector Bobosky Apolla, a senior custom official in charge of electronic and manual search at the airport was contacted by Alhaji Barak Belema through text message to accord his boys all necessary protection and assistance as usual. Unknown to them Inspector Bobosky the previous night having attended all night Gospel Crusade surrendered his life to God and washed his hands off from the business. When Malik Babados, Mitch Rapp and Stan Hurley arrived at the electronic screening section in the airport, the screening machine revealed the narcotic substance and they were all arrested. During interrogation, they all confessed and Alhaji Barak Belema was arrested. Alhaji Barak during police interrogation confessed that the drugs were supplied to him by Bakayoko Mumina who was subsequently arrested.

At their arraignment in the Federal High Court Lagos, the Police orderly to the judge, read the charge at once to all the accused persons and called on them individually to plead to the four different counts in the charge. Alhaji Barak Belema pleaded guilty to the Charges against him and was sentenced immediately. Malik Babados and Mitch Rapp were leg cuffed because of their muscular body to prevent them from escaping. Malik refused to plead to the charge and he was immediately cited for contempt and a plea of not guilty was recorded for him while Mitch stood mute when called upon to plead. Stan Hurley did not take his plea but rather raised a preliminary objection to his trial upon the charge on the ground that the prosecutor failed to obtain consent before filing the charge and that the charge ought to have been filed at Federal High Court Abuja since it is a Federal offence. The court forced him to plead and he pleaded 'plea bargain'. Bakayoko Mumina who speaks and understands only pidgin English when he was asked to plead said 'I de craze when I sell the thing to am'.

ANSWER THE FOLLOWING QUESTIONS:

- A. Using judicial and statutory authorities comment on the validity or otherwise of the arraignment of the defendants in the above scenario as it relates to the appearance of the defendants in the dock.
- B. Comment with the aid of judicial and statutory authorities on the procedure adopted in reading the charge to the Defendants.
- C. Comment on the propriety or otherwise of the Orderly reading the charge to the defendants.
- D. Comment on the propriety or otherwise of the judge who sentencing Alhaji Barack Belema immediately upon his plea. What are the duties of the Judge, Prosecution Counsel and Defence Counsel in the circumstance?
- E. Comment on the attitude of Malik Babados who refused to plead to the charge and the procedure adopted by the Court.
- F. Comment on Mitch Rapp who stood mute when asked to plead to the charge.
- G. Comment on the propriety or otherwise of the objection raised by Stan Hurley at that stage of the trial instead of taking his plea. At what stage of the trial would the objection have been properly raised? Comment on the propriety of the ground of the objection.
- H. Comment on the propriety or otherwise of the plea of 'plea bargain' subsequently entered by Stan Hurley.
- I. Comment also on the propriety or otherwise of the plea of Bakayoko Mumina and what the trial court is required to do if any.
- J. Mention the Roles and duties of Registrars and Judges in a criminal trial.

Week 14

TRIAL II: TRIAL PREPARATION AND EVIDENCE

General Rule: When discussing the burden of proof in criminal litigation,

- A. **Section 36(5) CFRN** must be made reference to. The section states that ‘Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty; provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts’. Section 36(5) is the foundation of the burden of proof in criminal litigation/trial.
- B. **Legal Burden:** There are two legs to the above provision. The first leg is in the legal burden of proof which by reason of presuming the innocence of the accused person is on the prosecution. The legal burden of proof also the general burden of proof does not shift throughout the criminal trial, it is always on the prosecution. In support is the fact that an accused can decide to remain silent throughout the proceeding – **Section 36(11) CFRN. Section 131(1) Evidence Act**, did states that whoever desires any court to give judgment as to any legal right or liability dependent on the evidence of facts which he asserts shall prove that those facts exist. See also **Section 135(2) Evidence Act**. Thus, the prosecution who is alleging that the accused has committed an offence must prove so.
- C. **Evidential Burden:** Aside from the legal or general burden, there is the evidential burden. **Section 131(2) Evidence Act** provides that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Thus, the evidential burden can be on the accused when he alleges the existence of any fact like the defence of alibi, insanity, and intoxication, facts within the knowledge of the accused – **Section 139(1) & (3)(c) Evidence Act**. The foregoing is given constitutional backing by the second leg, **Proviso of Section 36(5) CFRN**.
- D. **Instances of Evidential Burden**
1. Burden of proving exemptions, exceptions or qualifications
 2. Burden of proving intoxication or insanity
 3. Burden of proving facts within the knowledge of the accused person
 4. Burden of proving alibi – **Yanor v. State**.
 5. Burden of proving special plea of double jeopardy – autre fois convict or acquit and pardon.

Sample Draft of Trial Plan /Prosecution's Trial Plan]

A. Charge

1. Robbery
2. Theft
3. Conspiracy etc

B. Law under which the Charge is Brought

1. Section 296 Penal Code for robbery
2. Section 286 Penal Code for theft
3. Section 97(1) Conspiracy

C. Evidence of Elements of the Offence

1. Testimony of Mr.....
2. Result of the identification parade
3. The bike that was used in the commission of the crime
4. To use the video, must lay down the proper foundation for admissibility
5. Testimony of the clerk etc

D. Documents to be relied on

1. Bank teller showing the withdrawal of money
2. Account statement

E. Challenges/Weaknesses of Case

1. No eye witness testimony

F. Penalty

1. 21years imprisonment
2. Up to 5years imprisonment

G. Prayers

1. Conviction on all charges

Defence's Trial Plan

A. Charge

1. Robbery
2. Theft
3. Conspiracy

B. Law under which the Charge is Brought

1. Section 296 Penal Code for robbery
2. Section 286 Penal Code for theft
3. Section 97(1) Conspiracy

C. Evidence of Witnesses

1. Testimony of accused

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

2. Testimony of other witnesses

D. Documents to be relied on: Defendant's statement made at the police station when they were arrested.

E. Defence: alibi – produce the witnesses to the Jollywell Hotel, Wuse.

F. Strength of Case

1. No eye witness at the scene of the crime
2. Due process not followed – identification parade requires a minimum of 8 people for suspect and 12 people for 2 suspects of the same physical build
3. Stating that the bike doesn't belong to the defendant

G. Penalty

1. 21years imprisonment
2. Up to 5 years imprisonment

H. Prayers: Acquit the defendants on all charges

NLSSAMPLE OF TRIAL PLAN

CHARGE	LAW	EVIDENCE (PROSECUTION)	EVIDENCE (DEFENCE)	PENALTY	PRAYER (PROSECUTION)	PRAYER (DEFENCE)	REMARKS
Stealing	S. 383, 390 Criminal Code	1. Oral testimony of Mr Obeise 2. Eye witness account of a passenger in the bus 3. The report of I.D. parade	1. Evidence of alibi	3 years jail term	Asking the court to convict as charged	Asking the court to discharge and acquit	1. Prosecution to rely heavily on the report of the I.D. parade 2. Defence to argue that alibi of the accused not investigated by the prosecution

WEEK 14 ASSIGNMENT

Femi Ajimobi was arrested by the police at Obiagu shopping mall in Enugu for the offence of House breaking and Rape committed on the 4th June, 2020. Mrs Fatima James lodged a report at the police station that her neighbour, Femi Ajimobi broke into her apartment and raped her on the 3rd of June, 2020.

In his statement to the police, Femi Ajimobi denied the allegation and was subsequently charged to court.

At his trial, the prosecution called the prosecutrix, Mrs Fatima James as PWI and she gave a vivid account of how she was assaulted, beaten and raped by the defendant. The prosecution sought to tender the torn clothes and pant of the victim, but the defence objected on the ground that it was coming from improper custody. The trial judge sustained the objection.

The prosecution also called Dr. Moses Evang, an expert gynecologist to give evidence and tender the medical report of the examination conducted on the prosecutrix. The defence counsel objected on the ground that the Medical Report was not signed. The court sustained the objection and marked the document "rejected".

At the close of the prosecution's case, the defence called Chidi Amaka, a 12 year old boy to testify for the defence. The prosecution objected vehemently on the ground that he is not a competent witness.

The trial judge sustained the objection and subsequently adjourned the matter to 14th July, 2020 to enable the defence call another witness.

Answer the following questions:

1. (a) Was the trial judge right in sustaining the objection by refusing to admit the torn clothes and pant in evidence? Give reasons for your answer.

(b) On what basis would the court accept the evidence of Dr. Moses Evang in law?

(c) Was the trial judge right in rejecting the evidence? Give reasons for your answers.

2. (a) Comment on the Objection of the prosecution and the ruling of the court on the competence of Chidi Amaka to give evidence in this case.

(b) Under what circumstance would the evidence of Chidi Amaka be admissible in this case?

3. (a) Assuming Femi Ajimobi intends to call his elder brother who is the governor of Koko State as a witness for the defence, comment on the competence and compellability of the governor to testify in this case

Week 15

TRIAL III: TRIAL ADVOCACY - EXAMINATION OF WITNESSES

General Rule: in criminal trials, there is generally no required number of witnesses to call to prove a case – **Odunlami v. Nigerian Navy**. Evidence of one witness which is credible – cogent and direct – would prove the most heinous crime – **Ehimiyein v. State**. All that the prosecution is enjoined to do is to call evidence to establish the crime against the accused. The number of witnesses to call is entirely at the discretion of the prosecution – **Osugwu v. State**. Credibility of evidence does not depend on the number of witnesses but the quality of the evidence.

Corroboration: in some cases corroboration may be required e.g. unsworn evidence of a child, treason and treasonable felony, evidence of an accomplice, sedition, exceeding speed limit, perjury, tainted witness, agent provocateur, co-accused, etc.

Failure to Call Material Witness: although the number of witnesses to call is at the discretion of the prosecution, nevertheless, the prosecution has a duty to call a material witness (a witness whose evidence will lead to just determination of the case) otherwise it may affect the case of the prosecution.

EXAMINATION IN CHIEF

Examination in chief is the examination of a witness by the party who called him - **Section 214(1) Evidence Act**. It is a method of putting questions to witnesses with a view to obtaining material evidence from them.

It takes the form of responses to questions, which eventually provides a story line. Usually commenced by introductory questions before main questions. Counsel should guide witness to tell court only story that is relevant, in an orderly, sequential and easy to follow manner. Pre-trial interview prepare witnesses. Open Ended questions should be employed, the witness tells the story. E.g. where, why, when, what, who, how, describe, explain etc. For examination-in-chief, prepare your questions based on the theory of the case.

Transitional Questions: use questions that leads to another material aspect of the testimony.

CROSS-EXAMINATION

The examination of a witness by a party other than the party who called him shall be called cross examination - **Section 214 (2) Evidence Act 2011**. It comes after the examination in Chief has been completed. Not limited to acts elicited in examination in chief – **Section 215(2) EA**. Cross-examination is not mandatory. If the counsel on the opposing side has no real issues to prove by the questions,

then he should refrain from asking them -**Kpokpov. Uko**. Where a witness in examination – in – chief is silent on a material point and did not say anything against the interest of the opponent cross examination would not be necessary-**Kpokpo v. Uko**.

Principles/Tactics of Cross-Examination

1. Use leading questions
2. Use close ended questions and avoid open-ended questions like why, who, what, when, etc.
3. Use short and brief questions
4. Aim at establishing facts – put facts to witness and move on
5. Keep the spot light on you and let the witness answer yes or no as much as possible
6. Build your case to the point that you need and stop
- 7.

RE-EXAMINATION

This is the last stage of examination of a witness. It is done by the party who called the witness, where necessary, after cross-examination - **Section 214(3) Evidence Act 2011**. The aim of re-examination is to clear ambiguities, inconsistencies doubts or haziness that arise out of cross-examination.

Prohibited Forms of Re-Examination

- 1) It is not an opportunity for the re-examiner to elicit evidence, which he failed to elicit in his examination in chief.
- 2) Introducing new matter not arising out of cross-examination except with leave of court. Where leave of court is granted, the opponent will also be allowed to cross-examine the witness in respect to such new matter introduced.
- 3) Leading questions shall not be asked in re-examination – **Section 221 (2) EA**.

WEEK 15 ASSSIGNMENT

QUESTIONS

Tonye Okeke, Tamara Abubakar, and Timi Bolaji were arrested by the men of National Drugs Law Enforcement Agency (NDLEA) at Igbogene Yenagoa Bayelsa State on 5 March 2020 for possessing substances suspected to be Indian Hemp and cocaine. They were later arraigned in the Federal High Court sitting at Yenagoa. The prosecution asked Mr Yetunde Wori, a government

chemist who conducted the drug analysis on the substances, questions on the report he wrote. Due to the complex nature of the report, Yetunde had to read the report to enable him answer the questions put to him. Thereafter, Biogbolo Nimi Esq who represented Tonye Okeke asked Yetunde questions on the report on behalf of all the defendants even though they were separately represented by counsel. After the three defence counsel were done with questioning their clients and the witnesses called by them, the trial judge asked the defendants to tell him the difference between coke and cocaine, which all of them mentioned in their evidence before the court. The defence counsel objected to the question on the ground that the judge was descending into the arena of conflict between the parties. The judge overruled their objection, and asked the defendants to answer the question.

Below is the excerpt of what took place between the Prosecution and Yetunde Wori:

Prosecution: You are Yetunde Wori, a government chemist with the NDLEA?

Yetunde Wori: Yes, my lord.

Prosecution:

You obtained a B.Sc in Industrial Chemistry from the University of Ibadan in 1995; went to the University of London in 1998 for your M.Sc in Industrial Chemistry and Professional Certificate in Drug Analysis, and you have been with the NDLEA since 1999?

Yetunde Wori: You are very correct, my lord. You know me so well.

Prosecution: Please, tell this honourable court the role you played in this case.

Yetunde Wori:

Substances suspected to be Indian Hemp and cocaine were recovered from the defendants on 5 March 2020. After preliminary tests, NDLEA officers put the substances in the Substance Packing Form, and brought them to me on 12 March 2020 for investigation and analysis. I carried out the investigation in the NDLEA Laboratory in Lagos State, and I analysed the substances. Based on that, I wrote this complex report, from where I am giving evidence in this court.

Prosecution: So, your analysis shows that the substances are Indian Hemp and cocaine?

Defence Counsel: Objection, my lord. This question is very leading.

Court: Objection overruled. Witness may answer the question.

Yetunde Wori: You are very correct, my lord. My analysis shows that the substances recovered from the defendants are Indian Hemp and cocaine.

Prosecution: My lord, that is all for the witnesses.

Answer the following questions:

- A. i. State the types of examination the prosecution and Biogbolo Nimi Esq did with Yetunde Wori, and their uses in criminal trials.
ii. Mention questions that are not allowed in (i) above.
- B. Comment on the propriety or otherwise of Biogbolo Nimi Esq asking Yetunde Wori questions on behalf of the defendants even though they were separately represented by counsel.
- C. Comment on the propriety or otherwise of the judge asking the defendants to tell him the difference between coke and cocaine; the objection of the defence counsel to the question, and the ruling of the court on the objection. Would your answer be different if Biogbolo Nimi Esq had asked Tonye Okeke the same question by way of re-examination? Give reason(s) for your answer.
- D. Was Yetunde Wori right to have read the drug analysis report in order to give evidence on it? As his counsel, state the procedure he should have followed.
- E. Identify the types of questions asked in 1, 3, and 5 above, and state whether or not they are allowed in the circumstance of this case.
- F. Discuss the objection of the defence counsel to question 7, and the ruling of the trial judge on it.
- G. Assuming Yetunde Wori has turned against the prosecution in the court, advise the prosecution on what he should do with Yetunde to prove his case.
- H. State in six paragraphs, how you would lead Yetunde Wori to tender the drug analysis report in evidence.

Week 16

TRIAL IV: PRESENTATION OF CASE FOR THE DEFENCE

After the last prosecution witness is excused by the court, prosecution will close his case. The Court will consider whether a prima facie case has been made by the prosecution to necessitate the accused person to open his case. If it appears to the court that the case has not been made out sufficiently, then defendant cannot be asked to prove his innocence. This results in a discharge: Section 239(1) ACJL, 286 CPL, Section 191(3) CPCL. Discharge whether the accused is represented by counsel or not. If represented by counsel, it is expected that counsel will make the application but court can discharge suo motu. Note that if making a no case submission, no requirement that it must be in writing or filed before it can be made. Counsel can orally make a no case submission at the close of prosecution's case. In opening the case for the defence, the accused person has two broad options: 1. He may make a No Case Submission. 2. He may choose to enter into his own defence.

NO CASE SUBMISSION/RULING: A no case submission means that there is nothing in the evidence adduced by the prosecution that would persuade the court to compel the accused person to put up his defence. It means that there is no evidence on which the court would convict, even if the court believed the evidence adduced by the prosecution – *Fagriola v. FRN*. This can be made by the defence or the Court on its own volition at the close of the prosecution's case where a prima facie case has not been established against the accused – *Dabor v. The State*. When it is made by the court, it is called a NO CASE RULING. It may be made in respect of one count of offence or the entire charge sheet. The court must make a ruling on each count of offence separately – *Ajani & Ors v. R.*

Options Available To The Accused When A No Case Submission Is Overruled

1. Rest his case on the case of the prosecution, or
2. Entering upon his defence
3. Appeal against the ruling

EX-IMPROVISO RULE: This is a situation where the prosecution at the close of defence may with leave of court call or recall witnesses out of the usual order of proceedings (PW-DW-FA) - *Section 241 of the ACJL, Section 289 CPL; Section 194 CPCL.*

VISIT TO THE LOCUS IN QUO (THE SCENE OF AN OFFENCE): If court is satisfied that there is need to inspect immovable real evidence by the Court for the proper determination of the case, then the court will adjourn and continue proceedings there or adjourn and proceed to view and return to court - **Section 127 Evidence Act; Section 205 ACJL; Section 263(1) ACJA; Section 207 CPL and Section 243 CPCL**. It may be conducted on the application of the parties or the Court suo motu - **Unipetrol v. Adireje, Ehikioya v COP**

FINAL OR CONCLUDING ADDRESSES: Final or concluding address is the summing up of the facts and evidence adduced before the Court applying the Law to them and urging the Court to return verdict in the favour of a party. It does not constitute evidence - **R v Cobolah**. At the end of case for defence, accused or counsel can deliver a final address, prosecutor may reply - **Section 241 & 242 CPL; Section 192 & 193 CPCL; Section 273 ACJL; Section ACJA**.

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Week 16 ASSIGNMENT (Trial 4)

Jim John, Mshie Aku and Brown Okotebu were arraigned before the High Court of the Federal Capital Territory, Abuja, for the offence of assault occasioning bodily harm. Two witnesses were called by the prosecution, including a medical doctor, who was said to have treated the victim.

At the trial, the Police investigation officer (IPO) recalled how he traced and arrested the defendants in their various hideouts. He also tendered the confessional statements supposedly made by the defendants. He equally submitted in evidence, a bunch of three canes, as exhibits connected with the crime.

In the heat of cross-examination however, the IPO admitted that he never visited the scene of crime and that the sticks tendered in evidence were brought to the police station by the nominal complainant. He also added that the confessional statements, earlier tendered in evidence were written at the police station by another police officer. In his own testimony, the medical doctor tendered a document which shows that the victim was treated for malaria.

Thereafter, the prosecution closed its case. At this juncture, Jim John, the 1st defendant, a legal practitioner who represented himself, made an application that

the prosecution has not made out any case against him, which would require him to answer to the charge. However, he was promptly overruled by the learned trial judge, who rather made an order for a visit to the scene of crime.

When the trial resumed, the 1st defendant opted to remain silent throughout the proceedings but the others, not represented by counsel, provided incriminating evidence which led to the conviction of all the accused persons.

Answer the following Questions:

1. Mention the various options open to Jim John, Mshie Aku and Brown Okotebu at the close of the prosecution's case?
2. Comment on the propriety or otherwise of the application made by the 1st defendant at the end of the prosecutions' case and state whether the learned trial judge was right in rejecting the application
3. Assuming that the application of the 1st defendant in (b) above was upheld, what would be the effect on the substantive matter?
4. Can the conviction of the court stand in the present instance? Give reasons for your answer
5. What are the circumstances which would require a court to make an order for a visit to the scene of crime?
6. Outline the procedure for conducting the visit in (e) above

Week 17

JUDGMENT (VERDICT) AND SENTENCING JUDGMENT

Meaning of Judgment: Judgment, also known as verdict in criminal proceedings, is the final determination of the rights and obligations of the parties in a case. In a criminal trial, judgment is the process of delivering the court's conclusion on whether or not the accused/defendant is guilty as charged after a review of the evidence adduced at the trial of the accused. The proceeding is brought to an end upon judgment and the court becomes functus officio except for imposing sentence.

CONTENTS AND FORM OF A VALID JUDGMENT

Writing: Every court is expected to write down its judgment before delivering it in open court. See **Section 268(1) CPCL; Section 245 CPL; Section 275 ACJL; Section 308 ACJA and Section 294(1) CFRN**. Thus, no court is allowed to deliver oral judgment except the magistrate in the south upon fulfilling certain conditions. The position or exemption of the magistrate court in the south (except Lagos) is justified because they handle a large volume of cases, often by summary procedure.

Points for Determination (Issues for Determination): This is another mandatory requirement for a valid judgment. The points for determination in a criminal trial is whether or not in law and in fact, the accused is guilty of the offence charged. These points for determination are usually the ingredients of the offence and the court has recourse to substantive law for this purpose. See **Tanko v. State**.

Decision of the Court on the Points: This is another mandatory requirement for a valid judgment and its absence can vitiate the judgment. See **Willie John v. State**. Decision of the court on the points involves making a specific finding whether the point/ingredient has been proved beyond reasonable doubt. This is important for the purpose of appeal. The decisions of the court on each point will ultimately lead to the decision whether the accused is guilty or not.

Reasons for Decision: If the judgment of a court does not contain the reasons for the decision, that judgment will be overturned on appeal. The reasons for a decision are usually a direct result of the evaluation of evidence. Thus, the court states why it believes or disbelieves the evidence of one party. Failure to give

reasons for the decision will lead to the quashing of the judgment on appeal. See **Nwaefule v.State**

Date, Signing or Sealing Judgment: The judgment must be signed or sealed (north) by the judge that wrote it. The signature may be affixed before the date fixed for delivering the judgment or he is preferably required to sign (or seal) and date the judgment in open court and in the presence of the accused immediately after delivering it. A judgment must bear the date of its delivery or pronouncement and not the day on which it was written. That is, the relevant date is the date of delivery of the judgment. This is important for the purposes of appeal to determine whether the appeal was filed within time. Thus, for the purposes of appeal, time starts to run from the date of delivery of the judgment. However, if the accused was not present when the judgment was read, his time would start to run from the day he became aware of the judgment -**Ohuka v State**.

Form of Judgment

1. **Delivery of Judgment and Filing Reasons Later:** A Judge cannot deliver his judgment and file reasons thereof later: Note, once the judgment is pronounced the judge or the Magistrate is *functus officio*. See also **The Queen v. Fadina**.
2. **Judgment Dictated in Open Court:** is not written judgment. In **Okoduwa v. The State**. Instead of recording his judgment in writing and signing It and then pronouncing it at the same time, Justice Omo-Eboh dictated the judgment. The Supreme Court held that he was in error.
3. **Delivery after Final Addresses:** A judge could write the judgment after the close of all evidence. However, he must wait till after the final addresses before he can deliver the judgment -**R. v. Cobolah**.²
4. **Judgment on Every Count:** Judgment must be given on every count, where there are more counts than one.
5. **Conviction before Sentencing:** The judge must convict the accused before sentence. In **Oyediran v. The Republic**,³the judge did not convict the accused on some of the counts before passing sentence. The sentence was held null and void.

²10 WACA 283

³(1967) NMLR 122

CONVICTION AND ALLOCUTUS

Conviction (Verdict): Conviction is the act or process of judicially finding and pronouncing someone guilty of a crime. Conviction comes before sentence. When an accused is found guilty, the verdict or judgment must as a matter of law convict the accused person before a sentence is passed. Thus, conviction is to be stated expressly.

Allocutus: Allocutus is plea of leniency. Thus, allocutus is after conviction but before sentence – **Section 197(1) CPCL, Section 247 CPL** and **Section 277 ACJL**. Allocutus is an unsworn statement from the convicted defendant to the sentencing judge in which he asks for mercy, explains his conduct, apologise for the crime or say anything else in an effort to lessen/mitigate the impending sentence. Under the CPL and ACJL, it is the

SENTENCING: A sentence is the pronouncement by the court upon the accused person after his conviction in a criminal prosecution imposing the punishment to be inflicted. The penalty is usually in the form of a fine, imprisonment, caning, binding over, execution, etc.

Types of Sentences

1. Death sentence
2. Imprisonment
3. Fine
4. Caning
5. Haddi lashing
6. Deportation – **Section 402 – 412 CPL, Section 331 – 339 ACJL**
7. Probation
8. Restitution of stolen property – **Section 270 CPL**
9. Binding over
10. Forfeiture – **Section 290 ACJL**
11. Payment of damages for injury or compensation
12. Community service – **Section 347 ACJL**
13. Confinement at rehabilitation and correctional centers

WEEK 17 ASSIGNMENT ON JUDGMENT AND SENTENCING

1. List the features of a valid judgment generally and identify the one not represented or missing in the trial courts judgment in the scenario.
2. Assuming the signing of the judgment is in issue, how may the signature of the judge be proved?
3. Using judicial and statutory authorities what is the effect of non-delivery of the judgment within the constitutional time prescribed by law on the accused persons under the 1999 constitution?
4. Using the scenario below, students should make a detailed and concise ALLOCUTUS not exceeding two hundred words each for the 2nd accused convict before the court.
5. Using the scenario below, students should comment on the justification or otherwise for the conviction of the first accused convict for conspiracy being an offence of which he was not charged but a lesser offence and the sentence imposed.
6. What are the condition precedents to be considered by the court before it can take other offences into consideration when convicting an accused person?
7. Using the scenario below, students should comment on the justification or otherwise of the imposition of death sentence by firing squad and hanging pronounced on the second accused person by the trial judge.
- 8.

RAMPAM ALECHENU SCENARIO

THE STATE - COMPLAINANT
 VS

1. RAMPAM ALECHENU}
2. MUSA UGOCHUKWU } - ACCUSED

Background Story

Rampam Alechenu, Musa Ugochukwu and Igbo Adetokunboh are OND 1 students of the DORBEN Polytechnic, Bwari. They jointly paid for and occupied a one bedroom flat at the One Love Housing Estate along Nigerian Law School Road, Bwari. On 20th march, 2007, Hon Justice Silas Adetokunboh of the Lagos division of the Court of Appeal decided to visit his son Igbo at the estate after the

law dinner at the Nigerian Law School Headquarters, Bwari. He was informed that Igbo left the quarters a month before and had not returned.

The matter was reported at the Bwari Divisional Police Headquarters consequent upon which Rampam Alechenu and Musa Ugochukwu were arrested. Upon arrest, Rampam Alechenu informed the police that at all times material to the case, he was away attending a workshop in Lagos. Musa Ugochukwu on his part claimed he knew nothing about the sudden disappearance of Igbo but that a few days before his disappearance, Igbo and his girlfriend, Ego Ikpotu were discussing about travelling to Canada. Ego is now in Canada but nothing is heard from her concerning Igbo. Rampam and Musa have been charged and have been standing trial for the murder of Igbo.

The only evidence against the accused persons was the unexplained absence of Igbo. The prosecution called 25 witnesses all of whom testified that the trio were together on 20th February, 2007, the day Igbo was last seen. A submission of no case to answer was made on behalf of the accused persons at the close of the case for the prosecution which the Trial Judge dismissed without much ado. Rampam entered upon his defence and called 45 witnesses all as to his good character alone. Musa on his part, refused to give evidence. Final addresses were concluded on 12 December 2007 and the judge adjourned to 30th February 2008 for Judgment. The court did not sit again until 16th June 2008 when the Learned Trial Judge, Hon. Justice Maza Maza Suuso delivered the considered judgment of the court in the following terms:

Judgment

This is the judgment of this court. But before I go further, may I request counsel to confirm that the name of the 1st accused is Musa Ugochukwu and that 25 witnesses testified for the prosecution while 45 testified for the defence. This inquiry is absolutely necessary because according to my religious faith I must do justice in any case that involves life and death. May I also mention that the judgment of this court could not be delivered as scheduled because of the partial stroke of the left brain which I suffered on 3rd January 2008? I had to take some time to regain my memory. Thank God I am perfectly alright now.

Now back to the judgment of this court. When this case came up for hearing on 10th August 2007, the prosecution called 25 witnesses. At the close of the prosecution's case a no case submission was made on behalf of the 2 accused persons. I rightly overruled the submission because it would amount to insanity to uphold a no case submission where 25 witnesses have testified in a murder case. Let me mention at this stage that I believe the evidence of the prosecution

witnesses. After the no case submission was overruled, the 1st accused entered upon his defence and called 45 witnesses who testified as to his impeccable character. Even a Mai gadi without any proper training would believe the testimony of these witnesses because 45 witnesses cannot come to court and lie consistently on one point. I cannot believe any less.

For the avoidance of doubt, I find the case of murder not proved against the 1st accused and he is hereby discharged and acquitted. However, under the law, I have powers to convict an accused person for a lesser offence. See *Nwachukwu Vs. The State*. I hereby convict the 1st accused person for conspiracy.

For the 2nd accused person, the evidence against him is overwhelming. In fact his refusal to testify after his no case submission was overruled is, in law, itself a testimony against him. Let me also mention that his silence was not only rude but also contemptuous. His counsel identified two issues: one, whether there is evidence that the deceased died. Two, whether there is any evidence linking the accused to the death of the deceased if he ever died? Three, whether my failure to take evidence in long hand or through any other source does not deprive me of the opportunity to have full account of all the evidence led before me? Let me say without any fear of contradiction that I barely stopped short of asking for the call to Bar Certificate of the learned counsel because I cannot believe that a lawyer of over 10 years standing can argue in this manner. But for purposes of setting the records straight let me put the law in perspective. On the 1st issue whether the deceased died, I must say that the law is well settled that if a person is away for a reasonably long period without being heard of by those who should ordinarily hear from him, he is presumed dead. I consider 6 months reasonable time. It is elementary and I cannot waste precious time on this point.

On the 2nd issue whether the 2nd accused is linked to the murder of the deceased, the position of the law which has been long established is *res ipsa loquitur* meaning the thing speaks for itself. The fact that the deceased was last seen with accused is conclusive of that fact.

The last issue merits no comment as there is no legal authority requiring me to take note of evidence or to write down a judgment from a common source or at all. What is important is that I can remember all that transpired in my court. On the whole, the 2nd accused person is hereby sentenced to death by firing squad. As a deterrent to other liars, he is also to be given 12 strokes of the cane before execution of the sentence of death.

Week 18&19
APPEALS

Appeal is the process of seeking to reverse the decision of the trial/lower Court on the basis of facts, Law or mixed Law and facts. It is an invitation by a party to a proceeding to a superior court to review the decision of an inferior court to find out whether on a proper consideration of the facts placed before it and the applicable law, the lower court arrived at a correct decision – **Asogwa v. PDP**. An appeal is different from a judicial review which focuses on the legality of the decision rather than the correctness of the decision on the merit – **Gov. Oyo v. Folayan**.

A court does not review its own decision. It is a higher court that does that. Apart from the limited appellate jurisdiction which the Magistrates' Court exercises over Customary Courts in the Southern part of the country, the courts with appellate jurisdiction are the High Court of the State/FCT; Federal High Court; Court of Appeal; and Supreme Court.

SAMPLE DRAFTS
Notice of Appeal

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

CASE NO: CR/213/2020
APPEAL NO.....

BETWEEN:

OJOH EMMANUELAPPELLANT

AND

THE FEDERAL REPUBLIC OF NIGERIA.....RESPONDENT

NOTICE OF APPEAL

To: the Registrar
Court of Appeal
Abuja.

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

I, OJOH EMMANUEL having been convicted of the offence of conspiracy to commit culpable homicide punishable with death and now being a Prisoner in Prison at the Federal Prisons Abuja, DO HEREBY GIVE NOTICE of Appeal against my conviction on the following grounds:

GROUND ONE:

The Learned trial Judge erred in Law when he convicted the accused on no admissible evidence proving his guilt beyond reasonable doubt.

PARTICULARS OF ERROR:

The evidence of PW1 is hearsay and it did not link the death of the victim to the Accused/Appellant.

GROUND TWO

The decision of the trial judge is unreasonable and cannot be supported having regard to the evidence.

.....
APPELLANT

Only where person is an illiterate, that an illiterate jurat will be required

DATED THIS 9TH DECEMBER, 2020

FOR SERVICE ON:

The Respondent,
The Attorney-General of the Federation,
Federal Ministry of Justice,
Abuja.

Bail Pending Appeal

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT BWARI

CASE NO: CV/AF/345
APPEAL NO:.....
MOTION NO:.....

BETWEEN:

OJOH EMMANUEL..... APPLICANT/APPELLANT

AND

THE FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT/RESPONDENT

MOTION ON NOTICE FOR BAIL

BROUGHT PURSUANT TO SECTION 341(2)(B) AND (C) OF THE CRIMINAL
PROCEDURE CODE ACT AND UNDER THE INHERENT JURISDICTION OF
THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on theday of
.....2020 at the Hour of 9 O'clock in the forenoon or so soon thereafter as
Counsel on behalf of the
Appellant/Applicant may be heard praying this Honourable Court for the
following:

1. AN ORDER releasing the Appellant/Applicant to bail pending the
determination of the appeal against his conviction at the Court of Appeal.
2. AND FOR SUCH FURTHER ORDER AND ORDERS as this Honourable
Court may deem fit to make in the circumstances.

DATED THISDAY OF 2020.

.....
Eyeke Kenneth Esq
Appellant's Counsel

No 64 Afikpo Street, Abakaliki, Ebonyi State

08102959631

Eyekekennethsamuel@gmail.com

FOR SERVICE ON:

The Attorney-General of the Federation,
Federal Ministry of Justice,
Maitama
Abuja, FCT

Affidavit in Support of Motion for Bail Pending Appeal

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT BWARI

CASE NO: CV/AF/345

APPEAL NO:.....

MOTION NO:.....

BETWEEN:

OJOH EMMANUEL..... APPLICANT/APPELLANT

AND

THE FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT/RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION FOR BAIL

I, OJOH EMMANUEL, Male, Adult, Christian, Student of the Nigerian Law School and a Nigerian Citizen of One House Estate Bwari Abuja do hereby make oath and state as follows:

1. That I am the 1 Applicant/Appellant in this case and by virtue of which I am conversant with the facts of the case.
2. I was tried and convicted for conspiracy to commit culpable homicide punishable with death by this Court dated the 11 day of September 2020.

NLS SAMPLE DRAFT ON CRIMINAL LITIGATION

3. That consequent upon my conviction and sentence, I have appealed against it to the Court of Appeal Abuja Division and a copy of the Notice of Appeal filed on the 13th day of October 2020 is attached and marked Exhibit 'A'.
4. That I will be very material in the preparation of my appeal as I was told by my Counsel which I verily believe to be true.
5. That the grounds for the conviction and sentence are doubtful in Law, and granting me bail pending the hearing of the appeal is just in the circumstances.
6. That the possible determination of the Appeal may out last my sentence of six months term of imprisonment.
7. That I make this statement in good faith believing its contents to be true and correct and in accordance with the Oaths Act 2004.

.....
Deponent

Sworn to at the High Court FCT Registry,

Thisday of 2020

BEFORE ME

.....
COMMISSIONER OF OATHS

Appellant's Brief of Argument

IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
SITTING AT ABUJA

APPEAL NO:.....

BETWEEN

OJOH EMMANUELAPPELLANT

AND

THE FEDERAL REPUBLIC OF NIGERIA.....RESPONDENT

APPELLANT'S BRIEF OF ARGUMENT

INTRODUCTION/PRELIMINARY STATEMENT

This is an appeal against the decision of the High Court of the Federal Capital Territory delivered on 5th day of November 2020 by Hon Justice Evbuomwan Edward. The Notice of Appeal was filed on 10th day of December, 2020. The Appellant was arraigned on a charge of murder preferred by the Attorney General of the Federation and subsequently convicted of conspiracy to commit murder.

ISSUE FOR DETERMINATION

Whether the learned trial judge erred in law by convicting the accused person of a charge unsupported by evidence in the case.

STATEMENT OF FACTS

The Prosecution called 25 witnesses

ARGUMENTS ON THE ISSUES FOR DETERMINATION

ISSUE ONE

It is trite law that for a charge of conspiracy to stand, there must be an agreement between two or more persons. Therefore, it is not possible to convict only one person of conspiracy since there must be an agreement with someone else to conspire. See the case of

CONCLUSION/SUMMARY

This Honourable Court is urged to quash the decision of the trial court and acquit the accused of the offence of conspiracy of culpable homicide punishable by death.

LIST OF AUTHORITIES

JUDICIAL...

STATUTORY...

DATED THIS 30TH DAY OF DECEMBER, 2020

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08102959631

FOR SERVICE ON:

The Attorney General of the Federation
Federal Ministry of Justice
Maitama
Abuja, FCT

WEEK 19 ASSIGNMENT 1 ON APPEALS 2

Big Guy and his bosom friend Okoro Lian were arrested for alleged rape of Miss Lovett Fineface. Big Guy was said to have invited Miss Fineface to their apartment at No 2 Lois Drive Asokoro on the 31 of January 2020 for his birthday party. Miss Fineface alleged that she found there was no party rather a setup to violate her person. She said while Big Guy raped her severally, Okoro Lian was video recording the event with a grin on his face. They were both charged before the High Court of the Federal Capital Territory Maitama for conspiracy to commit rape and for rape. During the trial, the prosecution called only 2 witnesses Miss Fineface and Dr Rubb the medical doctor who examined Miss Fineface after the incident. The defence called 20 witnesses whose testimonies were about the philanthropic activities of the defendants in their community. One of the defence witnesses was Mary Orobo a 10-year-old girl whose testimony was taken on oath as the court overruled prosecution's objection to it because according to the court the issue of whether to allow Mary Orobo testify on oath or not is at the discretion of the court. The parties addressed the court on the 10th of April 2020 and the court adjourned for judgment to 30th June 2020. The Judge eventually delivered the judgment on the 3rd of August 2020. In his judgment the Honourable Justice Bobby Yellow made the following findings:

"I find that the prosecution has failed woefully to prove their case beyond reasonable doubt. For a crime as heinous as rape, they only called 2 witnesses while the defence called 20 witnesses who gave convincing evidence of how the defendants had contributed to the development of their community. One does not need a soothsayer to know where the pendulum swings. Particularly, the testimony of Mary Orobo was so convincing that the court is justified in admitting her evidence on oath seeing she possesses super intelligence and understood the duty of speaking the truth. In a case of rape the law is that the testimony of the victim of rape must be corroborated and the corroboration cannot be that of a female doctor who will obviously be biased in favour of her fellow woman. I find the charges not proved and I hereby discharge and acquit the accused persons".

The Prosecution is aggrieved with the decision and has decided to appeal. After the Notice of Appeal had been filed, the Attorney General of the Federation decides that the prosecution is no longer interested in pursuing the appeal.

Answer the following questions.

1. Draft the Notice of Appeal containing two grounds of appeal.
2. What steps should the prosecution take to effect its lack of interest in continuing with the appeal? How is this different from abatement of an appeal?

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3. Draft one issue for determination from the grounds of appeal you drafted in (1) above.
4. What possible orders can the court make on hearing the appeal.

Assignment two

Using the scenario in Assignment 1 answer the following questions

1. Assuming the court found the defendants guilty and they have appealed against the decision. Big Guy who is an asthmatic patient and also battling liver cancer seeks bail pending his appeal before the High Court. As his counsel draft the application.
2. Assuming the prosecution after filing their Notice of Appeal intends to file additional grounds, what procedure will they adopt?

Explain the circumstance where the Court of Appeal will allow additional evidence during the appeal.

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